

**Decision notice approval**  
**Section 282 of the Planning Act 2016 for a decision notice (approval) under s63 Planning Act 2016**



PLEASE QUOTE: RAL19/0026  
YOUR REFERENCE: 122 Etty Bay Road  
OUR REFERENCE: IN:MP1912041249  
ENQUIRIES TO: Isabella Newman – Senior Planning Officer

4 December 2019

Charlotte Kelder  
PO Box 273  
MOURILYAN QLD 4858

**Via email:** [katherine.kelder@ccrc.qld.gov.au](mailto:katherine.kelder@ccrc.qld.gov.au)

Dear Madam

**RAL19/0026 - Development application for Reconfiguring a Lot (One (1) Lot into Two (2) Lots) on land described as Lot 3 on RP743467, situated at 122 Etty Bay Road, Etty Bay**

I acknowledge receipt of the above application on 29 November 2019 and confirm the following details.

I wish to advise that, on 4 December 2019 the above development application was -

- ☐ approved in full or
- ☐ approved in part for the following or
- ☒ approved in full with conditions. The conditions of this approval are set out in Attachment 1. These conditions are clearly identified to indicate whether the assessment manager or a concurrence agency imposed them or
- ☐ approved in part for the following, with conditions

The conditions of this approval are set out in **Attachment 1**. These conditions are clearly identified to indicate whether the assessment manager or a concurrence agency imposed them.

**Approval under s64(5)**

This application is ☐ / is not ☒ taken to have been approved (a deemed approval) under section 64(5) of the Planning Act 2016.

## 1. Details of the approval

The following approvals are given:

	Planning Regulation 2017 reference	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Development assessable under the planning scheme, superseded planning scheme, a temporary local planning instrument, a master plan or a preliminary approval which includes a variation approval - building work assessable under the planning scheme - plumbing or drainage work - material change of use - reconfiguring a lot - operational work		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

## 2. Conditions

This approval is subject to the conditions in Attachment 1.

## 3. Approved plans and documents

Plan/Document number	Plan/Document name	Date
Unnumbered	Proposal plan	Received by Council on 29/11/19

## 4. Currency period for the approval (s.85)

The currency period for the development approval (Reconfiguring a Lot) shall be four (4) years starting the day the approval is granted or takes effect. In accordance with Section 85 of the Planning Act 2016 (PA), the development approval for a reconfiguration of a lot lapses if a plan for the reconfiguration is not given to Council within the abovementioned currency period.

An applicant may request Council to extend the currency period provided that such is made in accordance with Section 86 of PA and before the development approval lapses under Section 85 of PA.

## 5. 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. 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).

### 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*.

#### Appeal by a submitter

A submitter for a development application may appeal to the Planning and Environment Court against:

- any part of the development application for the development approval that required impact assessment
- a variation request.

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 down the applicant's appeal rights regarding this decision.

If you wish to discuss this matter further, please contact Senior Planning Officer, Isabella Newman on Ph: (07) 4043 9143.

Yours faithfully



**Manfred Boldy**  
**DIRECTOR PLANNING & REGIONAL DEVELOPMENT**

## Attachment 1—Conditions of the approval

### Part 1—Conditions imposed by the assessment manager

1. **Proposal:** The development must be undertaken generally in accordance with the application, documentation and plans in the table below, accepted by Council on 21 March 2019, all relating to Development Application – RAL19/0006, subject to:

Plan Number	Plan Name	Date
Unnumbered T h e	Proposal plan	Received by Council on 29/11/19

- (a) The plans, specifications, facts and circumstances as set out in the application submitted to Council;
- (b) Ensuring that the development complies in all respects with the following conditions of approval and the requirements of Council's Planning Scheme and the FNQROC Development Manual; and
- (c) Any alterations found necessary by the Chief Executive Officer or his delegate at the time of examination of the Engineering Plans or during construction of the development because of a particular requirement;

except where modified by these conditions of approval.

2. **Timing of Effect:** The conditions of this Development Permit must be complied with prior to the signing and dating of the Plan of Survey, except where specified otherwise in these conditions of approval.
3. **Lot Access:** The applicant/owner must apply to Council's Asset Engineering Section of the Infrastructure Services Department for approval for a rural allotment crossover for the new proposed lot. The access crossover is to be constructed prior to the endorsement of the plan of survey, to the satisfaction of the Director of Infrastructure Services. Future maintenance of the access is the responsibility of the land owner.
4. **Electricity Supply:** The applicant/owner must provide written evidence of negotiations with the electricity authority detailing that an electricity service will be provided to the new proposed lot, prior to endorsement of the Plan of Survey, to the satisfaction of the Director Planning and Regional Development.
5. **Stormwater Drainage:** The applicant/owner must ensure that the flow of all external stormwater from the property is directed to a lawful point of discharge, such that stormwater does not adversely affect surrounding properties to the satisfaction of the Director Planning and Regional Development.
6. **Outstanding Rates:** The applicant/owner is to ensure that all rates, interest and other charges levied on the property are paid prior to the endorsement of the Plan of Survey, to the requirements of the Chief Executive Officer.
7. **Survey Marks:** All existing survey marks are to be reinstated, new survey marks are installed in accordance with the Plan of Survey, and a cadastral surveyor is to certify the

survey work in writing, to the requirements and satisfaction of the Manager Planning Services, prior to the endorsement of the Plan of Survey.

8. **Public Infrastructure/Utilities - Alterations:** Any relocation or alteration to any public utilities in association with works pertaining to this reconfiguration must be undertaken as required by the relevant service provider and at no cost to Council. This includes stormwater infrastructure.

**Assessment Manager's Advice:**

- a) **Currency Period:** The currency period for the development approval (Reconfiguring a Lot) shall be four (4) years starting the day the approval is granted or takes effect. In accordance with Section 85 of the *Planning Act 2016 (PA)*, the development approval for a reconfiguration of a lot lapses if a plan for the reconfiguration is not given to Council within the abovementioned currency period.

An applicant may request Council to extend the currency period provided that such is made in accordance with Section 86 of *PA* and before the development approval lapses under Section 85 of *PA*.

- b) **Water Connection & Meter:** The applicant/owner/future purchaser is to apply to Council's Infrastructure Services Department (Water Section) to install a water service fitted with meter to the new proposed lot at no cost to Council, prior to the issue of a final inspection certificate for any building works on the lot. The fee/charge for each water service installed and any associated upgrades required to be carried out by Council is per Council's Fees and Charges Schedule at the rate applicable on application and must be paid prior to the works being undertaken.
- c) **Aboriginal Cultural Heritage:** The applicant/owner is to ensure compliance with the requirements of the Aboriginal Cultural Heritage Act and in particular 'the duty of care' that it imposes all landowners, developers and the like; and
- d) **Fees and Charges:** When the plan of subdivision for the reconfiguring of a lot is submitted to Council for endorsement, such plan shall be accompanied by the endorsement fee in accordance with Council's Schedule of Fees and Charges.
- e) **Council Indemnity:** The Council is indemnified against any claims arising from works carried out by the Applicant/Owner on Council property.
- f) **Compliance with Laws:** This approval does not negate the requirement for compliance with all other relevant local laws and other statutory requirements.



## Approved Plans





## Attachment 2–Planning Act 2016 extract on appeal rights

### Chapter 6 Dispute resolution

#### Part 1 Appeal rights

##### 229 Appeals to tribunal or P&E Court

- (1) Schedule 1 of the *Planning Act 2016* 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.

(Refer to Schedule 1 of the Planning Act 2016)

- (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 and 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 has 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.

## 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-
    - (a) conduct engaged in for the purpose of making a decision; and
    - (b) other conduct that relates to the making of a decision; and
    - (c) the making of a decision or failure to make a decision; and
    - (d) a purported decision ; and
    - (e) a deemed refusal.
  - non-appealable*, for a decision or matter, means the decision or matter-
    - (a) is final and conclusive; and
    - (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the Judicial Review Act 1991 or otherwise, whether by the Supreme Court, another court, a tribunal or another entity; and
    - (c) 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 the rules of the P&E Court.



# Statement of Reasons

*The following information is provided in accordance with section 63 of the Planning Act 2016.*



**Development Application:** RAL19/0026  
**Property Description:** Lot 3 on RP743467  
**Property Address:** 122 Etty Bay Road, Etty Bay  
**Proposal:** Reconfiguring a Lot (One (1) Lot into Two (2) Lots)  
**Planning Scheme:** Cassowary Coast Regional Council Planning Scheme 2015  
**Decision Date:** Approved with conditions on 4 December 2019

## REASONS FOR DECISION

The proposal complies with all assessment benchmarks.

## ASSESSMENT BENCHMARKS

<b>Assessment Benchmarks:</b>	<b>State Planning Policy -</b>  <b>Far North Queensland Regional Plan 2009-2031</b>  <b>Cassowary Coast Regional Council Planning Scheme 2015</b> <ul style="list-style-type: none"><li>• Rural Residential Zone Code</li><li>• Reconfiguring a Lot Code</li><li>• Acid Sulfate Soils Code</li><li>• Bushfire Hazard Code</li><li>• Coastal Protection Code</li><li>• Environmental Significance Code</li><li>• Flood Hazard Code</li><li>• Scenic Amenity Code</li><li>• Waterway Corridors and Wetlands Code</li></ul>
-------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

## COMPLIANCE WITH BENCHMARKS

<b>Assessment Benchmark</b>	<b>Reasons for the approval despite non-compliance with benchmark</b>
	Nil