



Decision Notice Approval

Planning Act Form 1 (version 1.2 effective 7 February 2020) made under section 282 of the Planning Act 2016 for a decision notice (approval) under section 63(2) of the Planning Act 2016

Application number:	D/1-2024	Contact:	Lana Groves
Notice Date:	19 April 2024	Contact Number:	07 4936 8099

APPLICANT DETAILS

Name:	Michael Swann		
Postal address:	C/- Reel Planning Pty Ltd PO BOX 437 ROCKHAMPTON QLD 4700		
Phone no:	07 4921 7002	Mobile no:	n/a
Email:	jacob@reelplanning.com		

I acknowledge receipt of the above application on 10 January 2024 and confirm the following:

DEVELOPMENT APPROVAL

Development Permit for a Material Change of Use for a Dwelling House (Building Envelope) and Reconfiguring a Lot for a Subdivision (one lot into two lots)

PROPERTY DESCRIPTION

Street address:	4 Vanderspek Place, Frenchville
Real property description:	Lot 4 on SP247716

Dear Michael Swann,

I advise that, on 16 April 2024 the above development application was:

approved in full with conditions* (refer to the conditions contained in **Attachment 1**)

*Note: The conditions show which conditions have been imposed by the assessment manager and which conditions have been imposed by a referral agency.

1. DETAILS OF THE APPROVAL

The following approvals are given:

	Development Permit	Preliminary Approval
Development assessable under the planning scheme, superseded planning scheme, a temporary local planning instrument, a master plan or a preliminary approval which includes a variation approval - Material change of use - Reconfiguring a lot	<input checked="" type="checkbox"/>	<input type="checkbox"/>

2. CONDITIONS

This approval is subject to the conditions in Attachment 1.

3. FURTHER DEVELOPMENT PERMITS REQUIRED

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

Type of development permit required	Subject of the required development permit
Operational Works	Access Works; Roof and Allotment Drainage; Site Works
Building Works	
Plumbing and Drainage Works	

4. SUBMISSIONS

Properly made submissions **were not** made in relation to the application.

5. REFERRAL AGENCIES

NIL

6. THE APPROVED PLANS

The approved development must be completed and maintained generally in accordance with the approved drawings and documents:

Reconfiguring a Lot Approved Plans:

Plan/Document Name	Prepared by	Date	Reference No.	Version/ Issue
Proposed Subdivision Plan	Reel Planning	27 September 2023	-	-

Material Change of Use Approved Plans:

<u>Plan/Document Name</u>	<u>Prepared by</u>	<u>Date</u>	<u>Reference No.</u>	<u>Version/ Issue</u>
Proposed Subdivision Plan	Reel Planning	27 September 2023	-	-
Slope Stability Assessment and Geotechnical Investigation	Butler Partners	9 January 2024	RG23-1178A	
Site-based Stormwater Management Plan	Maloney & Sons Engineering	9 June 2023	FP/001.CE23062	Rev A
Traffic Engineering Letter	Modus Traffic and Transport Engineering	29 September 2023		

7. CURRENCY PERIOD FOR THE APPROVAL (s.85 of the *Planning Act*)

In accordance with section 85(1)(a)(ii) of the *Planning Act 2016*, the development approval lapses if the first change of use does not happen within six (6) years after the approval starts to have effect, if not stated otherwise in the conditions of approval attached.

In accordance with section 85(1)(b)(ii) of the *Planning Act 2016*, the development approval lapses if a plan for the reconfiguration that, under the Land Title Act, is required to be given to a local government for approval is not given to the local government within four (4) years after the approval starts to have effect, if not stated otherwise in the conditions of approval attached.

8. STATEMENT OF REASONS

Description of the development	
Material Change of Use for a Dwelling House (building envelope) and Reconfiguring a Lot for Subdivision (one lot into two lots)	
Reasons for Decision	
<p>a) Assessment of the development against the relevant zone purpose, planning scheme codes and planning scheme policies demonstrates that the proposed development will not cause significant adverse impacts on the surrounding natural environment, built environment and infrastructure, community facilities, or local character and amenity; and</p> <p>b) On balance, the application should be approved because the circumstances favour Council exercising its discretion to approve the application even though the development does not comply with an aspect of the assessment benchmarks.</p>	
Assessment Benchmarks	
<p>The development was assessed against the following assessment benchmarks:</p> <ul style="list-style-type: none"> • Strategic Framework; • Local Government Infrastructure Plan; • Environmental Management and Conservation Zone Code; • Low Density Residential Zone Code; • Access, Parking and Transport Code; • Filling and Excavation Code; • Landscape Code; • Reconfiguring a Lot Code; • Stormwater Management Code; • Water and Sewer Code; • Biodiversity Overlay Code; • Bushfire Hazard Overlay Code; and • Steep Land Overlay Code. 	
Compliance with assessment benchmarks	
The development was assessed against all of the assessment benchmarks listed above and complies with all of these with the exceptions listed below.	
Assessment Benchmark	Reasons for the approval despite the non-compliance with benchmark
Environmental Management and Conservation Zone Code	<p>Performance Outcome (PO7)</p> <p>The proposed development does not comply with Acceptable Outcome (AO) 7 as the development involves the creation of two (2) new lots, contrary to AO7 stipulating that no new lots are created within the zone.</p> <p>While the development proposes subdivision of one (1) lot into two (2) lots, only one (1) additional lot will be created with the proposed Lot 2 located entirely within the Low-Density Residential Zone. Proposed Lot 1 will be spilt-zoned between the Low-Density Residential and Environmental Management and Conservation Zones. The number of lots that are subject to the Environment and Conservation Management Zone will not increase and therefore no new lots will be created in the zone compared to the pre-development state. As such, the development is considered to be</p>

	<p>consistent with Performance Outcome (PO) 7 and with Overall Outcome (2) (f), despite the conflict.</p> <p>Proposed Lot 1 will retain the existing dwelling house and ancillary structures (located fully within the Low Density Residential Zone), with any further development on Lot 1 anticipated to occur outside the Environmental Management and Conservation Zone. The building envelope on Proposed Lot 2 is located solely within the Low Density Residential Zone and therefore will not establish a new land use or associated building work within the Environmental Management and Conservation Zone.</p> <p>On the basis of the above assessment, the proposed development will:</p> <ul style="list-style-type: none"> • Protect significant natural features of vegetation and bushland areas from negative impacts associated with the development. • Restrict development on the site to an area located within the low-density residential zone, which is compatible with the environmental values of the land. • Not result in development of any extent within the environmental and conservation zone. • Avoid creating any adverse impacts on ecological features. <p>The development is therefore consistent with the purpose and overall outcomes of the Environmental Management and Conservation Zone Code.</p>
<p>Reconfiguring a Lot Code</p>	<p>Performance Outcome (PO) 11</p> <p>The proposed development does not wholly comply with Performance Outcome (PO) 11, and no Acceptable Outcome (AO) has been nominated, as the proposed reconfiguration and creation of the new lot is not orientated to enhance climatic responsiveness as required, with Lot 2 proposing the long axis of the of the block with a north-south orientation and is not rectangular in shape.</p> <p>Despite this, the 300 square metre building envelope that is proposed promotes an east-west orientation for the long axis of the building envelope and is therefore, taken to comply with Performance Outcome (PO) 11.</p>
<p>Biodiversity Overlay Code</p>	<p>Performance Outcome (PO) 14</p> <p>The proposed development does not wholly comply with Acceptable Outcome (AO) 14 as the development will result in the creation of an additional lot that is almost entirely affected by vegetation of state environmental significance.</p> <p>Notwithstanding, the additional lot (proposed Lot 2) is bound at the rear property boundary to Lot 1, with the biodiversity overlay encompassing this area and extending east through to the adjoining Lot 10 on RP618783, with no fragmentation between Lots 1, 2 and 15 resulting from the reconfiguration.</p> <p>On this basis, the proposed development is taken to satisfy Performance Outcome (PO) 14 as the ecological function and biodiversity values are thereby maintained as no fragmentation of significant vegetation will occur.</p>
<p>Bushfire Overlay Code</p>	<p>Performance Outcome (PO) 1</p> <p>The proposed development does not comply with Acceptable Outcome (AO)1.1.1 as the development will result in an additional residential lot that:</p> <ol style="list-style-type: none"> Does not have direct access to a public road; Has a single access driveway that services four (4) lots, approximately ninety (90) metres in length (maximum); and Has an access driveway with a gradient that exceeds 12.5 percent. <p>Despite the non-compliance, the proposed development has been supported by a Traffic Statement, prepared by a Registered Professional Engineer of Queensland (RPEQ) (Modus Consultants). The advice demonstrates that in instances where a</p>

driveway provides access to four (4) lots (proposed development scenario) that are more than forty (40) metres away from a dedicated road, the inclusion of a passing lane two (2) metres in width and eight (8) metres in length is sufficient in ensuring two-way movements along the access driveway, in consideration of the following:

- (i) The passing bay location allows for outbound vehicles to pull-in and give-way to inbound vehicles, providing sufficient visibility for an outbound vehicle to observe an inbound vehicle;
- (ii) Inbound and outbound vehicles are able to pass along the driveway utilising the passing bay, whilst ensuring a consistent 600 millimetres clearance is maintained between both vehicles; and
- (iii) The access driveway will service four (4) residential dwellings in total, corresponding to a peak hour trip generation of four (4) vehicles per hour.

On this basis, the proposed development is taken to comply with Performance Outcome (PO) 1 as the proposed passing bay adjacent to the access driveway facilitates safe and efficient vehicle movements for access and egress to and from the site in the event of a bushfire.

Performance Outcome (PO) 4

The proposed development does not comply with Acceptable Outcome (AO) 4.1 as no Bushfire Attack Level (BAL) has been provided by the applicant. The Bushfire Hazard Overlay Code requires developments located within high and very high bushfire hazard areas to achieve a BAL rating of less than 12.5.

While the proposed development does not satisfy AO4.1, the reconfiguration is over an existing lot, and although an additional lot is created, the site area and external property boundaries will not change or further expand into the very high bushfire hazard area.

Furthermore, Lot 1 will maintain the existing dwelling house and associated structures, which are located outside of the very high bushfire hazard, while Lot 2 is located wholly outside of the very high bushfire hazard and proposes a site area of 1,018 square metres, which does not trigger assessment against the Bushfire Hazard Overlay Code for the purposes of the Material Change of Use.

On this basis, the proposed development is taken to comply with Performance Outcome (PO) 4 as it is considered compatible with the level of risk associated with the bushfire hazard and is not deemed necessary or reasonable that a BAL rating be provided.

Performance Outcome (PO) 6

The proposed development does not comply with Acceptable Outcome (AO) 6.1 as no Bushfire Attack Level has been provided with the application material, which demonstrates that the proposed lots are separated from hazardous vegetation by a distance that achieves a Bushfire Attack Level (BAL) of twenty-nine (29) or less at all property boundaries.

Despite the conflict, proposed Lots 1 and 2 are not wholly affected by the very high bushfire hazard overlay, with the development footprint of Lot 1 (existing buildings and structures), and all property boundaries of Lot 2, being located entirely within the bushfire hazard buffer area.

The site is located within an urban area with surrounding residential lots adjoining the southern and western property boundaries, void of hazardous vegetation.

The Material Change of Use associated with the dwelling house (building envelope) does not trigger assessment against the Bushfire Hazard Overlay as the site is under 2000 square metres.

On this basis, it is not deemed necessary or reasonable that a BAL or bushfire management plan be provided based on the pre and post development conditions of Lot 1, and on balance, is considered consistent with the purpose of the code.

	<p>Performance Outcome (PO) 7</p> <p>The proposed development does not comply with Acceptable Outcome (AO) 7.1 as proposed Lot 1 is not separated from hazardous vegetation on adjoining Lots 10 on RP618783 and Lot 37 on SP153685 by a public road.</p> <p>The non-compliance can be justified on the basis that proposed Lots 1 and 2:</p> <ul style="list-style-type: none"> • have access to the sealed road of Vanderspek Place, enabling safe evacuation from the subject sites; • are located within 50 metres of a fire hydrant connected to the reticulated water network; and • the western property boundary of Lot 1 and the southern property boundary of Lot 2 both adjoin residential allotments void of hazardous vegetation at the property boundaries. <p>Further to this, the reconfiguration proposes one (1) additional lot within the Low-Density Residential Zone, which is not anticipated to significantly increase the density of persons on the site to the extent that would be considered incompatible with the level of risk associated with the bushfire hazard.</p> <p>On this basis, the proposed reconfiguration, complies with the purpose of the code and is considered a low-level conflict with PO7.</p>
	<p>Performance Outcome (PO) 10</p> <p>The proposed development does not satisfy the requirements of Acceptable Outcome (AO) 10.1 as the development does not include a perimeter road or fire access trail as required.</p> <p>Based on the nature of proposed development being for the reconfiguration of one (1) into two (2) lot subdivision within the perimeter of the existing Lot 1 property boundaries and no new roads proposed, it is not considered necessary or reasonable for the development to have a perimeter road or fire access trail.</p> <p>Furthermore, the provision of a passing bay adjacent to the access easement south of proposed Lot 2, supported by a Traffic Statement by Modus Engineering consultants, is considered sufficient in facilitating safe access and egress of emergency services during a bushfire event, as detailed in response to PO1 of the Bushfire Overlay Code.</p> <p>On this basis, the development complies with Performance Outcome (PO) 10.</p>
<p>Steep Land Overlay</p>	<p>Performance Outcome (5)</p> <p>The proposed development does not comply with Acceptable Outcomes (AO) 5.1 and 5.2 on the basis:</p> <ul style="list-style-type: none"> • The development footprint (building envelope) is located on a slope with a gradient that exceeds fifteen (15) percent; • The new lot does not meet the minimum lot size of 2000 square metres and minimum road frontage width of thirty (30 metres), in accordance with Table 8.2.11.3.2; and • The site does not have a road frontage to a form road. <p>Despite the non-compliance, the application was supported by a Slope Stability Report undertaken by a Registered Professional Engineer of Queensland (RPEQ) demonstrating that the future building location does not present evidence of instability and is considered a low risk of landside.</p> <p>Therefore, the proposed development is taken to comply with Performance Outcome (PO) 5.</p>

Landscape Code	<p>Performance Outcome (PO) 1 to 6</p> <p>No landscaping is proposed as part of the development. The reconfiguration is over an existing, well-established lot occupied with dense vegetation to the rear and right common property boundaries of Lot 1, and the rear property boundary of proposed Lot 2, identified as significant vegetation under the biodiversity overlay.</p> <p>The well-established hedging adjacent to the easement and the front property boundary of proposed Lot 2 provides a pleasant visual streetscape that will soften the built form of any future developments over the subject site, offsetting the landscaping provisions.</p> <p>In the context of the existing development on the subject site, the non-compliances with the landscaping provisions are considered low-level conflicts in the assessment of a two (2) lot subdivision.</p>
Relevant Matters	
The proposed development was not assessed against any relevant matters outside of the matters prescribed by regulation.	
Matters raised in submissions	
The proposal was the subject of public notification between 15 February 2024 and 7 March 2024, in accordance with the requirements of the Planning Act 2016 and the Development Assessment Rules, and no submissions were received.	
Matters Prescribed by Regulation	
<ul style="list-style-type: none"> • The Rockhampton Region Planning Scheme 2015 (version 4.4); and • Central Queensland Regional Plan 2013; • The common material, being the material submitted with the application. 	

9. APPEAL RIGHTS

The rights of an applicant to appeal to a tribunal or the Planning and Environment Court against a decision about a development application are set out in chapter 6, part 1 of the *Planning Act 2016*. 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*).

Appeal by an applicant

An applicant for a development application may appeal to the Planning and Environment Court against the following:

- the refusal of all or part of the development application
- a provision of the development approval
- the decision to give a preliminary approval when a development permit was applied for
- a deemed refusal of the development application.

An applicant may also have a right to appeal to the Development tribunal. For more information, see schedule 1 of the *Planning Act 2016*.

The timeframes for starting an appeal in the Planning and Environment Court are set out in section 229 of the *Planning Act 2016*.

Attachment 2 is an extract from the *Planning Act 2016* that sets out the applicant's appeal rights and the appeal rights of a submitter.

10. WHEN THE DEVELOPMENT APPROVAL TAKES EFFECT

This development approval takes effect:

- From the time the decision notice is given – if there is no submitter and the applicant does not appeal the decision to the court.


Or

- When the submitter's appeal period ends – if there is a submitter and the applicant does not appeal the decision to the court.

Or

- Subject to the decision of the court, when the appeal is finally decided – if an appeal is made to the court.

11. ASSESSMENT MANAGER

Name: Amanda O'Mara <u>COORDINATOR</u> <u>DEVELOPMENT ASSESSMENT</u>	Signature: 	Date: 19 April 2024
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Attachment 1 – Conditions of the approval

Part 1 – Conditions imposed by the assessment manager [Note: where a condition is imposed about infrastructure under Chapter 4 of the Planning Act 2016, the relevant provision of the Act under which this condition was imposed must be specified.]

Attachment 2—Extract on appeal rights



Attachment 1 – Part 1

Rockhampton Regional Council Conditions

Planning Act 2016

Reconfiguring a Lot Conditions

1.0 ADMINISTRATION

- 1.1 The owner, the owner's successors in title, and any occupier of the premises is responsible for ensuring compliance with the conditions of this development approval.
- 1.2 Where these Conditions refer to "Council" in relation to requiring Council to approve or to be satisfied as to any matter, or conferring on the Council a function, power or discretion, that role may be fulfilled in whole or in part by a delegate appointed for that purpose by the Council.
- 1.3 All conditions, works, or requirements of this development approval must be undertaken and completed:
- 1.3.1 to Council's satisfaction;
 - 1.3.2 at no cost to Council; and
 - 1.3.3 prior to the issue of the Survey Plan Approval Certificate, unless otherwise stated.
- 1.4 The following further Development Permits must be obtained prior to the commencement of any works associated with their purposes:
- 1.4.1 Plumbing and Drainage Works
- 1.5 All works must be designed, constructed and maintained in accordance with the relevant Council policies, guidelines and standards, unless otherwise stated.
- 1.6 All engineering drawings/specifications, design and construction works must be in accordance with the requirements of the relevant *Australian Standards* and must be approved, supervised and certified by a Registered Professional Engineer of Queensland.
- 1.7 The access to Lot 2 must be via the existing shared driveway and easement arrangement. Amended easement documents that include Lot 2 must accompany the Survey Plan for endorsement by Council, prior to the issue of the Survey Plan Approval Certificate.
- 1.8 Street numbering for the development must be in accordance with *Australian/New Zealand Standard for Rural and Urban Addressing (AS4819:2011)*. Council will allocate street numbering to the development in accordance with this standard at the time of issuing the Survey Plan Approval Certificate.

2.0 APPROVED PLANS AND DOCUMENTS

- 2.1 The approved development must be completed and maintained generally in accordance with the approved plans and documents, except where amended by any condition of this development approval:

Plan/Document Name	Prepared by	Date	Reference No.	Version/Issue
Proposed Subdivision Plan	Reel Planning	27 September 2023	-	-

- 2.2 Where there is any conflict between the conditions of this development approval and the details shown on the approved plans and documents, the conditions of this development approval must prevail.

3.0 PLUMBING AND DRAINAGE WORKS

- 3.1 A Development Permit for Plumbing and Drainage Works must be obtained for the connection of the proposed new lot to Council's reticulated water and sewerage networks. Alternatively, these works can be carried out as Private Works by Fitzroy River Water.

3.2 All internal plumbing and drainage works must be designed and constructed in accordance with the approved plans (refer to condition 2.1), Capricorn Municipal Development Guidelines, Water Supply (Safety and Reliability) Act 2008, Plumbing and Drainage Act 2018, Council's Plumbing and Drainage Policies and the provisions of a Development Permit for Plumbing and Drainage Works.

3.3 The development must be connected to Council's reticulated sewerage and water networks.

Note: Preference is for the sewerage connection to be provided from the access chamber located behind Lot 12 on SP158483.

3.4 Sewer connections and water meter boxes located within trafficable areas must be raised or lowered to suit the finished surface levels and must be provided with heavy duty trafficable lids.

3.5 Alteration or relocation of internal sanitary drainage works associated with the existing building must be in accordance with regulated work under the Plumbing and Drainage Act 2018.

3.6 Alteration, disconnection or relocation of internal plumbing and sanitary drainage works associated with the existing building must be in accordance with regulated work under the Plumbing and Drainage Act 2018 and Council's Plumbing and Drainage Policies.

4.0 ELECTRICITY

4.1 Underground electricity services to each lot must be provided in accordance with approved Operational Works Plans and the standards and requirements of the relevant service provider.

4.2 A *Certificate of Electricity Supply* from the relevant service provider must be provided to Council, prior to the issue of the Survey Plan Approval Certificate.

Note: The applicant can enter into a *Negotiated Connection Establishment Contract* with the Supplier for the provisioning of electrical services and/or street lighting. Provided the Applicant has undertaken all the conditions of the contract, including providing performance security, the Supplier will issue a *Certificate of Electricity Supply*.

5.0 TELECOMMUNICATIONS

5.1 Provide Fibre-Ready pit and pipe telecommunications infrastructure to each lot within the development in accordance with the Australian Government '*Telecommunications infrastructure in new developments*' policy.

Note

Applies to Reconfiguration of a Lot development where the construction of a new road or part thereof is required, and where the site is likely to be located within the Fibre footprint.

5.2 Evidence (see below) of acceptance of the works from the relevant service provider must be provided to Council, prior to the issue of the Survey Plan Approval Certificate e.g. This will be a letter from either :-

NBN a '*Certificate of Practical Completion*',

Telstra a-'*Telecommunications Agreement/Provisioning Letter*',

A Licenced Carrier under the Telecommunications Act 1997- (*signed documentation from a Registered Professional Engineer Queensland -electrical engineer.*)

6.0 ASSET MANAGEMENT

6.1 Any alteration necessary to electricity, telephone, water mains, sewerage mains, and/or public utility installations resulting from the development or in connection with the development, must be undertaken and completed at no cost to Council.

6.2 Any damage to existing stormwater, water supply and sewerage infrastructure, kerb and channel, pathway or roadway (including removal of concrete slurry from public land and Council infrastructure), that occurs while any works are being carried out in association with this development approval must be repaired at full cost to the developer. This includes the reinstatement of any existing traffic signs or pavement markings that may have been removed or damaged.

7.0 OPERATING PROCEDURES

7.1 The existing bin set-down area on the eastern side of the Vanderspek Place tee-head must be extended to accommodate the bins associated with four (4) residences (8 bins). The set-down area must be a minimum of eight (8) metres long.

7.2 All construction materials, waste, waste skips, machinery and contractors' vehicles must be located and stored or parked within the development site. Storage of materials, or parking of construction machinery or contractors' vehicles must not occur within Constantia Crescent or Vanderspek Place.

ADVISORY NOTES

NOTE 1. General Environmental Duty

General environmental duty under the *Environmental Protection Act 1994* prohibits unlawful environmental nuisance caused by noise, aerosols, particles, dust, ash, fumes, light, odour or smoke beyond the boundaries of the development site during all stages of the development including earthworks, construction and operation.

NOTE 2. General Safety Of Public During Construction

The *Work Health and Safety Act 2011* and *Manual of Uniform Traffic Control Devices* must be complied with in carrying out any construction works, and to ensure safe traffic control and safe public access in respect of works being constructed on a road.

NOTE 3. Infrastructure Charges Notice

This application is subject to infrastructure charges in accordance with Council policies. The charges are presented on an Infrastructure Charges Notice.

NOTE 4. Property Note (Building Envelope)

All future structures (habitable and non-habitable) must be contained within the Building Envelopes located on proposed Lot 2.

Material Change of Use Conditions

1.0 ADMINISTRATION

1.1 The owner, the owner's successors in title, and any occupier of the premises is responsible for ensuring compliance with the conditions of this development approval.

1.2 Where these Conditions refer to "Council" in relation to requiring Council to approve or to be satisfied as to any matter, or conferring on the Council a function, power or discretion, that role may be fulfilled in whole or in part by a delegate appointed for that purpose by the Council.

1.3 All conditions, works, or requirements of this development must be undertaken, completed, and be accompanied by a Compliance Certificate for any operational works required by this development approval:

1.3.1 to Council's satisfaction;

1.3.2 at no cost to Council; and

1.3.3 prior to the issue of the Certificate of Classification for the Building Works, unless otherwise stated.

1.4 The following further Development Permits must be obtained prior to the commencement of any works associated with their purposes:

1.4.1 Operational Works:

(i) Access Works;

(ii) Roof and Allotment Drainage;

(iii) Site Works

1.4.2 Plumbing and Drainage Works; and

1.4.3 Building Works:

(i) Building Works.

1.5 All Development Permits for Operational Works and Plumbing and Drainage Works must be obtained prior to the issue of a Development Permit for Building Works.

1.6 All works must be designed, constructed and maintained in accordance with the relevant Council policies, guidelines and standards, unless otherwise stated.

1.7 All engineering drawings/specifications, design and construction works must be in accordance with the requirements of the relevant Australian Standards and must be approved, supervised and certified by a Registered Professional Engineer of Queensland.

2.0 APPROVED PLANS AND DOCUMENTS

2.1 The approved development must be completed and maintained generally in accordance with the approved plans and documents, except where amended by any condition of this development approval:

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Site-based Stormwater Management Plan	Maloney & Sons Engineering	9 June 2023	FP/001.CE23 062	Rev A
Traffic Engineering Letter	Modus Traffic and Transport Engineering	29 September 2023		

2.2 Where there is any conflict between the conditions of this development approval and the details shown on the approved plans and documents, the conditions of this development approval must prevail.

3.0 ACCESS WORKS

3.1 A Development Permit for Operational Works (access works) must be obtained prior to the commencement of any access works on the development site.

3.2 All access works must be designed and constructed in accordance with the approved plans (refer to condition 2.1), *Capricorn Municipal Development Guidelines, Australian Standard AS2890 "Parking facilities"* and the provisions of a Development Permit for Operational Works (access works).

3.3 All access areas must be paved or sealed to Council's satisfaction. Design and construction must be in accordance with the provisions of a Development Permit for Operational Works (access works).

3.4 A new access to the development must be provided for proposed Lot 2.

3.5 Access easement documentation must be amended to include proposed Lot 2

3.6 A passing lane must be provided on the southern side of the existing access driveway, generally in accordance with the details in the Modus Traffic Engineering letter dated 29 September 2023. The passing lane must be extended towards the proposed driveway location for Lot 2 as far as practical to improve safety for the blind curve caused by the landscaping on the eastern side of 9 Vanderspek Place.

4.0 PLUMBING AND DRAINAGE WORKS

4.1 All internal plumbing and drainage works must be designed and constructed in accordance with the approved plans (refer to condition 2.1), *Capricorn Municipal Development Guidelines, Water Supply (Safety and Reliability) Act 2008, Plumbing and Drainage Act 2018, Council's Plumbing and Drainage Policies* and the provisions of a Development Permit for Plumbing and Drainage Works.

5.0 ROOF AND ALLOTMENT DRAINAGE WORKS

5.1 A Development Permit for Operational Works (roof and allotment drainage works) must be obtained prior to the commencement of any drainage works on the development site.

5.2 All roof and allotment drainage works must be designed and constructed in accordance with the approved plans (refer to condition 2.1), *Queensland Urban Drainage Manual, Capricorn Municipal Development Guidelines*, sound engineering practice and the provisions of a Development Permit for Operational Works (roof and allotment drainage works).

5.3 All roof and allotment runoff from the development must be directed to a lawful point of discharge and must not restrict, impair or change the natural flow of runoff water or cause a nuisance to surrounding land or infrastructure.

6.0 SITE WORKS

- 6.1 A Development Permit for Operational Works (site works) must be obtained prior to the commencement of any site works on the development site.
- 6.2 Any application for a Development Permit for Operational Works (site works) must be accompanied by an earthworks plan that clearly identifies the following:
- 6.2.1 the location of cut and/or fill;
 - 6.2.2 the type of fill to be used and the manner in which it is to be compacted;
 - 6.2.3 the quantum of fill to be deposited or removed and finished cut and/or fill levels;
- 6.3 Cut and fill of the subject allotment(s) must only be undertaken in areas where site-specific slope stability assessments have been carried out by a Registered Professional Engineer of Queensland experienced in Geotechnical investigations. In this regard, any works must comply with the recommendations of the site-specific assessments as approved by Council.
- 6.4 Cut and fill of the subject allotment(s) must be undertaken in accordance with the recommendations of the Slope Stability Report (refer to condition 2.1).
- 6.5 Slope stability must be managed as follows:
- 6.5.1 all engineering drawings/specifications and designs must be in accordance with the requirements of the relevant *Australian Standard AS3798 "Guidelines on earthworks for commercial and residential developments"* and must be approved by a Registered Professional Engineer of Queensland;
 - 6.5.2 site inspections must be undertaken by a Registered Professional Engineer of Queensland to confirm the design; and
 - 6.5.3 full engineering certification must be undertaken by a Registered Professional Engineer of Queensland.
- 6.6 All earthworks must be undertaken in accordance with *Australian Standard AS3798 "Guidelines on earthworks for commercial and residential developments"*.
- 6.7 Site works must be constructed such that they do not, at any time, in any way restrict, impair or change the natural flow of runoff water, or cause a nuisance or worsening to surrounding land or infrastructure.
- 6.8 Retaining structures above one (1) metre in height that are not incidental works to a Development Permit for Building Works, must not be constructed unless separately and specifically certified by a Registered Professional Engineer of Queensland and must be approved as part of a Development Permit for Operational Works (site works).

7.0 BUILDING WORKS

- 7.1 A Development Permit for Building Works assessable under the Building Assessment Provisions must be obtained prior to the commencement of any building works on the site.

8.0 ASSET MANAGEMENT

- 8.1 Any alteration necessary to electricity, telephone, water mains, sewerage mains, and/or public utility installations resulting from the development or in connection with the development, must be undertaken and completed at no cost to Council.
- 8.2 Any damage to existing stormwater, water supply and sewerage infrastructure, kerb and channel, pathway or roadway (including removal of concrete slurry from public land and Council infrastructure), that occurs while any works are being carried out in association with this development approval must be repaired at full cost to the developer. This includes the reinstatement of any existing traffic signs or pavement markings that may have been removed or damaged.

9.0 ENVIRONMENTAL

- 9.1 Any application for a Development Permit for Operational Works must be accompanied by an Erosion and Sediment Control Plan that addresses, but is not limited to, the following:
- (i) objectives;
 - (ii) site location and topography;
 - (iii) vegetation;

- (iv) site drainage;
- (v) soils;
- (vi) erosion susceptibility;
- (vii) erosion risk;
- (viii) concept;
- (ix) design; and
- (x) implementation,

for the construction and post-construction phases of work.

10.0 OPERATING PROCEDURES

- 10.1 All construction materials, waste, waste skips, machinery and contractors' vehicles must be located and stored or parked within the development site. Storage of materials or parking of construction machinery or contractors' vehicles must not occur within Constantia Crescent or Vanderspek Place.

ADVISORY NOTES

NOTE 1. General Environmental Duty

General environmental duty under the *Environmental Protection Act 1994* prohibits unlawful environmental nuisance caused by noise, aerosols, particles, dust, ash, fumes, light, odour or smoke beyond the boundaries of the development site during all stages of the development including earthworks, construction and operation.

NOTE 2. General Safety Of Public During Construction

The *Work Health and Safety Act 2011* and *Manual of Uniform Traffic Control Devices* must be complied with in carrying out any construction works, and to ensure safe traffic control and safe public access in respect of works being constructed on a road.

NOTE 3. Building Works

Council will be a referral agency for the Building Works Permit where the development does not comply with the Queensland Development Code. This Development Permit does not constitute a referral agency response from Council for the Building Works Permit in relation to building envelopes and setbacks.

NOTE 4. Rating Category

Please note, a Material Change of Use approval may result in an adjustment to a property's rating category. Please contact Council's Rates Department should you require further information.

The following is an extract from the *Planning Act 2016* (Chapter 6)

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states—
- matters that may be appealed to—
 - either a tribunal or the P&E Court; or
 - only a tribunal; or
 - only the P&E Court; and
 - the person—
 - who may appeal a matter (the **appellant**); and
 - who is a respondent in an appeal of the matter; and
 - who is a co-respondent in an appeal of the matter; and
 - 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—
- for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency or
 - for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
 - 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
 - for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
 - 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
 - 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—
- the adopted charge itself; or
 - for a decision about an offset or refund—
 - the establishment cost of trunk infrastructure identified in a LGIP; or
 - 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—
- is in the approved form; and
 - 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—
- the respondent for the appeal; and
 - each co-respondent for the appeal; and
 - for an appeal about a development application under schedule 1, table 1, item 1—each principal submitter for the development application; and
 - for an appeal about a change application under schedule 1, table 1, item 2—each principal submitter for the change application; and
 - 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
 - for an appeal to the P&E Court—the chief executive; and
 - for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The **service period** is—
- if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
 - 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) 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.

231 Other appeals

- (1) Subject to this chapter, schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
- (2) The Judicial Review Act 1991, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the Judicial Review Act 1991 in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section— **decision** includes—
- conduct engaged in for the purpose of making a decision; and
 - other conduct that relates to the making of a decision; and
 - the making of a decision or the failure to make a decision; and
 - a purported decision; and
 - a deemed refusal.

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

- is final and conclusive; and
- may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the Judicial Review Act 1991 or otherwise, whether by the Supreme Court, another court, a tribunal or another entity; and
- is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

232 Rules of the P&E Court

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.

(2) However, the P&E Court may hear and decide an appeal even if the person has not complied with rules of the P&E Court.

Schedule 1

Appeals section 229

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.

Table 1			
Appeals to the P&E Court and, for certain matters, to a tribunal			
1. Development applications An appeal may be made against— <ol 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	1 A concurrence agency that is not a co-respondent

Table 1			
Appeals to the P&E Court and, for certain matters, to a tribunal			
		agency's referral response—the concurrence agency	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
2. Change applications An appeal may be made against— (a) a responsible entity's decision for a change application, other than a decision made by the P&E court; or (b) a deemed refusal of a change application.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 The applicant 2 If the responsible entity is the assessment manager—an affected entity that gave a pre-request notice or response notice	The responsible entity	If an affected entity starts the appeal—the applicant	1 A concurrence agency for the development application 2 If a chosen assessment manager is the respondent—the prescribed assessment manager 3 A private certifier for the development application 4 Any eligible advice agency for the change application 5 Any eligible submitter for the change application
3. Extension applications An appeal may be made against— (a) the assessment manager's decision about an extension application; or (b) a deemed refusal of an extension application.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 The applicant 2 For a matter other than a deemed refusal of an extension application – a concurrence agency, other than the chief executive, for the application	The assessment manager	If a concurrence agency starts the appeal – the applicant	If a chosen assessment manager is the respondent – the prescribed assessment manager

Table 1			
Appeals to the P&E Court and, for certain matters, to a tribunal			
<p>4. Infrastructure charges notices An appeal may be made against an infrastructure charges notice on 1 or more of the following grounds</p> <p>a) The notice involved an error relating to –</p> <p>(i) The application of the relevant adopted charge; or</p> <p>Examples of errors in applying an adopted charge –</p> <ul style="list-style-type: none"> • The incorrect application of gross floor area for a non-residential development • Applying an incorrect ‘use category’, under a regulation, to the development <p>(i) The working out of extra demands, for section 120; or</p> <p>(ii) An offset or refund; or</p> <p>b) There was no decision about an offset or refund; or</p> <p>c) If the infrastructure charges notice states a refund will be given – the timing for giving the refund; or</p> <p>d) The amount of the charge is so unreasonable that no reasonable relevant local government could have imposed the amount.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The person given the Infrastructure charges notice	The local government that gave the infrastructure charges notice	-	-
<p>5. Conversion applications An appeal may be made against—</p> <p>(a) the refusal of a conversion application; or</p> <p>(b) a deemed refusal of a conversion application.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant	The local government to which the conversion application was made	-	-
<p>6. Enforcement notices An appeal may be made against the decision to give an enforcement notice.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The person given the enforcement notice	The enforcement authority	-	If the enforcement authority is not the local government for the premises in relation to which the offence is alleged to have happened—the local government

Table 2			
Appeals to the P&E Court only			
<p>1. Appeals from tribunal An appeal may be made against a decision of a tribunal, other than a decision under section 252, on the ground of—</p> <p>(a) an error or mistake in law on the part of the tribunal; or</p> <p>(b) jurisdictional error.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A party to the proceedings for the decision	The other party to the proceedings for the decision	-	-

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

<p>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.</p>			
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
<p>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.</p>			
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
<p>4. Compensation claims An appeal may be made against— (a) a decision under section 32 about a compensation claim; or (b) a decision under section 265 about a claim for compensation; or (c) a deemed refusal of a claim under paragraph (a) or (b).</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person dissatisfied with the decision	The local government to which the claim was made	-	-
<p>5. Registered premises</p>			

Table 2 Appeals to the P&E Court only			
An appeal may be made against a decision of the Minister under chapter 7, part 4.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 A person given a decision notice about the decision 2 If the decision is to register premises or renew the registration of premises—an owner or occupier of premises in the affected area for the registered premises who is dissatisfied with the decision	The Minister	-	If an owner or occupier starts the appeal – the owner of the registered premises
6. Local laws An appeal may be made against a decision of a local government, or conditions applied, under a local law about— (a) the use of premises, other than a use that is the natural and ordinary consequence of prohibited development; or (b) the erection of a building or other structure.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who— (a) applied for the decision; and (b) is dissatisfied with the decision or conditions.	The local government	-	-

Table 3 Appeals to the tribunal only			
1. Building advisory agency appeals An appeal may be made against giving a development approval for building work to the extent the building work required code assessment against the building assessment provisions.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A building advisory agency for the development application related to the approval	The assessment manager	The applicant	1 A concurrence agency for the development application related to the approval 2 A private certifier for the development application related to the approval
3. Certain decisions under the Building Act and the Plumbing and Drainage Act An appeal may be made against a decision under— (a) the Building Act, other than a decision made by the Queensland Building and Construction Commission; or (b) the Plumbing and Drainage Act, part 4 or 5.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)

Table 3			
Appeals to the tribunal only			
A person who received, or was entitled to receive, notice of the decision	The person who made the decision	-	-
<p>4. Local government failure to decide application under the Building Act An appeal may be made against a local government's failure to decide an application under the Building Act within the period required under that Act.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who was entitled to receive, notice of the decision	The local government to which the application was made	-	-