

25 September 2019

**Enquiries:** Daniel Lamond  
**Our Ref:** MCUC 2018\_2511/2 (920523)  
**Your Ref:** ET18-005

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

Mackay Resort Development Pty Ltd  
C/- Paula Zangrande, ZAP Creative  
25 Meston Cres  
BRINSMEAD QLD 4870

**Email:** paula@zapcreative.com.au or

Dear Sir/Madam

**Development Application for Request for Minor Change (Dwelling House)  
At 6 Wharf Street PORT DOUGLAS  
On Land Described as LOT: 21 TYP: PTD PLN: 20925**

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

Please quote Council's application number: ROL 2018\_2511 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 Hoyer**  
**Manager Environment & Planning**

encl.

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



# Decision Notice

## Approval with Conditions

*Given under section 63 of the Planning Act 2016*

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### Applicant Details

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**Name:** Mackay Resort Development Pty Ltd  
**Postal Address:** C/- Paula Zangrande, ZAP Creative  
25 Meston Cres  
BRINSMEAD QLD 4870  
**Email:** paula@zapcreative.com.au or

### Property Details

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**Street Address:** 6 Wharf Street PORT DOUGLAS  
**Real Property Description:** LOT: 21 TYP: PTD PLN: 20925  
**Local Government Area:** Douglas Shire Council

### Details of Proposed Development

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Minor Change to Material Change of Use (Dwelling house)

### Decision

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**Date of Decision:** 25 September 2019  
**Decision Details:** Development Permit

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

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

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

## Assessment Manager Conditions & Advices

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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.

### Air-conditioning Screens

3. Air-conditioning units located above ground level and visible from external properties and the street must be screened with appropriate materials to improve the appearance of the building. Such screening must be completed prior to the Commencement of Use.

### Damage to Council Infrastructure

4. In the event that any part of Council's existing sewer, water or road infrastructure is damaged as a result of construction activities occurring on the site, the applicant/owner must notify Council immediately of the affected infrastructure and have it repaired or replaced at no cost to Council, to Council's satisfaction.

### Vehicle Parking

5. The amount of vehicle parking must be as specified in Council's Planning Scheme which is a minimum of two (2) spaces located on site. In addition, all parking, driveway and vehicular manoeuvring areas must be imperviously sealed and drained.

### Storage of Machinery and Plant

6. The storage of any machinery, material and vehicles must not cause a nuisance to surrounding properties, to the satisfaction of the Chief Executive Officer.

### Landscaping Plan

7. The site must be landscaped in accordance with details included on a Landscaping Plan. The Landscaping Plan must detail the following:
  - a. Further planting of appropriate trees and shrubs with screening qualities within established gardens beds along the frontage of the site and adjoining land to the north having regard to Planning Scheme Policy SC6.7- Landscaping;
  - b. Deep planting of setback areas and planter beds within the development;
  - c. Provide fencing details (materials and finishes), particularly with respect to any fencing fronting Wharf Street;
  - d. Provide an appropriate landscaping strip of deep planting spanning the length of the road frontage boundary in the road reserve. Species in this area must be

appropriate for planting near services such as water, sewer, gas, telecommunications etc;

- e. All services in the road verge must be accurately located and detailed on the landscaping plan drawn to scale. The plan must include species with screening qualities to adequately screen the retaining wall to the satisfaction of the Chief Executive Officer. Where this cannot be achieved due to conflict with services in the road verge, services must be relocated at no cost to Council;
- f. Include any other relevant conditions included in this Development Permit. A copy of this Development Approval must be given to the applicant's Landscape Architect/Designer;
- g. A species list detailing all proposed vegetation.

One A3 copy of the landscape plan must be endorsed by the Chief Executive Officer. All landscaping plans must be endorsed prior to the issue of a Development Permit for Building Works. Landscaped areas must be maintained at all times to the satisfaction of the Chief Executive Officer. The owner must take responsibility for the maintenance of the on-street landscaping at all times.

### **Ponding and/or Concentration of Stormwater**

8. The proposed development is not to create ponding nuisances and/or concentration of stormwater flows to adjoining properties.

### **Sediment and Erosion Control**

9. Soil and water management measures must be installed/implemented prior to discharge of water from the site, such that no external stormwater flow from the site adversely affects surrounding or downstream properties (in accordance with the requirements of the Environmental Protection Act 1994, and the FNQROC Development Manual).

### **External Works**

10. Undertake the following works external to the land at no cost to Council:
  - a. Provide a vehicle crossover and apron to Wharf Street.
  - b. Repair any damage to existing roadway (including removal of concrete slurry from footways, roads, kerb and channel and stormwater gullies and drain lines) that may occur during and works carried out in association with the construction of the approved development.

### **Sewer Works Internal**

11. Undertake sewer diversion works in accordance with the Queensland Plumbing and Drainage Act 2018 and the Queensland Development Code.
- ~~11. Provide details demonstrating how the development complies with the Queensland Development Code (QDC) MP1.4, with respect to undertaking building works within close proximity to the sewer. In the event QDC MP1.4 cannot be complied with, an alternative solution, endorsed by an RPEQ must be detailed and approved by the Chief Executive Officer prior to the issue of a Development Permit for Building Work. If an alternative solution is proposed, it must not result in decreased building setbacks from Wharf Street. This solution once endorsed can be taken as the concurrence agency response for the purpose of the building works referral triggered by proposed development within the zone of influence under the QDC MP1.4.~~

## Building Colours

12. External building colours must be consistent with, or similar to the colours proposed on DA06 Concept Plan prepared by ZAP Creative dated 27 August 2019.
12. ~~External building colours must be consistent with shades of the surrounding natural environment and must be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Building Works.~~

## ADVICE NOTES

1. 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 cyclone watch and that relevant emergency telephone contacts are provided to Council officers, prior to commencement of works.
2. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.
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).

## Further Development Permits

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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 out in compliance with the Queensland *Plumbing and Drainage Act 2018*.

## Concurrence Agency Response

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**Note** – Concurrence Agency Response is attached. This Concurrence Agency Response maybe amended by agreement with the respective agency.

## Currency Period for the Approval

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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

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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)



Sheet List			
Sheet Number	Sheet Name	Current Revision Description	Current Revision Date
DA01	Cover Sheet	ISSUE FOR MATERIAL CHANGE DA	27/08/2019
DA02	Site Plan	ISSUE FOR MATERIAL CHANGE DA	27/08/2019
DA03	Floor Plans	ISSUE FOR MATERIAL CHANGE DA	27/08/2019
DA04	Elevations	ISSUE FOR MATERIAL CHANGE DA	27/08/2019
DA05	Dimensions & Sections	ISSUE FOR MATERIAL CHANGE DA	27/08/2019
DA06	Perspective Images	ISSUE FOR MATERIAL CHANGE DA	27/08/2019

REV	DATE	REVISION	BY
1	201907	ISSUE FOR MATERIAL CHANGE DA	DA
2	201908	ISSUE FOR MATERIAL CHANGE DA	DA

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Drawings: 8424 847 010  
Email: admin@zaprocreative.com.au | Web: www.zaprocreative.com.au

**Wharf St Residence**  
CONCEPT  
Lot 21 Wharf Street, Port Douglas

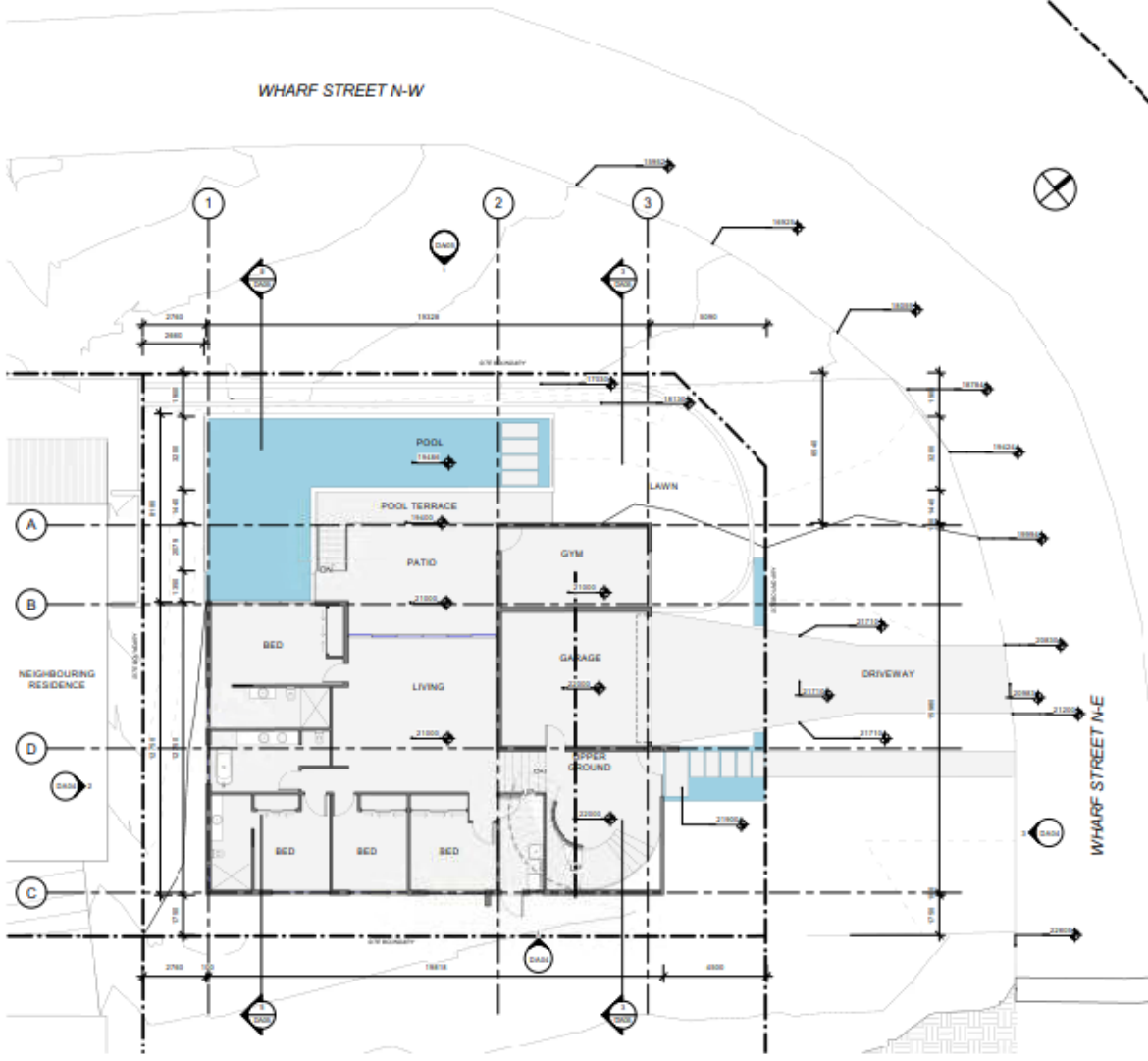
A & J Mackay  
Cover Sheet

DATE	BY
DATE	BY
DATE	BY
DATE	BY
DATE	BY
DATE	BY

2019007 DA01 2

Keynote Legend

REV	DATE	DETAILS	PREP
1			PC
2			PC



1 Site Plan  
1:100

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**Wharf St Residence**

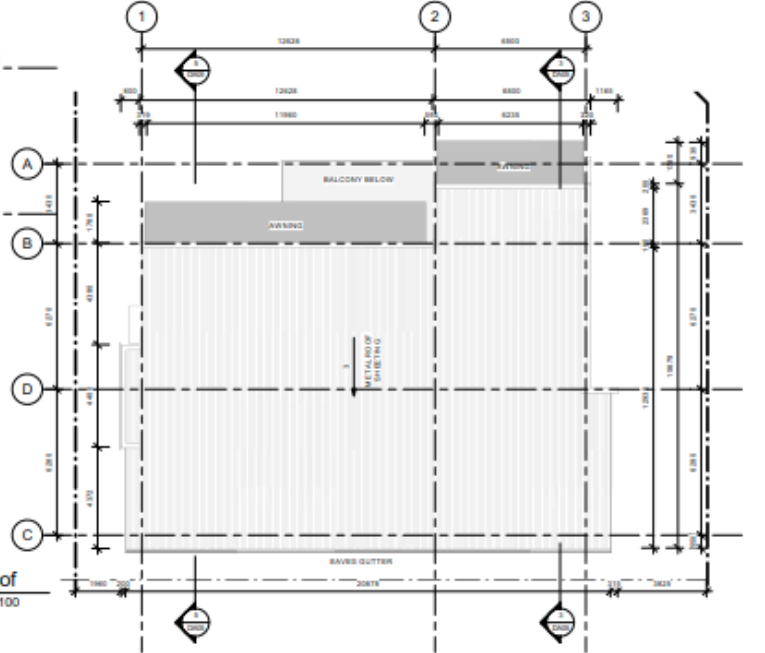
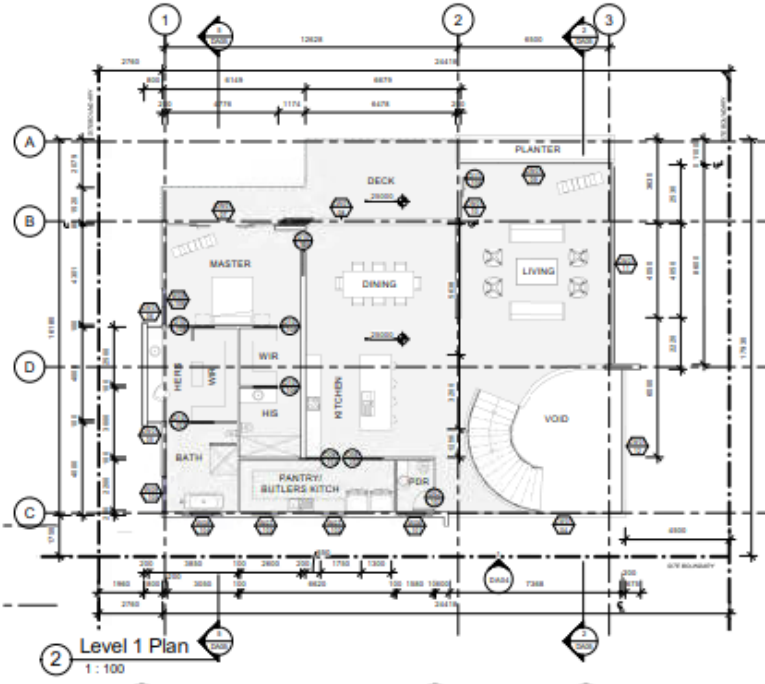
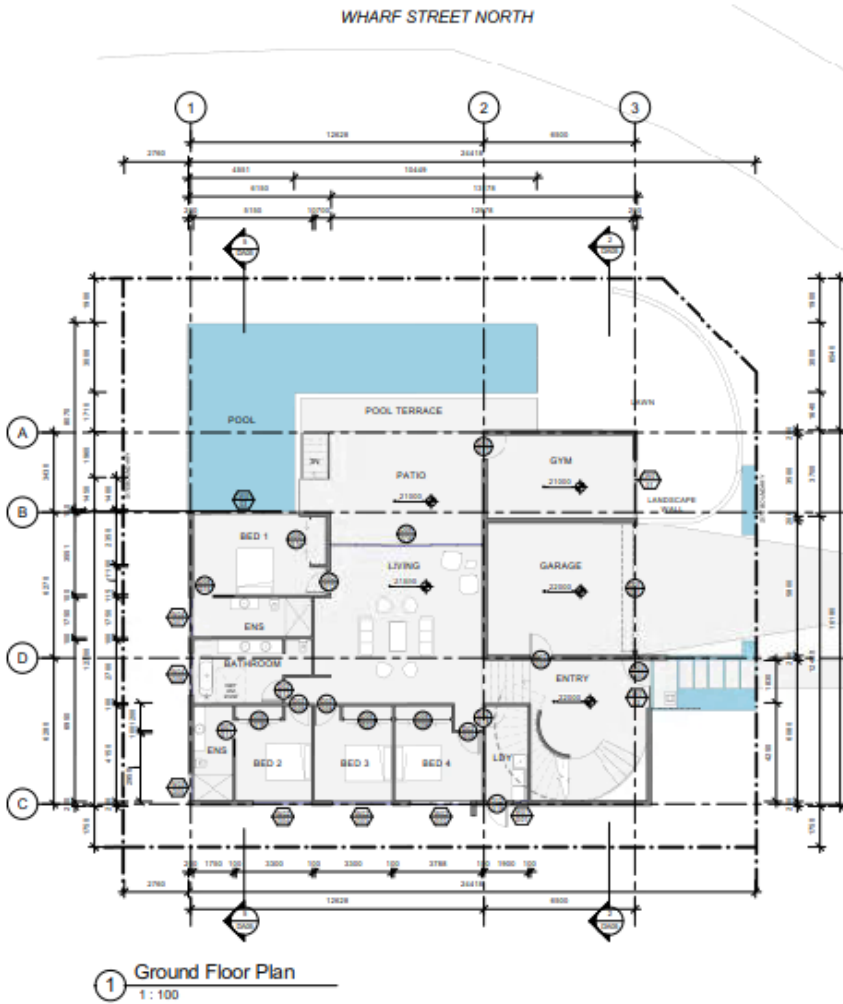
CONCEPT

Lot 21 Wharf Street, Port Douglas

A & J Mackay  
Site Plan

Scale	1:100
Client	A&J
Architect	Charles
Architect	Stephen
Project No.	2019007
Sheet No.	DA02
Revision	2

Keynote Legend



REV	DATE	DETAILS	PREP
1	20/03/2019	SUBS FOR NATIONAL CHANGE CL	MC
2	27/03/2019	SUBS FOR NATIONAL CHANGE CL	MC

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**Wharf St Residence**

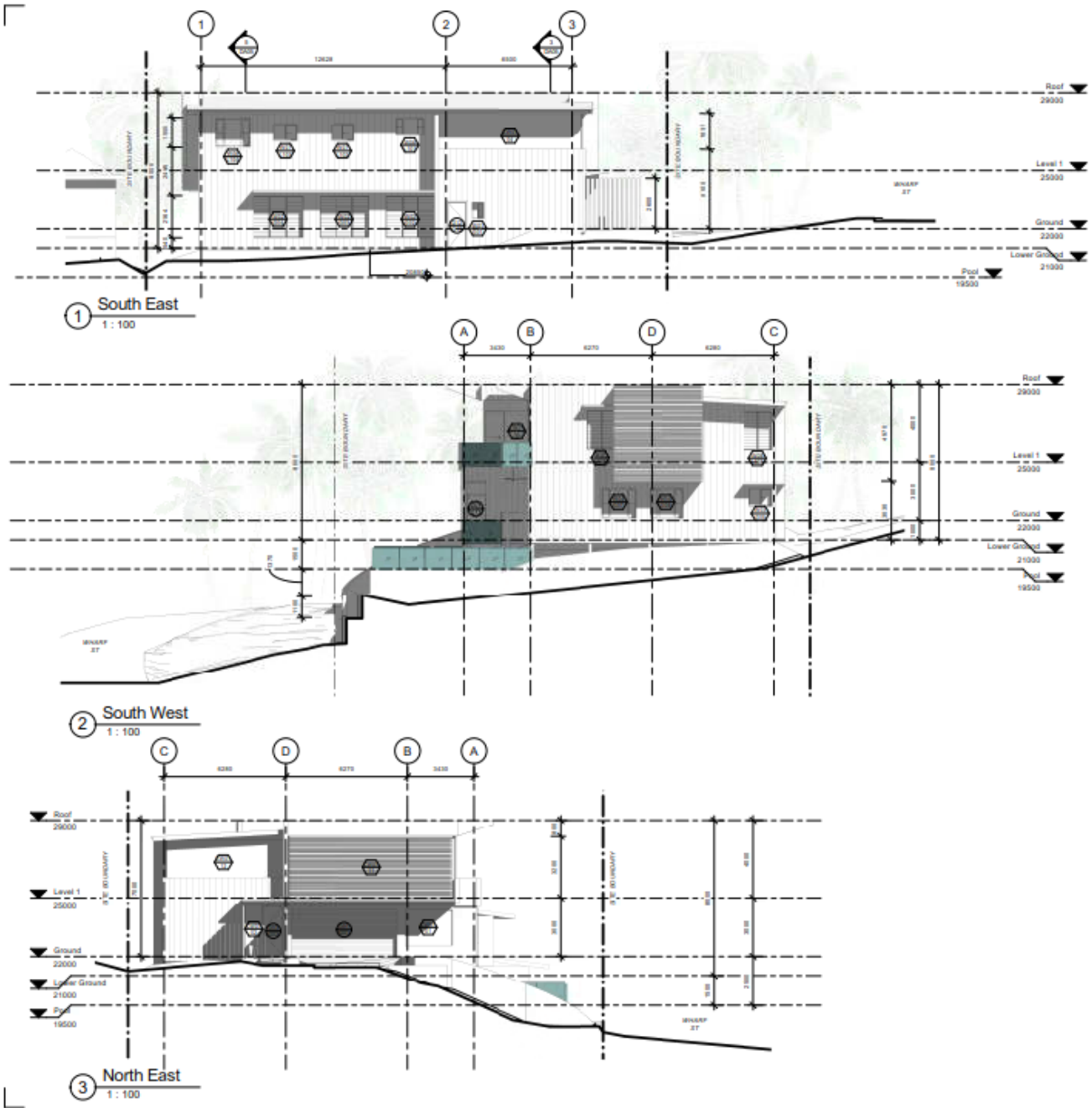
CONCEPT

Lot 21 Wharf Street, Port Douglas

A & J Mackay  
Floor Plans

DATE	SCALE	SHEET NO.	TOTAL SHEETS
20/03/2019	1:100	DA03	2





REV.	DATE	DETAILS	PREP.
1	20/06/2019	SOLO FOR MATERIAL CHANGE	MC
2	27/06/2019	SOLO FOR MATERIAL CHANGE	MC

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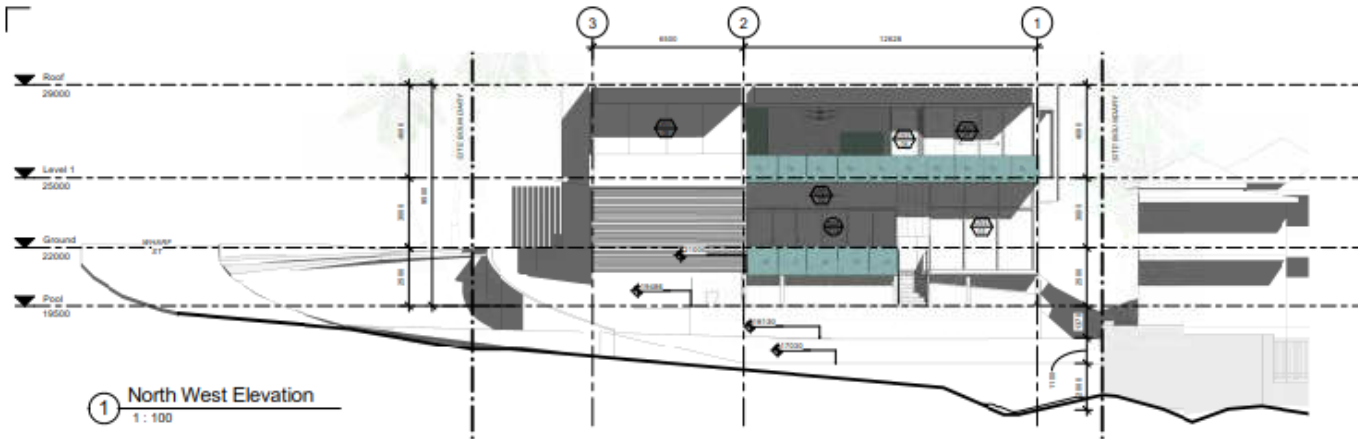
**Wharf St Residence**  
CONCEPT  
Lot 21 Wharf Street, Port Douglas

A & J Mackay  
Client  
Elevations

Scale:  
Date:  
Scale: 1: 100  
Drawn: Author  
Checked: Checker  
Verified: Approver

2019007 DA04 2

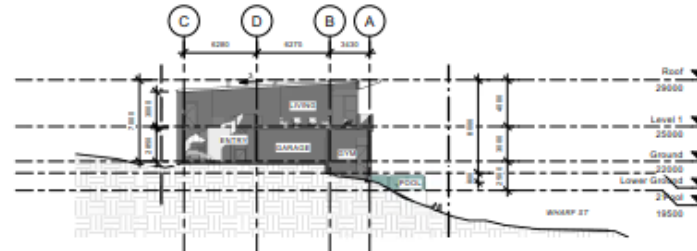
Project No. Detail No. Revision No.



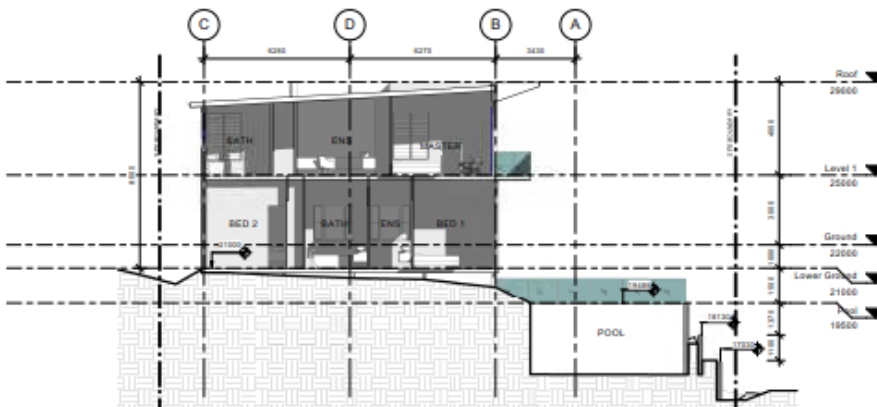
1 North West Elevation  
1 : 100



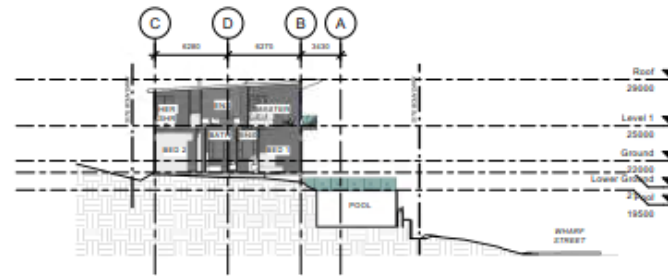
2 Section 1  
1 : 100



3 Site View Section 1  
1 : 200



4 Section 2  
1 : 100



5 Site View Section 2  
1 : 200

REV	DATE	DETAILS	JOB NO
1	20/02/20	SOLO FOR NATIONAL CHECK CA	NO
2	27/02/20	SOLO FOR NATIONAL CHECK CA	NO

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**Wharf St Residence**

CONCEPT

Lot 21 Wharf Street, Port Douglas

**A & J Mackay**

Elevations & Sections

NO	DATE	BY	CHECKED

2019007 DA05 2



① **Wharf St North-West**  
1 : 10



③ **East Corner**  
1 : 10



② **Wharf St North-East**  
1 : 10

REV	DATE	DETAILS	PAGE
1	20/03/20	ISSUE FOR MATERIAL CHANGE CA	02
2	23/03/20	ISSUE FOR MATERIAL CHANGE CA	02

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**Wharf St Residence**

CONCEPT

Lot 21 Wharf Street, Port Douglas

A & J Mackay

Perspective Images

Scale		
Scale	1 : 10	
Drawn	Author	
Checked	Designer	
Verified	Reviewer	
<b>2019007</b>	<b>DA06</b>	<b>2</b>
Project No.	Issue No.	Revision

## Reasons for Decision

1. Sections 60, 62 and 63 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 10 July 2019 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.
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 & Port Douglas/ Craiglie Local Plan 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:
    - i) Subject to conditions, the development satisfactorily meets the Planning Scheme benchmarks.

# Extracts from the Planning Act 2016 - Making Representations During Applicant's Appeal Period

Planning Act 2016  
Chapter 3 Development assessment

[s 74]

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## Division 2 Changing development approvals

### Subdivision 1 Changes during appeal period

#### 74 What this subdivision is about

- (1) This subdivision is about changing a development approval before the applicant's appeal period for the approval ends.
- (2) This subdivision also applies to an approval of a change application, other than a change application for a minor change to a development approval.
- (3) For subsection (2), sections 75 and 76 apply—
  - (a) as if a reference in section 75 to a development approval were a reference to an approval of a change application; and
  - (b) as if a reference in the sections to the assessment manager were a reference to the responsible entity; and
  - (c) as if a reference in section 76 to a development application were a reference to a change application; and
  - (d) as if the reference in section 76(3)(b) to section 63(2) and (3) were a reference to section 83(4); and
  - (e) with any other necessary changes.

#### 75 Making change representations

- (1) The applicant may make representations (*change representations*) to the assessment manager, during the applicant's appeal period for the development approval, about changing—
  - (a) a matter in the development approval, other than—
    - (i) a matter stated because of a referral agency's response; or

- 
- (ii) a development condition imposed under a direction made by the Minister under chapter 3, part 6, division 2; or
    - (b) if the development approval is a deemed approval—the standard conditions taken to be included in the deemed approval under section 64(8)(c).
  - (2) If the applicant needs more time to make the change representations, the applicant may, during the applicant's appeal period for the approval, suspend the appeal period by a notice given to the assessment manager.
  - (3) Only 1 notice may be given.
  - (4) If a notice is given, the appeal period is suspended—
    - (a) if the change representations are not made within a period of 20 business days after the notice is given to the assessment manager—until the end of that period; or
    - (b) if the change representations are made within 20 business days after the notice is given to the assessment manager, until—
      - (i) the applicant withdraws the notice, by giving another notice to the assessment manager; or
      - (ii) the applicant receives notice that the assessment manager does not agree with the change representations; or
      - (iii) the end of 20 business days after the change representations are made, or a longer period agreed in writing between the applicant and the assessment manager.
  - (5) However, if the assessment manager gives the applicant a negotiated decision notice, the appeal period starts again on the day after the negotiated decision notice is given.

## **76 Deciding change representations**

- (1) The assessment manager must assess the change representations against and having regard to the matters that

- must be considered when assessing a development application, to the extent those matters are relevant.
- (2) The assessment manager must, within 5 business days after deciding the change representations, give a decision notice to—
    - (a) the applicant; and
    - (b) if the assessment manager agrees with any of the change representations—
      - (i) each principal submitter; and
      - (ii) each referral agency; and
      - (iii) if the assessment manager is not a local government and the development is in a local government area—the relevant local government; and
      - (iv) if the assessment manager is a chosen assessment manager—the prescribed assessment manager; and
      - (v) another person prescribed by regulation.
  - (3) A decision notice (a *negotiated decision notice*) that states the assessment manager agrees with a change representation must—
    - (a) state the nature of the change agreed to; and
    - (b) comply with section 63(2) and (3).
  - (4) A negotiated decision notice replaces the decision notice for the development application.
  - (5) Only 1 negotiated decision notice may be given.
  - (6) If a negotiated decision notice is given to an applicant, a local government may give a replacement infrastructure charges notice to the applicant.

## Extracts from the Planning Act 2016 – Appeal Rights

Planning Act 2016  
Chapter 6 Dispute resolution

[s 229]

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- (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

- (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—

- 
- (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.

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

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whether by the Supreme Court, another court, any tribunal or another entity; and

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### **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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## **Subdivision 5      Changing charges during relevant appeal period**

### **124      Application of this subdivision**

This subdivision applies to the recipient of an infrastructure charges notice given by a local government.

### **125      Representations about infrastructure charges notice**

- (1) During the appeal period for the infrastructure charges notice, the recipient may make representations to the local government about the infrastructure charges notice.
- (2) The local government must consider the representations.
- (3) If the local government—
  - (a) agrees with a representation; and
  - (b) decides to change the infrastructure charges notice;the local government must, within 10 business days after making the decision, give a new infrastructure charges notice (a *negotiated notice*) to the recipient.
- (4) The local government may give only 1 negotiated notice.
- (5) A negotiated notice—
  - (a) must be in the same form as the infrastructure charges notice; and
  - (b) must state the nature of the changes; and
  - (c) replaces the infrastructure charges notice.
- (6) If the local government does not agree with any of the representations, the local government must, within 10 business days after making the decision, give a decision notice about the decision to the recipient.
- (7) The appeal period for the infrastructure charges notice starts again when the local government gives the decision notice to the recipient.

## **126 Suspending relevant appeal period**

- (1) If the recipient needs more time to make representations, the recipient may give a notice suspending the relevant appeal period to the local government.
- (2) The recipient may give only 1 notice.
- (3) If the representations are not made within 20 business days after the notice is given, the balance of the relevant appeal period restarts.
- (4) If representations are made within the 20 business days and the recipient gives the local government a notice withdrawing the notice of suspension, the balance of the relevant appeal period restarts the day after the local government receives the notice of withdrawal.

## **Division 3 Development approval conditions about trunk infrastructure**

### **Subdivision 1 Conditions for necessary trunk infrastructure**

#### **127 Application and operation of subdivision**

- (1) This subdivision applies if—
  - (a) trunk infrastructure—
    - (i) has not been provided; or
    - (ii) has been provided but is not adequate; and
  - (b) the trunk infrastructure is or will be located on—
    - (i) premises (the *subject premises*) that are the subject of a development application, whether or not the infrastructure is necessary to service the subject premises; or
    - (ii) other premises, but is necessary to service the subject premises.

## Extracts from the Planning Act 2016 –Appeal Rights

Planning Act 2016  
Chapter 6 Dispute resolution

[s 229]

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(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



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- (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

- (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.

- (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

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## **Part 2 Development tribunal**

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