

Our ref: PR139521/OCK/MD/L79409



Date: 7 May 2020

135 Abbott Street
Cairns QLD 4870
T +61 7 4031 1336

Attn: Daniel Lamond
Chief Executive Officer
Douglas Shire Council
PO Box 723
Mossman Qld 4873

Via: Email Daniel.Lamond@douglas.qld.gov.au

Dear Daniel,

**Application for a Minor Change to a Development Approval (Section 78 of the Planning Act 2016)
Marc and Elizabeth Showniruk, Whyanbeel Road, Whyanbeel
Your Ref: SUP2941/2018 and ROL3071/2019**

Further to consultation between the undersigned and Council representatives, a Minor Change is sought to the Development Approvals (refer to a copy of each Approval in **Attachment A**) that permits the reconfiguration of the land described as Lots 4, 5 and 6 on RP851512 and Lot 10 on RP748614 located at Whyanbeel.

On behalf of Marc and Elizabeth Showniruk, we lodge this application for a Minor Change to the development approval to you as the responsible entity.

In accordance with your fee advice (refer to **Attachment B**), the application fee for the Minor Change Application is \$450.00 and it is noted that Marc or Elizabeth Showniruk will contact Council direct to arrange payment.

Proposed change

The changes sought to Condition 3 of each Development Approval include:

- To require the existing footing of the awning support of the timber Class 10 structure to be removed from the natural drainage line and that the awning be supported by a cantilever structure or alternative means of support to the satisfaction of Council's Chief Executive Officer; and
- To delete reference to the requirement to formalise the natural drainage path by way of an RPEQ certified engineering assessment.

We would appreciate the opportunity to review the recommended amended terms of Condition 3 prior to Council's formal consideration.

Supporting Information

In support of these changes, please find attached the following:

- **Attachment A:** A copy of the Development Approvals subject of the Change Application;

- **Attachment B:** Council's fee advice
- **Attachment C:** The completed Change Application Form; and
- The following further detail in support of the proposal:

The Minor Change Application has been lodged in response to the provision of further information and consultation with Council's Planners in respect of the terms of Condition 3 and the need for the condition to be amended to address Council's principal concern related to the existing footing of the awning support impeding stormwater flows and being undermined by stormwater flows.

Subsequent to the consideration of the further information provided and Council's Planners inspecting the site, we were advised that changes to Condition 3 of each Approval, generally as described above, would be accepted subject to the lodgement of a Minor Change Application.

Minor Change Status

The development as changed is consistent with the definition of a Minor Change under the Act.

- (i) The change would not result in substantially different development considering the individual circumstances of the development in the context of the change proposed, and having regard to the matters indicated at Section 4 of Schedule 1 to the Development Assessment Rules, we advise as follows:
 - (a) *involves a new use*

The Minor Change Application does not seek approval of any additional uses to be included in the development.
 - (b) *results in the application applying to a new parcel of land*

No additional land is included in the land subject of the Minor Change Application.
 - (c) *dramatically changes the built form in terms of scale, bulk and appearance*

No, the proposed changes will not dramatically change the built form in terms of scale, bulk and appearance as compared to that already approved.
 - (d) *changes the ability of the proposed development to operate as intended*

No, the development will function as originally intended.
 - (e) *removes a component that is integral to the operation of the development*

No, the change does not remove a component that is integral to the operation of the development.
 - (f) *significantly impacts on traffic flow and the transport network, such as increasing traffic to the site*

No, the changes will not significantly impact traffic flow.
 - (g) *introduces new impacts or increase the severity of known impacts*

No, the development will function as originally intended.
 - (h) *removes an incentive or offset component that would have balanced a negative impact of the development*

No, the current Approval does not include any incentive or offset provisions.

(i) *impacts on infrastructure provisions.*

No, the change will not impact on infrastructure provisions.

(ii) Additionally, the requested change to the development, if a new application were lodged for the development including the change, would not result in the inclusion of prohibited development in the application, would not require any referrals and would not require public notification.

Change assessment process

The matters for consideration by the responsible entity are set out at Section 81 of the Act. To that end, in respect of the changed development we note the following:

- With regard to properly made submissions in respect of the proposed development, it is noted that the development is code assessable which does not provide for the receipt of properly made submissions.
- There have been no other change applications that have been approved in respect of the proposed development.
- No formal pre-request response notice has been sought in respect of the proposal. However, subsequent to the consideration of further information provided and Council's Planners inspecting the site, we were advised that the changes would be accepted subject to the lodgement of a Minor Change Application.
- Under Section 81(2)(da) and (3), the responsible entity is to assess against or have regard to both the matters which applied when the original development application was made and to the matters that apply at the time the change application is made.

In respect of these considerations, it is not considered that the changes warrant a detailed assessment against the former or current Planning Scheme.

It is anticipated that adequate detail has been provided to facilitate Council's consideration of the Minor Change Application. However, should you seek to discuss the matter and/or seek further information, do not hesitate to contact the undersigned in the Cairns office.

Yours sincerely,
for RPS Australia East Pty Ltd



Owen Caddick-King
Principal - Planning
owen.caddick-king@rpsgroup.com.au
+61 7 42761027

enc: **Attachment A:** Copy of Development Approvals
Attachment B: Copy of Council's fee advice
Attachment C: Completed Change Application Form

Our ref: PR133458/OCK/SF/L78312



Attachment A

Copy of Development Approvals

29 January 2019

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

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

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

Dear Sir/Madam

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

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

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

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

Yours faithfully


PAUL HOYE
Manager Environment and Planning

encl.

- Decision Notice
- Approved Plan

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

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

1. Applicant's details

Name: E F Showniruk & M A Showniruk

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

2. Location details

Street Address: 580R Whyanbeel Road WHYANBEEL

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

Local Government Area: Douglas Shire Council

3. Details of proposed development

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

4. Decision

Date of decision: 22 January 2019

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

5. Approved plans and specifications

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

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

6. Conditions

This approval is subject to the conditions in Schedule 1.

7. Further development permits

Not applicable

8. Properly made submissions

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

9. Currency period for the approval

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

10. Rights of appeal

The rights of applicants to appeal to a tribunal or the Planning and Environment Court against decisions about a development application are set out in chapter 6, part 1 of the *Planning Act 2016*. For particular applications, there may also be a right to make an application for a declaration by a tribunal (see chapter 6, part 2 of the *Planning Act 2016*).

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

SCHEDULE 1 – CONDITIONS AND ADVICE

PART 1A—RECOMMENDATION CARRIED UNANIMOUSLY AT THE 22 JANUARY 2019 ORDINARY COUNCIL MEETING

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

And;

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

And;

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

PART 1B—CONDITIONS IMPOSED BY THE ASSESSMENT MANAGER

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

Except where modified by these conditions of approval

Timing of Effect

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

Storm Water Drainage

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

Storm Water Drainage Easement

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

Survey.

Electricity and Telecommunications

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

Structural Integrity of Timber Class 10 Structure

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

PART 1C—ADVICE NOTES

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

PART 1D— STATEMENT OF REASONS

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

- b. the development application contained information from the applicant which Council reviewed together with Council's own investigation of assessment against the 2006 Douglas Shire Planning Scheme in making its assessment manager decision.
3. Evidence or other material on which findings were based:
- a. the development triggered assessment under the Assessment Table associated with the Rural Areas and Rural Settlements Locality;
 - b. Council undertook an assessment in accordance with the provisions of sections 60, 62 and 63 of the *Planning Act 2016*; and
 - c. the applicant's reasons have been considered and the following findings are made:
 - i. Subject to conditions the development is considered to meet the Planning Scheme requirements.

SCHEDULE 2 – PLANNING ACT EXTRACT ON APPEAL RIGHTS

CHAPTER 6, PART 1 APPEAL RIGHTS

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states—
 - (a) matters that may be appealed to—
 - (i) either a tribunal or the P&E Court; or
 - (ii) only a tribunal; or
 - (iii) only the P&E Court; and
 - (b) the person—
 - (i) who may appeal a matter (the appellant); and
 - (ii) who is a respondent in an appeal of the matter; and
 - (iii) who is a co-respondent in an appeal of the matter; and
 - (iv) who may elect to be a co-respondent in an appeal of the matter.
- (2) An appellant may start an appeal within the appeal period.
- (3) The **appeal period** is—
 - (a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency; or
 - (b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
 - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or
 - (d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
 - (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or
 - (f) for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

Note — See the P&E Court Act for the court's power to extend the appeal period.
- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—
 - (a) the adopted charge itself; or
 - (b) for a decision about an offset or refund—
 - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
 - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

230 Notice of appeal

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

- (3) The appellant or, for an appeal to a tribunal, the registrar must, within the service period, give a copy of the notice of appeal to—
 - (a) the respondent for the appeal; and
 - (b) each co-respondent for the appeal; and
 - (c) for an appeal about a development application under schedule 1, table 1, item 1—each principal submitter for the development application; and
 - (d) for an appeal about a change application under schedule 1, table 1, item 2—each principal submitter for the change application; and
 - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); and
 - (f) for an appeal to the P&E Court—the chief executive; and
 - (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The **service period** is—
 - (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
 - (b) otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

SCHEDULE 1 APPEALS

1 Appeal rights and parties to appeals

- (1) Table 1 states the matters that may be appealed to—
 - (a) the P&E court; or
 - (b) a tribunal.
- (2) However, table 1 applies to a tribunal only if the matter involves—
 - (a) the refusal, or deemed refusal of a development application, for—
 - (i) a material change of use for a classified building; or
 - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
 - (b) a provision of a development approval for—
 - (i) a material change of use for a classified building; or
 - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
 - (c) if a development permit was applied for—the decision to give a preliminary approval for—
 - (i) a material change of use for a classified building; or
 - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
 - (d) a development condition if—
 - (i) the development approval is only for a material change of use that involves the use of a building classified under the Building Code as a class 2 building; and
 - (ii) the building is, or is proposed to be, not more than 3 storeys; and
 - (iii) the proposed development is for not more than 60 sole-occupancy units; or
 - (e) a decision for, or a deemed refusal of, an extension application for a development approval that is only for a material change of use of a classified building; or
 - (f) a decision for, or a deemed refusal of, a change application for a development approval that is only for a material change of use of a classified building; or
 - (g) a matter under this Act, to the extent the matter relates to—

- (i) the Building Act, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission; or
 - (ii) the Plumbing and Drainage Act, part 4 or 5; or
 - (h) a decision to give an enforcement notice in relation to a matter under paragraphs (a) to (g); or
 - (i) a decision to give an infrastructure charges notice; or
 - (j) the refusal, or deemed refusal, of a conversion application; or
 - (k) a matter that, under another Act, may be appealed to the tribunal; or
 - (l) a matter prescribed by regulation.
- (3) Also, table 1 does not apply to a tribunal if the matter involves—
- (a) for a matter in subsection (2)(a) to (d)—
 - (i) a development approval for which the development application required impact assessment; and
 - (ii) a development approval in relation to which the assessment manager received a properly made submission for the development application; or
 - (b) a provision of a development approval about the identification or inclusion, under a variation approval, of a matter for the development.
- (4) Table 2 states the matters that may be appealed only to the P&E Court.
- (5) Table 3 states the matters that may be appealed only to the tribunal.
- (6) In each table—
- (a) column 1 states the appellant in the appeal; and
 - (b) column 2 states the respondent in the appeal; and
 - (c) column 3 states the co-respondent (if any) in the appeal; and
 - (d) column 4 states the co-respondents by election (if any) in the appeal.
- (7) If the chief executive receives a notice of appeal under section 230(3)(f), the chief executive may elect to be a co-respondent in the appeal.

Extract of Schedule 1 of the Planning Act 2016

Table 1			
Appeals to the P&E Court and, for certain matters, to a tribunal			
1. Development applications An appeal may be made against— <ul style="list-style-type: none"> (a) the refusal of all or part of the development application; or (b) the deemed refusal of the development application; or (c) a provision of the development approval; or (d) if a development permit was applied for—the decision to give a preliminary approval. 			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant	The assessment manager	If the appeal is about a concurrence agency's referral response—the concurrence agency	1 A concurrence agency that is not a co-respondent 2 If a chosen assessment manager is the respondent—the prescribed assessment manager 3 Any eligible advice agency for the application 4 Any eligible submitter for the application

**Table 2
Appeals to the P&E Court only**

2. Eligible submitter appeals
 An appeal may be made against the decision to give a development approval, or an approval for a change application, to the extent that the decision relates to—
 (a) any part of the development application for the development approval that required impact assessment; or
 (b) a variation request.

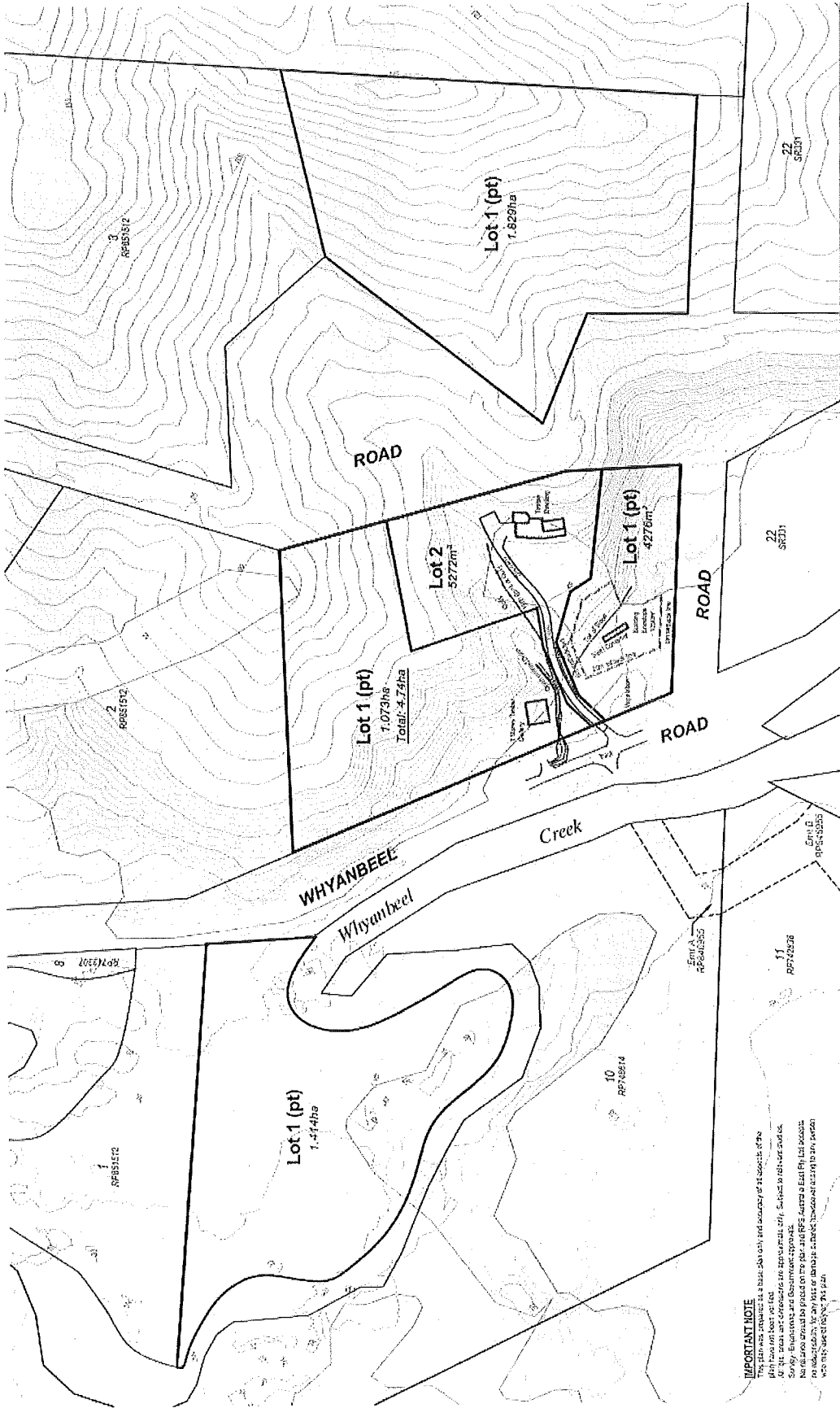
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 For a development application—an eligible submitter for the development application 2 For a change application—an eligible submitter for the change application	1 For a development application—the assessment manager 2 For a change application—the responsible entity	1 The applicant 2 If the appeal is about a concurrence agency's referral response—the concurrence agency	Another eligible submitter for the application

3. Eligible submitter and eligible advice agency appeals
 An appeal may be made against a provision of a development approval, or failure to include a provision in the development approval, to the extent the matter relates to—
 (a) any part of the development application or the change application, for the development approval, that required impact assessment; or
 (b) a variation request.

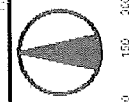
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 For a development application—an eligible submitter for the development application 2 For a change application—an eligible submitter for the change application 3 An eligible advice agency for the development application or change application	1 For a development application—the assessment manager 2 For a change application—the responsible entity	1 The applicant 2 If the appeal is about a concurrence agency's referral response—the concurrence agency	Another eligible submitter for the application

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

APPROVED PLAN



IMPORTANT NOTE
 The plan was prepared as a basic plan only and accuracy of it depends on the
 information provided to the surveyor. The surveyor is not responsible for errors or
 omissions in the plan. The surveyor is not responsible for errors or omissions in
 the plan. The surveyor is not responsible for errors or omissions in the plan.
 No liability shall be accepted for any loss or damage caused by the use of this
 plan.

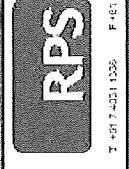


Marc Showniruk
 Proposed Reconfiguration
 Proposed Lots 1 & 2
 cancelling Lots 4-6 on RP851512

Legend
 RVM Category B
 - Remnant

DNRM LIDAR Contours
 Interval 1.0m (<50.0m)
 Index 5.0m

DNRM DCD3 boundaries have been shifted as
 a best fit to the DNRM LIDAR data. Boundary &
 contour locations are approximate only.



RPS Australia East Pty Ltd
 ACN 147 552 762
 105 Abbott St
 PO Box 1549
 CARNS QLD 4670
 T +61 7 431 1336 F +61 7 431 2342 W rps.com.au

PRELIMINARY - FOR DISCUSSION PURPOSES ONLY Scale 1:1500 @ A3 | Date 2-10-2018 | Drawing PR138521-3

23 May 2019

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

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

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

Dear Sir/Madam

**Development Application for Reconfiguring a Lot (Boundary realignment)
Whyanbeel Road, Whaynbeel, 580 Whyanbeel Road, Whyanbeel, 583 Whyanbeel
Road, Whyanbeel:**

**Land Described as LOT: 4 on RP: 851512, LOT: 5 on RP: 851512, LOT: 6 on RP:
851512 and LOT: 10 on RP: 748614**

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

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

Yours faithfully


PAUL HOYE
Manager Environment and Planning

encl.

- Decision Notice
- Approved Plans

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

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

1. Applicant's details

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

2. Location details

Street Address: Whyanbeel Road, Whyanbeel, 580 Whyanbeel Road, Whyanbeel,
583 Whyanbeel Road, Whyanbeel.
Real Property Description: LOT: 4 RP: 851512, LOT: 5 RP: 851512, LOT: 6 RP: 851512, LOT:
10 RP: 748614
Local Government Area: Douglas Shire Council

3. Details of proposed development

Reconfiguring a Lot (Boundary Realignment)

4. Decision

Date of decision: 23 May 2019

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

5. Approved plans and specifications

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

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

6. Conditions

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

7. Further development permits

Not applicable

8. Properly made submissions

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

9. Currency period for the approval

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

10. Rights of appeal

The rights of applicants to appeal to a tribunal or the Planning and Environment Court against decisions about a development application are set out in chapter 6, part 1 of the *Planning Act 2016*. For particular applications, there may also be a right to make an application for a declaration by a tribunal (see chapter 6, part 2 of the *Planning Act 2016*).

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

SCHEDULE 1 – CONDITIONS AND ADVICE

PART 1A—CONDITIONS IMPOSED BY THE ASSESSMENT MANAGER

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

Except where modified by these conditions of approval

Timing of Effect

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

Storm Water Drainage

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

Storm Water Drainage Easement

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

Electricity and Telecommunications

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

Structural Integrity of Timber Class 10 Structure

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

PART 1B – ADVICE NOTES

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

PART 1C— STATEMENT OF REASONS

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

SCHEDULE 2 – PLANNING ACT EXTRACT ON APPEAL RIGHTS

CHAPTER 6, PART 1 APPEAL RIGHTS

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states—
 - (a) matters that may be appealed to—
 - (i) either a tribunal or the P&E Court; or
 - (ii) only a tribunal; or
 - (iii) only the P&E Court; and
 - (b) the person—
 - (i) who may appeal a matter (the appellant); and
 - (ii) who is a respondent in an appeal of the matter; and
 - (iii) who is a co-respondent in an appeal of the matter; and
 - (iv) who may elect to be a co-respondent in an appeal of the matter.
- (2) An appellant may start an appeal within the appeal period.
- (3) The **appeal period** is—
 - (a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency; or
 - (b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
 - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or
 - (d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
 - (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or
 - (f) for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

Note — See the P&E Court Act for the court's power to extend the appeal period.

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—
 - (a) the adopted charge itself; or
 - (b) for a decision about an offset or refund—
 - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
 - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

230 Notice of appeal

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

- (3) The appellant or, for an appeal to a tribunal, the registrar must, within the service period, give a copy of the notice of appeal to—
 - (a) the respondent for the appeal; and
 - (b) each co-respondent for the appeal; and
 - (c) for an appeal about a development application under schedule 1, table 1, item 1—each principal submitter for the development application; and
 - (d) for an appeal about a change application under schedule 1, table 1, item 2—each principal submitter for the change application; and
 - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); and
 - (f) for an appeal to the P&E Court—the chief executive; and
 - (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The **service period** is—
 - (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
 - (b) otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

SCHEDULE 1 APPEALS

1 Appeal rights and parties to appeals

- (1) Table 1 states the matters that may be appealed to—
 - (a) the P&E court; or
 - (b) a tribunal.
- (2) However, table 1 applies to a tribunal only if the matter involves—
 - (a) the refusal, or deemed refusal of a development application, for—
 - (i) a material change of use for a classified building; or
 - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
 - (b) a provision of a development approval for—
 - (i) a material change of use for a classified building; or
 - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
 - (c) if a development permit was applied for—the decision to give a preliminary approval for—
 - (i) a material change of use for a classified building; or
 - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
 - (d) a development condition if—
 - (i) the development approval is only for a material change of use that involves the use of a building classified under the Building Code as a class 2 building; and
 - (ii) the building is, or is proposed to be, not more than 3 storeys; and
 - (iii) the proposed development is for not more than 60 sole-occupancy units; or
 - (e) a decision for, or a deemed refusal of, an extension application for a development approval that is only for a material change of use of a classified building; or
 - (f) a decision for, or a deemed refusal of, a change application for a development approval that is only for a material change of use of a classified building; or
 - (g) a matter under this Act, to the extent the matter relates to—

- (i) the Building Act, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission; or
 - (ii) the Plumbing and Drainage Act, part 4 or 5; or
 - (h) a decision to give an enforcement notice in relation to a matter under paragraphs (a) to (g); or
 - (i) a decision to give an infrastructure charges notice; or
 - (j) the refusal, or deemed refusal, of a conversion application; or
 - (k) a matter that, under another Act, may be appealed to the tribunal; or
 - (l) a matter prescribed by regulation.
- (3) Also, table 1 does not apply to a tribunal if the matter involves—
- (a) for a matter in subsection (2)(a) to (d)—
 - (i) a development approval for which the development application required impact assessment; and
 - (ii) a development approval in relation to which the assessment manager received a properly made submission for the development application; or
 - (b) a provision of a development approval about the identification or inclusion, under a variation approval, of a matter for the development.
- (4) Table 2 states the matters that may be appealed only to the P&E Court.
- (5) Table 3 states the matters that may be appealed only to the tribunal.
- (6) In each table—
- (a) column 1 states the appellant in the appeal; and
 - (b) column 2 states the respondent in the appeal; and
 - (c) column 3 states the co-respondent (if any) in the appeal; and
 - (d) column 4 states the co-respondents by election (if any) in the appeal.
- (7) If the chief executive receives a notice of appeal under section 230(3)(f), the chief executive may elect to be a co-respondent in the appeal.

Extract of Schedule 1 of the Planning Act 2016

Table 1			
Appeals to the P&E Court and, for certain matters, to a tribunal			
1. Development applications An appeal may be made against— <ul style="list-style-type: none"> (a) the refusal of all or part of the development application; or (b) the deemed refusal of the development application; or (c) a provision of the development approval; or (d) if a development permit was applied for—the decision to give a preliminary approval. 			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant	The assessment manager	If the appeal is about a concurrence agency's referral response—the concurrence agency	1 A concurrence agency that is not a co-respondent 2 If a chosen assessment manager is the respondent—the prescribed assessment manager 3 Any eligible advice agency for the application 4 Any eligible submitter for the application

**Table 2
Appeals to the P&E Court only**

2. Eligible submitter appeals
 An appeal may be made against the decision to give a development approval, or an approval for a change application, to the extent that the decision relates to—
 (a) any part of the development application for the development approval that required impact assessment; or
 (b) a variation request.

Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 For a development application—an eligible submitter for the development application 2 For a change application—an eligible submitter for the change application	1 For a development application—the assessment manager 2 For a change application—the responsible entity	1 The applicant 2 If the appeal is about a concurrence agency's referral response—the concurrence agency	Another eligible submitter for the application

3. Eligible submitter and eligible advice agency appeals
 An appeal may be made against a provision of a development approval, or failure to include a provision in the development approval, to the extent the matter relates to—
 (a) any part of the development application or the change application, for the development approval, that required impact assessment; or
 (b) a variation request.

Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 For a development application—an eligible submitter for the development application 2 For a change application—an eligible submitter for the change application 3 An eligible advice agency for the development application or change application	1 For a development application—the assessment manager 2 For a change application—the responsible entity	1 The applicant 2 If the appeal is about a concurrence agency's referral response—the concurrence agency	Another eligible submitter for the application

Note:

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

Our ref: PR133458/OCK/SF/L78312



Attachment B
Copy of Council's Fee Advice

From: Daniel Lamond <Daniel.Lamond@douglas.qld.gov.au>
Sent: Thursday, 30 April 2020 4:21 PM
To: Owen Caddick-King <owen.caddick-king@rpsgroup.com.au>
Subject: RE: Whyanbeel subdivision

CAUTION: This email originated from outside of RPS.

Hi Owen,

Council agrees to taking the single \$450 application fee for the two minor change applications.

Kind regards,

Daniel Lamond | Town Planner
Environment & Planning | Douglas Shire Council
P: 07 4099 9456 | **F:** 07 4098 2902
E: daniel.lamond@douglas.qld.gov.au | **W:** douglas.qld.gov.au
Mail: PO Box 723, Mossman Q 4873 | **Office:** 64-66 Front St, Mossman Q 4873

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Our ref: PR133458/OCK/SF/L78312



Attachment C

Completed Change Application Form

Change application form

Planning Act Form 5 (version 1.2 effective 7 February 2020) made under Section 282 of the Planning Act 2016.

This form is to be used for a change application made under section 78 of the *Planning Act 2016*. It is important when making a change application to be aware of whether the application is for a minor change that will be assessed under section 81 of the *Planning Act 2016* or for an other change that will be assessed under section 82 of the *Planning Act 2016*.

An applicant must complete all parts of this form, and provide any supporting information that the form identifies as being required to accompany the change application, unless stated otherwise. Additional pages may be attached if there is insufficient space on the form to complete any part.

Note: All terms used in this form have the meaning given under the *Planning Act 2016*, the *Planning Regulation 2017*, or the *Development Assessment Rules (DA Rules)*.

PART 1 – APPLICANT DETAILS

1) Applicant details	
Applicant name(s) <i>(individual or company full name)</i>	Marc and Elizabeth Showniruk C/- RPS Australia East Pty Ltd
Contact name <i>(only applicable for companies)</i>	Owen Caddick-King, RPS Australia East Pty Ltd
Postal address <i>(P.O. Box or street address)</i>	C/- RPS Australia East Pty Ltd, PO Box 1949
Suburb	Cairns
State	Qld
Postcode	4870
Country	Aust..
Email address <i>(non-mandatory)</i>	owen.caddick-king@rpsgroup.com.au
Mobile number <i>(non-mandatory)</i>	
Applicant's reference number(s) <i>(if applicable)</i>	PR139521

2) Owner's consent - Is written consent of the owner required for this change application?	
Note: Section 79(1A) of the <i>Planning Act 2016</i> states the requirements in relation to owner's consent.	
<input type="checkbox"/> Yes – the written consent of the owner(s) is attached to this change application	
<input checked="" type="checkbox"/> No	

PART 2 – LOCATION DETAILS

3) Location of the premises <i>(complete 3.1) or 3.2), and 3.3) as applicable)</i>				
3.1) Street address and lot on plan				
<input checked="" type="checkbox"/> Street address AND lot on plan <i>(all lots must be listed)</i> , or				
<input type="checkbox"/> Street address AND lot on plan for an adjoining or adjacent property of the premises <i>(appropriate for development in water but adjoining or adjacent to land e.g. jetty, pontoon. All lots must be listed)</i> .				
a)	Unit No.	Street No.	Street Name and Type	Suburb
			Whyanbeel Road	Whyanbeel
	Postcode	Lot No.	Plan Type and Number <i>(e.g. RP, SP)</i>	Local Government Area(s)
	4873	10	RP748614	Douglas Shire Council
b)	Unit No.	Street No.	Street Name and Type	Suburb
			Whyanbeel Road	Whyanbeel
	Postcode	Lot No.	Plan Type and Number <i>(e.g. RP, SP)</i>	Local Government Area(s)
	4873	Lots 4,5 & 6	RP851512	Douglas Shire Council



**Queensland
Government**

3.2) Coordinates of premises (appropriate for development in remote areas, over part of a lot or in water not adjoining or adjacent to land e.g. channel dredging in Moreton Bay)

Note: Place each set of coordinates in a separate row.

Coordinates of premises by longitude and latitude

Longitude(s)	Latitude(s)	Datum	Local Government Area(s) (if applicable)
		<input type="checkbox"/> WGS84 <input type="checkbox"/> GDA94 <input type="checkbox"/> Other: <input type="text"/>	

Coordinates of premises by easting and northing

Easting(s)	Northing(s)	Zone Ref.	Datum	Local Government Area(s) (if applicable)
		<input type="checkbox"/> 54 <input type="checkbox"/> 55 <input type="checkbox"/> 56	<input type="checkbox"/> WGS84 <input type="checkbox"/> GDA94 <input type="checkbox"/> Other: <input type="text"/>	

3.3) Additional premises

- Additional premises are relevant to the original development approval and the details of these premises have been attached in a schedule to this application
- Not required

PART 3 – RESPONSIBLE ENTITY DETAILS

4) Identify the responsible entity that will be assessing this change application

Note: see section 78(3) of the Planning Act 2016

Douglas Shire Council

PART 4 – CHANGE DETAILS

5) Provide details of the existing development approval subject to this change application

Approval type	Reference number	Date issued	Assessment manager/approval entity
<input checked="" type="checkbox"/> Development permit <input type="checkbox"/> Preliminary approval	SUP2941/2018	20 January 2019	Douglas Shire Council
<input checked="" type="checkbox"/> Development permit <input type="checkbox"/> Preliminary approval	ROL3071/2019	23 May 2019	Douglas Shire Council

6) Type of change proposed

6.1) Provide a brief description of the changes proposed to the development approval (e.g. changing a development approval for a five unit apartment building to provide for a six unit apartment building):

Refer to RPS submission, dated 7 May 2020

6.2) What type of change does this application propose?

- Minor change application – proceed to Part 5
- Other change application – proceed to Part 6

PART 5 – MINOR CHANGE APPLICATION REQUIREMENTS

7) Are there any affected entities for this change application		
<input checked="" type="checkbox"/> No – proceed to Part 7 <input type="checkbox"/> Yes – list all affected entities below and proceed to Part 7 <i>Note: section 80(1) of the Planning Act 2016 states that the person making the change application must give notice of the proposal and the details of the change to each affected entity as identified in section 80(2) of the Planning Act 2016.</i>		
Affected entity	Pre-request response provided? (where a pre-request response notice for the application has been given, a copy of the notice must accompany this change application)	Date notice given (where no pre-request response provided)
	<input type="checkbox"/> No <input type="checkbox"/> Yes – pre-request response is attached to this change application	
	<input type="checkbox"/> No <input type="checkbox"/> Yes – pre-request response is attached to this change application	
	<input type="checkbox"/> No <input type="checkbox"/> Yes – pre-request response is attached to this change application	

PART 6 – OTHER CHANGE APPLICATION REQUIREMENTS

Note: To complete this part it will be necessary for you to complete parts of DA Form 1 – Development application details and in some instances parts of DA Form 2 – Building work details, as mentioned below. These forms are available at <https://planning.dsdmip.qld.gov.au>.

8) Location details - Are there any additional premises included in this change application that were not part of the original development approval?
<input type="checkbox"/> No <input type="checkbox"/> Yes

9) Development details
9.1) Is there any change to the type of development, approval type, or level of assessment in this change application? <input type="checkbox"/> No <input type="checkbox"/> Yes – the completed Sections 1 and 2 of Part 3 (Development details) of DA Form 1 – Development application details as these sections relate to the new or changed aspects of development are provided with this application.
9.2) Does the change application involve building work? <input type="checkbox"/> No <input type="checkbox"/> Yes – the completed Part 5 (Building work details) of DA Form 2 – Building work details as it relates to the change application is provided with this application.

10) Referral details – Does the change application require referral for any referral requirements?
<i>Note: The application must be referred to each referral agency triggered by the change application as if the change application was the original development application including the proposed change.</i> <input type="checkbox"/> No <input type="checkbox"/> Yes – the completed Part 5 (Referral details) of DA Form 1 – Development application details as it relates to the change application is provided with this application. Where referral is required for matters relating to building work the Referral checklist for building work is also completed.

11) Information request under Part 3 of the DA Rules
<input type="checkbox"/> I agree to receive an information request if determined necessary for this change application <input type="checkbox"/> I do not agree to accept an information request for this change application <i>Note: By not agreeing to accept an information request I, the applicant, acknowledge:</i>

- that this change application will be assessed and decided based on the information provided when making this change application and the assessment manager and any referral agencies relevant to the change application are not obligated under the DA Rules to accept any additional information provided by the applicant for the change application unless agreed to by the relevant parties
- Part 3 of the DA Rules will still apply if the application is an application listed under section 11.3 of the DA Rules.

Further advice about information requests is contained in the [DA Forms Guide: Forms 1 and 2](#).

12) Further details

- Part 7 of *DA Form 1 – Development application details* is completed as if the change application was a development application and is provided with this application.

PART 7 – CHECKLIST AND APPLICANT DECLARATION

13) Change application checklist

I have identified the:

- responsible entity in 4); and
- for a minor change, any affected entities; and Yes
- for an other change all relevant referral requirement(s) in 10)

Note: See the *Planning Regulation 2017* for referral requirements

- For an other change application, the relevant sections of [DA Form 1 – Development application details](#) have been completed and is attached to this application Yes Not applicable

- For an other change application, where building work is associated with the change application, the relevant sections of [DA Form 2 – Building work details](#) have been completed and is attached to this application Yes Not applicable

- Supporting information addressing any applicable assessment benchmarks is attached to this application Yes
- Note:** This includes any templates provided under 23.6 and 23.7 of *DA Form 1 – Development application details* that are relevant as a result of the change application, a planning report and any technical reports required by the relevant categorising instrument(s) (e.g. the local government planning scheme, State Planning Policy, State Development Assessment Provisions). For further information, see [DA Forms Guide: Planning report template](#).

- Relevant plans of the development are attached to this development application Yes
- Note:** Relevant plans are required to be submitted for all relevant aspects of this change application. For further information, see [DA Forms Guide: Relevant plans](#).

14) Applicant declaration

- By making this change application, I declare that all information in this change application is true and correct.
- Where an email address is provided in Part 1 of this form, I consent to receive future electronic communications from the responsible entity and any relevant affected entity or referral agency for the change application where written information is required or permitted pursuant to sections 11 and 12 of the *Electronic Transactions Act 2001*.

Note: It is unlawful to intentionally provide false or misleading information.

Privacy – Personal information collected in this form will be used by the responsible entity and/or chosen assessment manager, any relevant affected entity or referral agency and/or building certifier (including any professional advisers which may be engaged by those entities) while processing, assessing and deciding the change application.

All information relating to this change application may be available for inspection and purchase, and/or published on the assessment manager’s and/or referral agency’s website.

Personal information will not be disclosed for a purpose unrelated to the *Planning Act 2016*, *Planning Regulation 2017* and the DA Rules except where:

- such disclosure is in accordance with the provisions about public access to documents contained in the *Planning Act 2016* and the *Planning Regulation 2017*, and the access rules made under the *Planning Act 2016* and *Planning Regulation 2017*; or
- required by other legislation (including the *Right to Information Act 2009*); or
- otherwise required by law.

This information may be stored in relevant databases. The information collected will be retained as required by the *Public Records Act 2002*.

PART 8 – FOR COMPLETION OF THE ASSESSMENT MANAGER – FOR OFFICE USE ONLY

Date received: Reference number(s):

QLeave notification and payment			
<i>Note: For completion by assessment manager if applicable</i>			
Description of the work			
QLeave project number			
Amount paid (\$)		Date paid (dd/mm/yy)	
Date receipted form sighted by assessment manager			
Name of officer who sighted the form			