

Administration Office

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6 July 2020

Enquiries: Daniel Lamond  
Our Ref: SUP2941/2018 (960750)  
Your Ref: PR139521/OCK/IL/L78102

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

Dear Sir/Madam

**Minor Change to Superseded Planning Scheme Request & Development  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**

Please find attached the Decision Notice for the above-mentioned minor change request.

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 81A OF THE PLANNING ACT 2016)**

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

**1. Applicant's details**

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Name: E F Showniruk & M A Showniruk

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

**2. Location details**

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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**

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Minor Change to Request for Superseded Planning Scheme Assessment and Development Application for Reconfiguring a Lot (3 lots into 2).

**4. Decision**

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Date of decision: 30 June 2020

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

**5. Approved plans and specifications**

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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**

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This approval is subject to the conditions in Schedule 1.

**7. Further development permits**

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Development Permit for Building Work.

#### **8. Properly made submissions**

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

#### **9. Currency period for the approval**

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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**

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

## 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](http://www.dsc.qld.gov.au)

## PART 1D— STATEMENT OF REASONS

The reasons for this decision are:

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

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

Findings on material questions of fact:

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

Evidence or other material on which findings were based:

- a) the development triggered assessable development under the Assessment Table associated with the Rural Zone Code;

- b) Council undertook an assessment in accordance with the provisions of sections 60, 62 and 63 of the *Planning Act 2016*; and
- c) the applicant's reasons have been considered and the following findings are made:  
Subject to conditions, the development satisfactorily meets the Planning Scheme benchmarks.

~~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

<b>Table 1</b> <b>Appeals to the P&amp;E Court and, for certain matters, to a tribunal</b>			
1. Development applications An appeal may be made against— <ul style="list-style-type: none"> <li>(a) the refusal of all or part of the development application; or</li> <li>(b) the deemed refusal of the development application; or</li> <li>(c) a provision of the development approval; or</li> <li>(d) if a development permit was applied for—the decision to give a preliminary approval.</li> </ul>			
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**

<p>2. Eligible submitter appeals</p> <p>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—</p> <p>(a) any part of the development application for the development approval that required impact assessment; or</p> <p>(b) a variation request.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
<p>1 For a development application—an eligible submitter for the development application</p> <p>2 For a change application—an eligible submitter for the change application</p>	<p>1 For a development application—the assessment manager</p> <p>2 For a change application—the responsible entity</p>	<p>1 The applicant</p> <p>2 If the appeal is about a concurrence agency's referral response—the concurrence agency</p>	<p>Another eligible submitter for the application</p>
<p>3. Eligible submitter and eligible advice agency appeals</p> <p>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—</p> <p>(a) any part of the development application or the change application, for the development approval, that required impact assessment; or</p> <p>(b) a variation request.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
<p>1 For a development application—an eligible submitter for the development application</p> <p>2 For a change application—an eligible submitter for the change application</p> <p>3 An eligible advice agency for the development application or change application</p>	<p>1 For a development application—the assessment manager</p> <p>2 For a change application—the responsible entity</p>	<p>1 The applicant</p> <p>2 If the appeal is about a concurrence agency's referral response—the concurrence agency</p>	<p>Another eligible submitter for the application</p>

**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

