Queensland Government

Development Tribunal

Form 10—Notice of Appeal/ Application for Declaration

Planning Act 2016. Version 5 – August 2020

1. Appellant/Applicant details

It is important to name the correct Appellant as provided for under the Planning Act 2016 as otherwise the appeal may be invalid. The Appellant is normally the party named in the notice of decision being appealed against. In some cases, it may be the property owner, even if not named in the notice of decision. If in doubt, contact the Registrar on 1800 804 833 or seek appropriate advice.

Name/s in full (individual, company, government agency, etc.)	Sarah Anne Cutting	
Postal address	Address 7 Ray Street Suburb Yorkeys Knob State Queensland Postcode 4878	
Contact	Phone	Mobile 0421 605 843
Email address	fruitariansarah@yahoo.com.au	

2. Property description

The description must identify all land that is the subject of the appeal or application. Lot and plan details (e.g. SP/RP) can be found on title documents or rates notice. If the plan is not registered by title, provide previous lot and plan details. This section may be left blank if the appeal relates to an application for chief executive approval for an on-site sewage treatment plant or greywater treatment plant.

Street address	Street Lot 74 Forest Creek Road Suburb Forest Creek State Queensland Postcode 4873
Lot and plan details (attach list if necessary)	RP: 733654
Local government area where the land is situated	Douglas Shire

3. Appeal/declaration details

Please attach copy of notice (e.g. decision notice, enforcement notice, information notice, pool safety non-conformity notice etc.) as well a copy of the development application, if applicable.

Date of the written notice of decision sought to be appealed	07/09/2020 DD / MM / YYYY
Date written notice of decision received	07/09/2020 DD / MM / YYYY
Description of appeal (For guidance to common appeal types, see page 4)	Appeal about changing or cancelling conditions imposed on a building development approval

4. Grounds for appeal/declaration

The *Planning Act 2016*, section 230(1), requires the grounds for appeal to be succinctly stated. However, further pages may be added if necessary.

1. Condition 4 is not reasonably required in relation to the development or the use of the Land as a consequence of the development.

2. Condition 4 is an unreasonable imposition on the development and on the use of the premises as a consequence of your development because:
the future and potential uses of the land will not alter significantly as a result of building the dwelling on the south side because I will continue to cross the creek by foot on a regular basis; and
other creek crossings on private land in the area have not been subjected to the same standard as Condition 4 would impose.

3. Condition 4 is not necessary to achieve certain performance outcomes of the Environmental management zone code and may undermine a relevant Assessment Benchmarks.

4. The Shire has made conflicting assertions regarding crossing the creek by foot. They say they would allow it to occur from dwelling house to the south side of the land but they say they don ' t permit it to occur from the north side of the land to the dwelling house.

5. In the event that the Tribunal is not minded to set aside Condition 4 altogether, I propose amendments to Condition 4.

5. Fee and hearing options

Please contact the Registrar on 1800 804 833 before completing this section if clarification is required. A site inspection is usually desirable, so that the tribunal can properly understand the issues. If you select 'No', the tribunal may nevertheless insist on one and you will then be required to top-up the fee. The Registrar can advise you about the correct fee, if necessary.

Site Inspection required	Class of building (Optional to provide)	Floor area (Optional to provide)	Fee (Refer to notes on p6)
✓ Yes No	Class 1	m²	$ $689.60

6. Appellant's/Applicant's signature

This section **MUST** be signed by the Appellant/Applicant named in section 1. A company may sign by a duly authorised representative. In that case, the Registry may ask for proof of the representative's authority, such as a document duly executed by the company appointing the representative.

Signature of Appellant/Applicant		Date 02/10/2020 DD / MM / YYYY
Print name	Sarah Anne Cutting	
Signature of joint Appellant/ Applicant (if required)		Date DD / MM / YYYY
Print name		

7. Property owner/s signature

This section **ONLY** needs to be completed where the property owner has not already signed in section 6 as Appellant/Applicant.

This ensures the owner is aware an appeal has been lodged about their property and that appeal parties may be required to enter the property for the purposes of a site inspection or appeal hearing.

This section may be left blank where there is no specific property involved (e.g. a chief executive approval matter under plumbing legislation) or the property owner does not support the appeal (e.g. a building advisory agency appeal against a building certifier's decision favourable to the property owner).

Signature of property owner (s)		Date 02/10/2020 DD / MM / YYYY
		Date DD / MM / YYYY
Print name	Sarah Anne Cutting	

8. Appellant's/Applicant's agent for communications with the Registry

This section **ONLY** needs to be completed if the Appellant/Applicant wishes to nominate someone to be their agent for communications with the Registry (e.g. the agent may be a town planner or building certifier retained by a property owner who is the Appellant).

Name of agent	
Email address for agent	
Postal address for agent	Address Suburb State Postcode
Phone number for agent	

Office Use Only

Action	Date/Amount		Officer signature
Receipt of Form 10 by Registrar	Date DD / MM / YYYY		
Receipt of fee by Registrar	Date DD / MM / YYYY	$	
Review of Form 10 by Manager	Date DD / MM / YYYY		

Guidance to Appeal/Application Types (for assistance in completing section 3)

This is an overview only and is not a full description of the matters that may be the subject of an appeal or application for a declaration to a Development Tribunal. For a full description of those matters, including limitations on a Development Tribunal's jurisdiction, see the *Planning Act* 2016, particularly sections 229, 239 – 241 and schedule 1.

Appeals about Building matters

- appeal about a development application, including a building development application
- appeal about the extension of a building development approval
- appeal about permissible changes for a building development approval
- appeal about changing or cancelling conditions imposed on a building development approval
- appeal about an enforcement notice given under the *Building Act 1975* or the *Planning Act 2016*
- appeal about an information notice issued under the *Building Act 1975*
- appeal against decisions by Building Certifiers and Referral Agencies about inspection of building work under the *Building Act 1975*
- appeal about failure to decide other applications (not building development applications) made under the *Building Act 1975*

Appeals about swimming pool fencing

- appeal against a pool safety nonconformity notice

Appeals about plumbing and drainage under the *Plumbing and Drainage Act 2018*

- appeal about an information notice issued under the Act
- appeal about a chief executive approval information notice issued under the Act
- appeal about an enforcement notice given under the Act

Appeals about water or sewerage connections under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*

- appeal against a water connection decision for which the land is subject to a development application for a material change of use for a classified building or for a material change of use involving a limited class 2 building (section 99BRBE)
- appeal against particular charges for a water connection, including connection charges, property service works charges and trunk infrastructure charges (section 99BRBF)
- appeal against a refusal of a conversion application to convert non-trunk infrastructure into trunk infrastructure (section 99BRBFA)

Appeals about a decision under the *Residential Services (Accreditation) Act* 2002

- appeal against a decision about whether premises comply with prescribed building requirements (section 29)

Appeals about infrastructure charges

- appeal against an infrastructure charge notice or conversion application

Appeals by an advice agency

- appeal by an advice agency

Appeals about material change of use (MCU) of classified buildings and limited class 2 buildings

- appeal about a development application for the MCU of a classified building
- appeal about an extension for development approval for the MCU of a classified building
- appeal about a change application of a development approval for the MCU of a classified building
- appeal about conditions imposed on a development approval for the MCU of limited class 2 buildings

Application for a declaration

- appeal about whether a development application is properly made
- appeal about whether a proposed change for a development approval for an MCU of premises is a minor change

Guidance for completing this form

For further information about lodging an appeal/declaration refer to Appeal fact sheets.

For assistance in completing this form contact the Registrar on 1800 804 833.

Change of name: The Building and Development Dispute Resolution Committees were established under the *Sustainable Planning Act 2009*. Under the *Planning Act 2016* the name has been changed to the Development Tribunals.

Lodging this form: This form as well as supporting documentation and information plus the prescribed fee must be lodged with the Registrar within the relevant appeal period. This may be done by email, post or in person. Appeal periods will vary according to the type of appeal/declaration. Please refer to the Appeal fact sheets for more information on appeal periods. Lodgment may be made by email, by post or by delivery (see address details below). For further information please contact the Registrar, Development Tribunals.

Fees: The most commonly applied fees are listed on the last page of this form. A complete list of all the fees for appeal/declarations can be found in schedule 17 of the *Planning Regulation 2017* which can be viewed at www.legislation.qld.gov.au/browse/inforce (under 'Subordinate Legislation'). *It is advisable to seek advice from the Registrar* before completing section 5 of the form as these vary according to the type of application being lodged.

Payment: Payment may be made via the online credit card payment facility on the Queensland Government website, or by cheque or money order. Cheques and money orders should be made payable to the Department of Housing and Public Works.

Special facilities: Tribunal hearings are held at various venues, not all of which are accessible by or have facilities for people with mobility disabilities. If you require a venue with access and facilities for a person(s) with a mobility disability, or are aware of a person with mobility disabilities who wishes to attend a hearing, please advise the Registrar in sufficient time for such a venue to be arranged. If special services, such as an interpreter, are required, please notify the Registrar in sufficient time for the services to be provided.

Privacy: The information collected on this form will be used by the Department of Housing and Public Works in accordance with your appeal or application to be decided by a Tribunal. Details may be disclosed to parliament or other agencies, for purposes associated with the Tribunal. Your details may also be disclosed to other parties in accordance with a requirement of the *Planning Act 2016* and may be stored in a department database. The information collected will be retained as required by the *Public Records Act 2002* and is subject to the *Right to Information Act 2009* and the *Information Privacy Act 2009*.

Please note that final decisions (which include details such as name, address and property details) will be uploaded for public viewing to the department's website. For further information regarding your privacy, please contact the Registrar on 1800 804 833.

Checklist (optional)

To ensure your application is complete, please use this checklist to confirm you have included:

- ☐ Form 10:
  - ☐ Check correct Appellant/Applicant named in section 1
  - ☐ Insert property details in section 2
  - ☐ Insert relevant dates and description of appeal in section 3
  - ☐ Insert 'grounds for appeal/declaration' in section 4
  - ☐ Select whether site inspection required in section 5
  - ☐ Appellant/Applicant to sign and date in section 6
- ☐ Decision notice (eg enforcement notice, information notice, pool safety nonconformity notice)
- ☐ Concurrence Agency Advice
- ☐ Development application, where applicable
- ☐ Plans
- ☐ Payment of the appeal fee

Department of Housing and Public Works

The Registrar

Development Tribunals

post GPO Box 2457 Brisbane Qld 4001 Australia

visit 41 George Street, Brisbane

tel 1800 804 833

fax +61 7 3237 1248

email registrar@hpw.qld.gov.au

website www.hpw.qld.gov.au

The *Planning Act 2016* is administered by the Department of State Development, Manufacturing, Infrastructure and Planning except the provisions relating to the administration of the development tribunal under the Act (Chapter 6, section 282 and Schedule 1) which are administered by the Department of Housing and Public Works.

Development Tribunal fees

Fees apply to applications for appeals or declarations lodged with the Development Tribunals. Fees referred to below are current as at 1 July 2019 and are subject to change at any time without notice.

It is advisable to contact the Registrar to confirm the applicable fee for the appeal/declaration being lodged.

Only the more common fees are listed in the table below.

A full list of the fees for appeals/declarations is contained in schedule 17 of the of the *Planning Regulation 2017* which can be viewed via the webpage at www.legislation.qld.gov.au/browse/inforce (under 'Subordinate Legislation').

Subject of appeal/declaration	No site inspection by Tribunal	Site inspection by Tribunal
Class 1 or class 10 building	$414.50	$689.60
Class 2 to class 9 building (floor area of 500m² or less)	$603.90	$871.35
Class 2 to class 9 building (floor area greater than 500m²)	$871.35	$1,294.85
Appeals under the *SEQ Water Act*. **section 99BRBE** **section 99BRBF or BRBFA**	 $414.50 $726.70	 $689.60 $1,001.85
Infrastructure charges notice or conversion application	$726.70	$1,001.85
Declaration	$281.55	N/A

DOUGLAS
SHIRE COUNCIL

PO Box 723 Mossman Qld 4873
www.douglas.qld.gov.au
enquiries@douglas.qld.gov.au
ABN 71 241 237 800

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

7 September 2020

Enquiries: Jenny Elphinstone
Our Ref: MCUC 2020_3662/1 (Doc ID 970378)
Your Ref: 20201378

Sarah Anne Cutting
fruitariansarah@yahoo.com.au

Dear Madam

Development Application for Material Change of Use (Dwelling house)
At Forest Creek Road Forest Creek
On land described as Lot 74 on RP733654

Please find attached the Negotiated Decision Notice for the above-mentioned development application. This Negotiated Decision Notice replaces the Decision notice issued on 25 August 2020.

Please quote Council's application number: MCUC 2020_3662/1 in all subsequent correspondence relating to this development application.

Should you require any clarification regarding this, please contact Jenny Elphinstone on telephone 07 4099 9444.

Yours faithfully

Neil Beck For
Paul Hoye
Manager Environment & Planning

encl.

- Negotiated Decision Notice
  - Approved Drawing(s) and/or Document(s)
  - Reasons for Decision
- Advice For Appeals (Decision Notice)

Cc – Patrick.c@gmacert.com.au

Negotiated Decision Notice

Approval (with conditions)

Given under sections 60, 63, 65 and 76 of the Planning Act 2016

Applicant Details

Name:	Sarah Anne Cutting
Postal Address:	fruitariansarah@yahoo.com.au

Property Details

Street Address:	Forest Creek Road Forest Creek
Real Property Description:	Lot 74 on RP733654
Local Government Area:	Douglas Shire Council

Details of Proposed Development

Applicant request for change representations seeking the deletion of the conditions 3 and 4 of the Decision Notice for the Development Permit for Material Change of Use for a Dwelling house.

Negotiated Decision

Date of Decision: 7 September 2020 replacing the Decision Notice issued on 25 August 2020

Decision Details: Approved in part whereby:

1. Condition 4 is amended as follows:

   Onsite access

   4. a. where the dwelling house is to be sited south of the waterway on the land the developer must:

      i. Provide a vehicle access and culvert crossover from the car park area, through the existing cleared creek crossing path, to the new house location. The access and crossing must be designed by a RPEQ (Registered Practising Engineer Queensland)~~.~~ and;

      ii. The creek crossing must be constructed and certified as having been appropriately

constructed by a RPEQ prior to the commencement of use;

OR

b. the dwelling house is sited in the existing clearing area north of the waterway on the land in a position to the satisfaction of the Chief Executive Officer having suitable regard to the setback from the adjacent road, the setback from the top of bank of the waterway, and requirements for onsite wastewater infrastructure.

2. All other conditions of the Decision Notice issued on 25 August 2020 remain unchanged.

Approved Drawing(s) and/or Document(s)

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

Drawing or Document	Reference	Date
Site and Floor Plan, Elevations	Greg Skyring Design and Drafting Pty Ltd, Drawing 307-20, Sheet 1 of 1, Revision A.	21 July 2020
FNQROC Regional Development Manual Standard Drawing/s for Vehicle Access		
Rural Allotment Access	Standard Drawing S1105 Issue E	26 November 2014

Note – The plans referenced above will require amending in order to comply with conditions of this Decision Notice.

Assessment Manager Conditions & Advices

Assessment Manager Conditions

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 Commencement of Use, except where specified otherwise in these conditions of approval.

External Works

3. Undertake the following works external to the land at no cost to Council:

   a. Provide a concrete or bitumen finish over the top surface of the existing culvert crossover and apron from the sealed road pavement to the property boundary. The dimensions of the finish area are to be in accordance with FNQROC Development Manual Standard Drawing S1105;

Where the vehicle crossing is constructed in accordance with the FNQROC Regional Development Manual the works do not constitute Operational Works. Such work must be constructed to the satisfaction of the Chief Executive Officer prior to Commencement of Use.

Onsite access

4. a. where the dwelling house is to be sited south of the waterway on the land the developer must:

   i. Provide a vehicle access and culvert crossover from the car park area, through the existing cleared creek crossing path, to the new house location. The access and crossing must be designed by a RPEQ (Registered Practising Engineer Queensland)~~.~~ and;

   ii. The creek crossing must be constructed and certified as having been appropriately constructed by a RPEQ prior to the commencement of use;

   OR

   b. the dwelling house is sited in the existing clearing area north of the waterway on the land in a position to the satisfaction of the Chief Executive Officer having suitable regard to the setback from the adjacent road, the setback from the top of bank of the waterway, and requirements for onsite wastewater infrastructure.

Finished Floor Level

5. The finished floor level of all habitable rooms within the dwelling house must be a minimum of 300mm above the 1% AEP flood event.

Building Colours

6. Building colours should be re non-reflective and are moderately dark to darker shades of grey, green, blue and brown or the development is not visible external to the site by vegetation screening.

Treatment of Onsite Waste

7. The method of on-site effluent disposal must be in accordance with the *Queensland Plumbing and Drainage Act 2002* and Section 33 of the *Environmental Protection Policy (Water) 1997*.

Water Supply

8. Water storage tank(s) with a minimum capacity not less than 10,000 litres must be installed prior to occupation of the premises. Details of the water tank(s) must be shown on plans submitted with the building application. Such water tanks must be provided with:

   a. Mosquito-proof screens of brass, copper, aluminium or stainless steel gauze not coarser than one (1) mm aperture mesh of substantial construction and installed in such manner as not to cause o accelerate corrosion; or

   b. Flap valve at every opening of the tank or other receptacle; or

   c. Other approved means for preventing the ingress or egress of mosquitoes; and

   d. Where a tank or other receptacle is provided with a manhole, the manhole must have a diameter of no more than 40 cm; and

   e. The water tank(s) shall be fitted with a 50 mm ball valve with a camlock fitting.

Vegetation Clearing

9. Existing vegetation on the subject land is to be retained, except where removal is permitted for this development, the Planning Scheme or otherwise approved under a separate development permit.

Generators

10. Noise from generators, air-conditioning units, swimming and spa pool filters, service equipment or other mechanical equipment, must not emanate from the subject land to a degree that would, in the opinion of the Chief Executive Officer, create an environmental nuisance having regard to the provisions of Chapter 8 Part 3B of the *Environmental Protection Act 1994.*

Fuel Storage

11. All fuels must be stored in an undercover and secure location at all times.

Advices

1. 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 of the *Planning Act 2016*.
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. This approval does not negate the requirement for compliance with relevant Local Laws and statutory requirements.
4. For information relating to the *Planning Act 2016* log on to 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 .
5. It is recommended separate enquiry be made with Council as to the ability to traverse the neighbouring Council reserve on a temporary basis for the transportation of building materials to the site and access by trades on a limited time basis in order to minimise impact on the waterway.

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 2018*.

Currency Period for the Approval

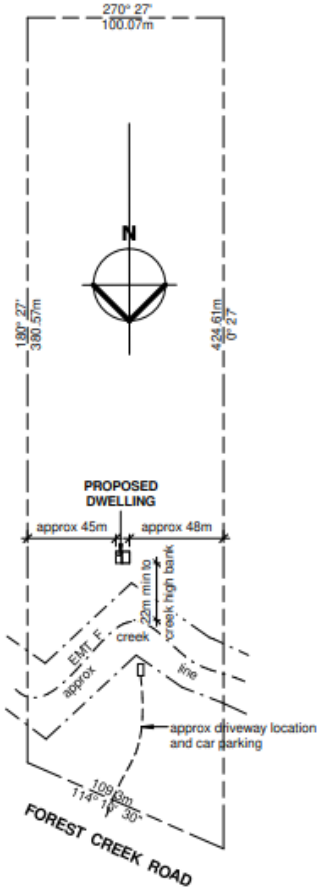
This approval, granted under the provisions of the *Planning Act 2016*, shall lapse six (6) years from the day the approval takes effect in accordance with the provisions of Section 85 of the *Planning Act 2016*.

Rights to make Representations & Rights of Appeal

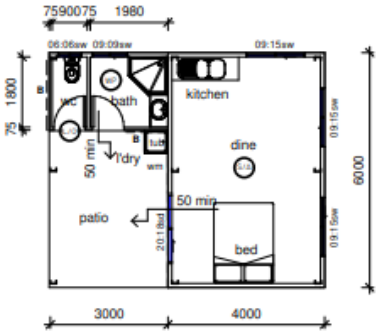
The rights of applicants to make representations and rights to appeal to a Tribunal or the Planning and Environment Court against decisions about a development application are set out in Chapter 6, Part 1 of the *Planning Act 2016.*

A copy of the relevant appeal provisions are attached.

Approved Drawing(s) and/or Document(s)



1 Site Plan
1 : 2000



2 Floor Plan
1 : 100

LEGEND

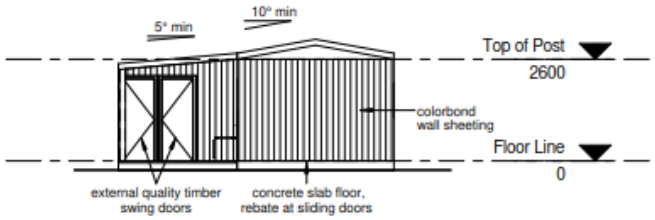
- girt walls to building supplier specs
- 70 x 35 MGP12 H2 stud framed external and internal walls, studs – 450 crs, 2/70 x 45 jambs
- As above with 4mm F22 structural ply lining extra to one face, nail fixed for bracing to Manufacturers specs
- Waterproof wet area to AS3740.
- Smoke alarms to AS3786.
- Lift-off hinges to WC - where pan is within a 1200 radius from door hinge

WALL FIXING NOTES

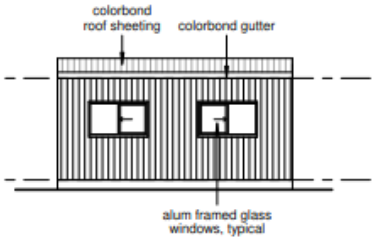
- fix stud to posts with 1/No14 teks screw at top, bottom and mid height
- fix stud to each girt with 2/No14 teks screws
- fix top plate to each crossing purlin over with 2/No14 teks screws
- fix bottom plate to slab with 1/12Ø trubolt at 900 max crs

TIMBER SCHEDULE

studs	- 70 x 35 MGP12 H2/450 crs
jamb studs	- 2/70 x 45
top plate	- 70 x 45
bottom plate	- 70 x 35

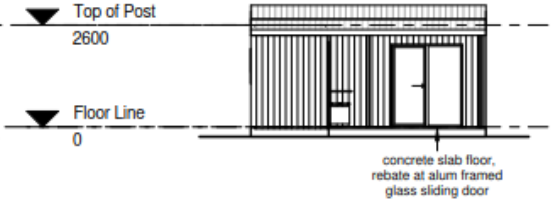


3 Front Elevation
1 : 100



4 Right Elevation
1 : 100

5 Rear Elevation
1 : 100



6 Left Elevation
1 : 100

GREG SKYRING Design and DRAFTING Pty. Ltd.
Lic Under QBSA Act 1991 - No 1040371
11 Noli Close, Mossman Q. 4873
Phone/Fax: (07) 40982061
Mobile: 0419212652
Email: greg@skyringdesign.com.au

PROJECT	CLIENT	WIND CLASS	PLAN NUMBER	SHEET
Proposed Dwelling, L74 RP733654, Forest Creek Road, FOREST CREEK	S. Cutting	C2	307-20	1 of 1
	SCALES	**PLAN TITLE**	**DATE OF ISSUE**	**REV**
	As indicated	Site and Floor Plan, Elevations	21.07.20	A

Reasons for Decision – Consideration of Applicant's Representations for Changes

The reasons for this decision are:

1. Sections 43(2)(b), 60, 63, 65 and 76 of the *Planning Act 2016*:
   a. to ensure the development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme Version 1.0; and
   b. to ensure compliance with the *Planning Act 2016*.
2. Findings on material questions of fact:
   a. the development application was properly lodged to the Douglas Shire Council 30/07/2020 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; and
   c. the decision notice was issued on 25 August 2020 and the applicant properly lodged change representations on 31 August 2020.
3. Evidence or other material on which findings were based:
   a. the development triggered assessable development under the Assessment Table associated with the Environmental Management Zone Code;
   b. Council undertook an assessment in accordance with the provisions of sections 60 and 63 of the *Planning Act 2016*;
   c. Subject to conditions of the approval Council determined the development satisfactorily meets the Planning Scheme benchmarks;
   d. the applicant's change representations as provided on 31 August 2020; and
   e. the applicant's change representations have been considered and the following findings are made:
      i. the approval is appropriate subject to conditions. Condition 4 is amended to provide for an alternative siting of the dwelling house north of the waterway should the applicant so desire.

Non-Compliance with Assessment Benchmarks

Benchmark Reference	Alternative Measure/Comment
Environmental Zone Code AO6.2 Access and vehicle manoeuvring and parking areas are constructed and maintained to: (a) minimise erosion.	Access through the waterway can minimise erosion by a condition of the approval requiring the construction of a culvert crossing.
Flood Hazard Overlay Code AO1.2 Development within the Flood and Storm Tide hazards overlay maps (excluding the Flood plain assessment sub-category) is designed to provide immunity to the Defined Inundation Event as outlined within Table 8.2.4.3.b plus a freeboard of 300mm. AO1.3 New buildings are: (a) not located within the overlay area;	A condition of the approval requires suitable ground and floor levels to achieve appropriate immunity.
Natural Areas Overlay Code AO9 Development does not occur on that part of the site affected by a waterway corridor.	A condition of the approval requires a culvert crossing over the waterway.

Consideration of Change Representations

Representation 1. I wish to access the dwelling by foot to minimise disruption to the creek.

Planning Consideration

By foot creates disturbance to the waterway by both the occupant and any visitors. The approval runs with the land and considerations are beyond the current or initial land owner. It is reasonable that appropriate access be provided between the car parking area and the dwelling house. A condition limiting access across the creek by foot passage only is untenable to enforce.

Representation 2. I will park on the north side of the creek, well away from the creek and existing cleared creek crossing path to minimise erosion. (My vehicle is not capable of driving on the creek crossing).

Planning Consideration

The applicant's personal financial circumstances are not matters for consideration of assessment against the relevant benchmark. The approval runs with the land and reasonable use by a future land owner needs to be considered. A condition limiting the land owner's vehicle type is unreasonable to enforce.

Representation 3. I believe parking well away from the creek, in the cleared area near the road where I intend to park, will ensure the development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme Version 1.0; compliance with the Planning Act 2016 and the 2017 State Planning Policy and the Environmental Management Zone Code; therefore satisfactorily meeting the Planning Scheme benchmarks.

Planning Consideration

No issue is raised with the proposed car parking area. The condition of concern is the form of access across the creek.

Representation 4. The proposed site is not affected by a waterway corridor (Natural Areas Overlay Code) as the creek is very shallow and easily crossed by foot year round. The proposed site is 20 metres away from the creek.

Planning Consideration

The development application is made over the entire property. The land is mapped with a waterway, reflecting the existing waterway on the land. It is reasonable to assume there is connectivity between the car parking area and the dwelling house. The nature of the required crossing reflects the physical aspects of the waterway. It is anticipated that this culvert crossing is a very minor work.

Representation 5. An apron and concrete or bitumen finish is unnecessary as I wish to access the dwelling by foot.

Planning Consideration

The condition wording is in regards to vehicle access to the land and reflects the FNQROC Regional Development Manual standard having regard to the nature and extent of the existing vehicle entry. A standard culvert design certified by an RPEQ Engineer is expected to have a sealed finish to ensure longevity, design and construction standards.

Representation 6. There are other council approved dwellings in the Daintree which do not have an apron or sealed driveway to the dwelling.

Planning Consideration

The condition wording the FNQROC Regional Development Manual Standards and the current Planning Scheme requirements.

Representation 7. It is legal to access a dwelling by foot, and not illegal to park away from your dwelling.

Planning Consideration

No issue is raised with the applicant / land owner accessing the area between the car park and the dwelling by foot. Council takes issue with the path of travel across the creek. The access should be over and not through the waterway.

Representation 8. *I will not drive or take a vehicle or allow visitors to drive any where near the creek or the existing cleared creek crossing path.*

Planning Consideration

The approval runs with the land and considerations are beyond the current or initial land owner. It is reasonable that appropriate access be provided between the car parking area and the dwelling house. A condition limiting access across the creek by foot passage by the occupier / land owner and all visitors is untenable to enforce, in particular for future land owners.

Representation 9. *The construction works requested will disrupt the fish and eel in the creek and the dredging for the culvert will cause more destruction than what walking through the creek regularly will do.*

Planning Consideration

The proposed works are a one-off construction and where undertaken appropriately are accepted instream works.

Representation 10. *It is not illegal to walk through a creek on your own property.*

Planning Consideration

The conditions do not prohibit the applicant walking through the creek. The conditions have regard to the development achieving compliance with the respective Planning Scheme codes.

Representation 11. I do not want concrete or bitumen on the property for both aesthetic and environmental reasons.

Planning Consideration

The existing vehicle crossing onto the land already has both bitumen and concrete. These are standard design finishes having regard to the Regional climate and conditions. No alterative design finish that is RPEQ Certified has been proposed.

Representation 12. *I do not have the money for the works, so if these conditions are not removed it would mean building on the North side of the creek, which would mean crossing the creek more frequently to get to my fruit orchard and preferred part of the property to spend time in for privacy, seclusion and less noise disruption.*

Planning Consideration

The personal financial circumstances of the applicant are not considerations for assessment of the benchmark. Council would have no issue with an alternative siting for the dwelling house on the north side of the creek which would negate the need for the culvert creek crossing. Condition 4 can be amended to provide for an alternative siting position of the dwelling house north of the waterway.

(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 an appeal relating to the *Plumbing and Drainage Act 2018*—

(i) for an appeal against an enforcement notice given because of a belief mentioned in the *Plumbing and Drainage Act 2018*, section 143(2)(a)(i), (b) or (c)—5 business days after the day the notice is given; or

(ii) for an appeal against a decision of a local government or an inspector to give an action notice under the *Plumbing and Drainage Act 2018*—5 business days after the notice is given; or

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(iii) otherwise—20 business days after the day the notice is given; or

(g) 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—

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(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, section 1, table 1, item 1—each principal submitter for the application whose submission has not been withdrawn; and

(d) for an appeal about a change application under schedule 1, section 1, table 1, item 2—each principal submitter for the application whose submission has not been withdrawn; and

(e) each person who may elect to be a co-respondent for the appeal other than an eligible submitter for a development application or change application the subject of the appeal; 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 to an appeal by filing a notice of election in the approved form—

(a) if a copy of the notice of appeal is given to the person—within 10 business days after the copy is given to the person; or

(b) otherwise—within 15 business days after the notice of appeal is lodged with the registrar of the tribunal or the P&E Court.

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(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 Non-appealable decisions and matters

(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,

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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.

Part 2 Development tribunal

Division 1 General

233 Appointment of referees

(1) The Minister, or chief executive, (the ***appointer***) may appoint a person to be a referee, by an appointment notice, if the appointer considers the person—

(a) has the qualifications or experience prescribed by regulation; and

(b) has demonstrated an ability—

(i) to negotiate and mediate outcomes between parties to a proceeding; and

(ii) to apply the principles of natural justice; and

(iii) to analyse complex technical issues; and

(iv) to communicate effectively, including, for example, to write informed succinct and well-organised decisions, reports, submissions or other documents.

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Receipt no. 4480400

Queensland Government

From	enquiries@smartservice.qld.gov.au
Date paid	2 October 2020, 7:33 pm
Paid by	Credit card

Item description	Reference	Amount (excl. GST)	GST	Amount (incl. GST)
Development Tribunal Application Fees Development Tribunal Appeal Application Fee - Address of subject property: Lot 74 Forest Creek Road, Forest Creek, Queensland, 4873 Department of Housing and Public Works	Sarah Anne Cutting	$689.60	$0.00	$689.60
			Total	**$689.60**
			Total amount paid No GST has been charged	**$689.60**

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