

In the Planning and Environment Court
Held at: Brisbane

Appeal No. 2916 of 2024

Between: **DAVID MANTEIT**

Appellant

And: **BRISBANE CITY COUNCIL**

Respondent

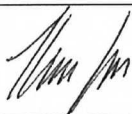
AFFIDAVIT

Filed on: April 2025

I, **KIERAN RYAN** of Reel Planning, Unit 1/9 Camford Street, Milton, Brisbane in the State of Queensland, being under oath say:

1. I am a Town Planner and Director with Reel Planning. A copy of my Curriculum Vitae appears at **Exhibit KR-1**, pages 24 to 26.
2. I have prepared a report in accordance with the *Planning and Environment Court Rules (Qld) 2018*. This report accurately states my opinions and conclusions. A copy of the report I prepared for this appeal appears at **Exhibit KR-1**, pages 4 to 26.
3. The contents of this affidavit are true, except where they are stated on the basis of information and belief, in which case they are true to the best of my knowledge.
4. I have been instructed on an expert's duty in accordance with the *Planning and Environment Court Rules 2018* and I confirm that:
 - (a) I have made all necessary enquiries in the discharge of my professional duty that I consider significant;
 - (b) I have not received or accepted instructions to adopt or reject a particular opinion in relation to an issue in dispute in this proceeding;
 - (c) the opinions held in the report exhibited to this affidavit are genuinely held by me; and
 - (d) I understand and have to the best of my ability discharged that duty.

Deponent:



Solicitor:



AFFIDAVIT OF KIERAN RYAN
Filed on behalf of the Respondent

CITY LEGAL – BRISBANE CITY COUNCIL
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BRISBANE Q 4000
Tel: (07) 3178 5581
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5. I understand that a person who provides a false matter in an affidavit commits an offence.

SWORN by **KIERAN RYAN**
at Brisbane
this 22nd day of April 2025 and
made in the form of an electronic
document, signed electronically and
made, signed and witnessed in accordance
with Part 6A of the *Oaths Act 1867*.



Deponent

before me:



Sarah McCabe

Australian Legal Practitioner, City Legal – Brisbane City Council
special witness under the *Oaths Act 1867*

I understand the requirements for witnessing a
document by audio visual link and have complied with those
requirements.

In the Planning and Environment Court
Held at: Brisbane

Appeal No. 2916 of 2024

Between: **DAVID MANTEIT**

Appellant

And: **BRISBANE CITY COUNCIL**

Respondent

CERTIFICATE OF EXHIBIT

Exhibit "**KR-1**" to the Affidavit of **KIERAN RYAN** sworn before me on this 22nd day of April 2025:

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Deponent



Solicitor – Sarah McCabe

Planning and Environment Appeal No. 2916 of 2024

BETWEEN

David Manteit (Appellant)

AND

Brisbane City Council (Respondent)

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1. BACKGROUND and PURPOSE OF THE REPORT

- 1.1 This report relates to land located at 128 Ashridge Road, Darra (hereon the 'subject site') which is the subject of an Appeal in the Planning and Environment (Appeal number 2916/24). It has been prepared by Kieran Ryan whose Curriculum Vitae is attached.
- 1.2 In preparing this report, I acknowledge that I have been instructed on an expert's duty in accordance with the *Planning & Environment Court Rules 2018* and *Uniform Civil Procedure Rules 1999*, and confirm that:
 - (a) I have read, and agreed to be bound by, the code of conduct in Schedule 1 of the *Planning and Environment Court Rules 2018*;
 - (b) I have not received or accepted any instructions to adopt or reject any particular opinion in relation to an issue in dispute in this proceeding;
 - (c) the factual matters stated in this report are, as far as I know, true;
 - (d) I have made all enquiries I consider appropriate;
 - (e) the opinions stated in this report are genuinely held by me;
 - (f) this report contains reference to all matters I consider significant;
 - (g) I understand my duty as an expert to the Court and have complied with my duty to the Court.
- 1.3 In accordance with paragraph 5 of the Court Order, dated 13 February 2025, by His Honour Judge Williamson KC, I have been instructed to prepare a report which:
 - (a) gives context to the land and its designations;
 - (b) explains the planning scheme assessment benchmarks for the proposed development; and,
 - (c) explains the purpose, from a town planning perspective, of the disputed conditions.
- 1.4 I understand and acknowledge that any question about legislative interpretation is a matter for the Court. However, where it may be of assistance, I provide, from a town planning perspective, observations on these matters that inform the basis of my opinion.

2. SUBJECT SITE DETAILS

- 2.1 The subject site is located 128 Ashridge Road, Darra (as shown in Figure 1 below). The formal description and particulars of the lot are identified in Table 1.

Table 1 – Site Particulars

Formal description	Lot 2 on RP117157
Site area	802m ²
Ashridge Road frontage	Approximately 47m

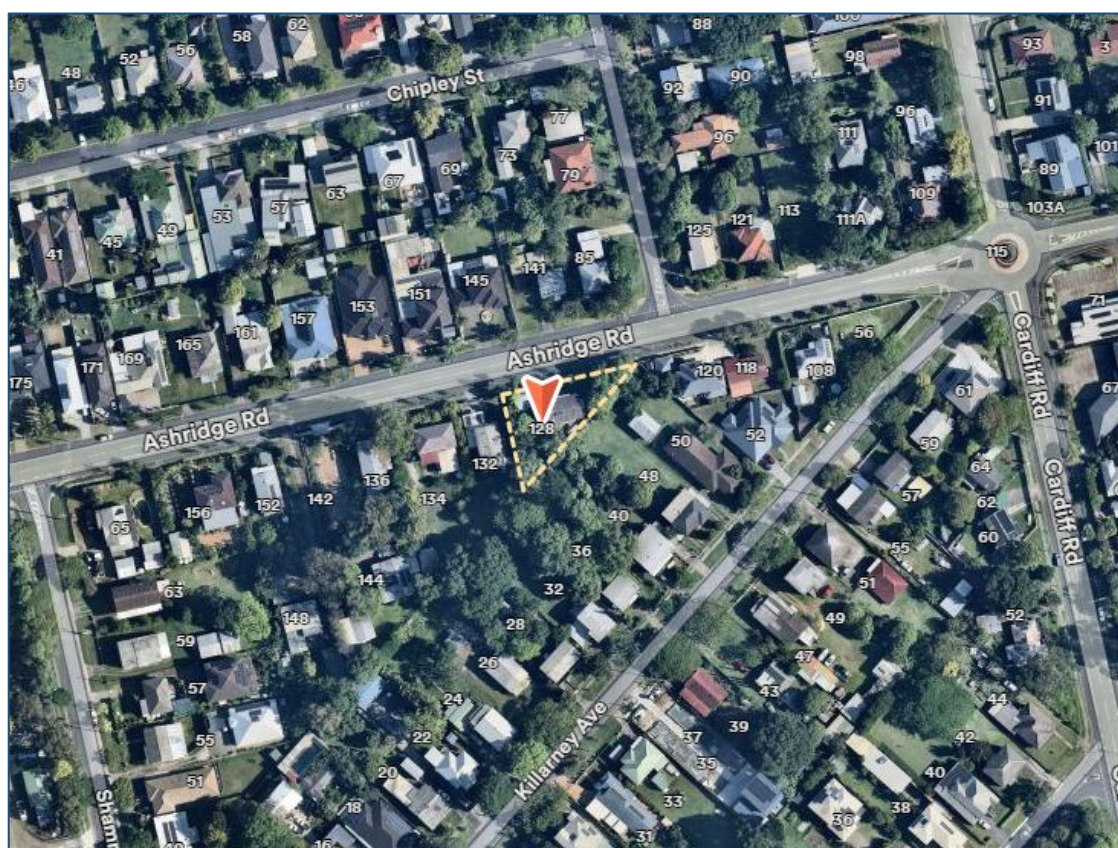


Figure 1: The subject site (Source: Nearmap, 2025)

- 2.2 The subject site is located in the Brisbane City Council local government area, approximately 12kms south-west of Brisbane's Central Business District (CBD).
- 2.3 Immediately to the east, west and south of the subject site (bound by Ashridge Road, Shamrock Road and Killarney Avenue), are detached dwellings located on various sized allotments ranging from 418 – 1,303m² in size. To the north, the subject site has a single frontage to Ashridge Road and is located near a five (5) way roundabout. Ashridge Road runs generally east-west and ultimately connects to Pannard Street (to the north-east) and Bellwood Street/ Station Avenue (to the west).
- 2.4 The consideration of the surrounding locality, the subject site:
- (a) is located in a residential area characterised by predominately detached dwellings, supported with some examples of multiple dwellings;
 - (b) is radially located approximately 145m to local shopping area on the corner of Ashridge and Cardiff Roads, containing a restaurant, laundromat, veterinary, shop and massage parlour;

(c) is located ('as the crow flies') approximately:

- a. 460m to the Darra train station;
- b. 360m to industrial area located to the west; and
- c. 190m to Council's Darra depot.

2.5 A review of Council's Development.i reveals that one development application and approval recorded on the subject site, which is the subject of this proceeding, and is summarised below¹:

(a) On or about 12 July 2024, a development application (Council reference: A006565555) was made seeking a Development Permit for a Reconfiguration of a Lot (1 into 2 lots).

(b) The application sought approval to subdivide the property resulting in:

- i. Proposed Lot 1 – 492m² in size and the retention of the existing Dwelling house;
- ii. Proposed Lot 2 – 310m² in size.

(c) An extract of the approved subdivision plan is shown in Figure 2 below. This approved plan includes notations (or amendments in red) marked up by Council regarding aspects relating to stormwater infrastructure and implementation of a shared crossover. In my experience it is not uncommon for Councils to 'Red Pen' plans of approval as part of a material change of use or reconfiguring a lot application. This is most commonly done in the interests of expediency, rather than seek that the applicant revise plans to reflect an outcome sought by Council. It is a way of saving time and cost for both parties (the applicant and Council), particularly where additional plans or drawings will be required as part of detailed engineering or building design.

(d) Examples of modification to approved plans include:

- i. Requirements for amended facades on buildings. In these circumstances Council may not support the existing building façade design, but rather than delay a decision on an application they are content to approve a different design prior to building approval.
- ii. Requirements for additional or different landscaping. Similar to the above, Council may not support the submitted landscape design, but are content to receive a revised design prior to building approval.
- iii. Requirements for an easement to be shown over infrastructure. In this example, Council may modify a plan to show the location and/or width of an easement (for example over a driveway) to enforce and clarify a requirement of a condition.

(e) In each of the examples above, would be confident that a solution (that meets the assessment benchmarks and planning purpose) is available subject to detailed design that follows the application. I note that in this case there is a reference on the approved drawing which indicate the mark ups are 'indicative only' and 'subject to detailed design'. There is also a note on the driveway which references the condition of approval. In my opinion and experience there is flexibility about the final design where Council seeks to Red Pen approved plans. The final design (including for the subject development and in the three examples I have provided above) would be determined as part of the subsequent submission to Council. In the case of the easement example noted above, the final location

¹ The assessment frameworks for the development application is explained in section 4 of this report

and width of the easement would naturally follow the alignment of the infrastructure it was identified to protect. If the location of that infrastructure shifted during detailed design, the easement would shift with it.

(f) Council approved the development on or about 25 September 2024.

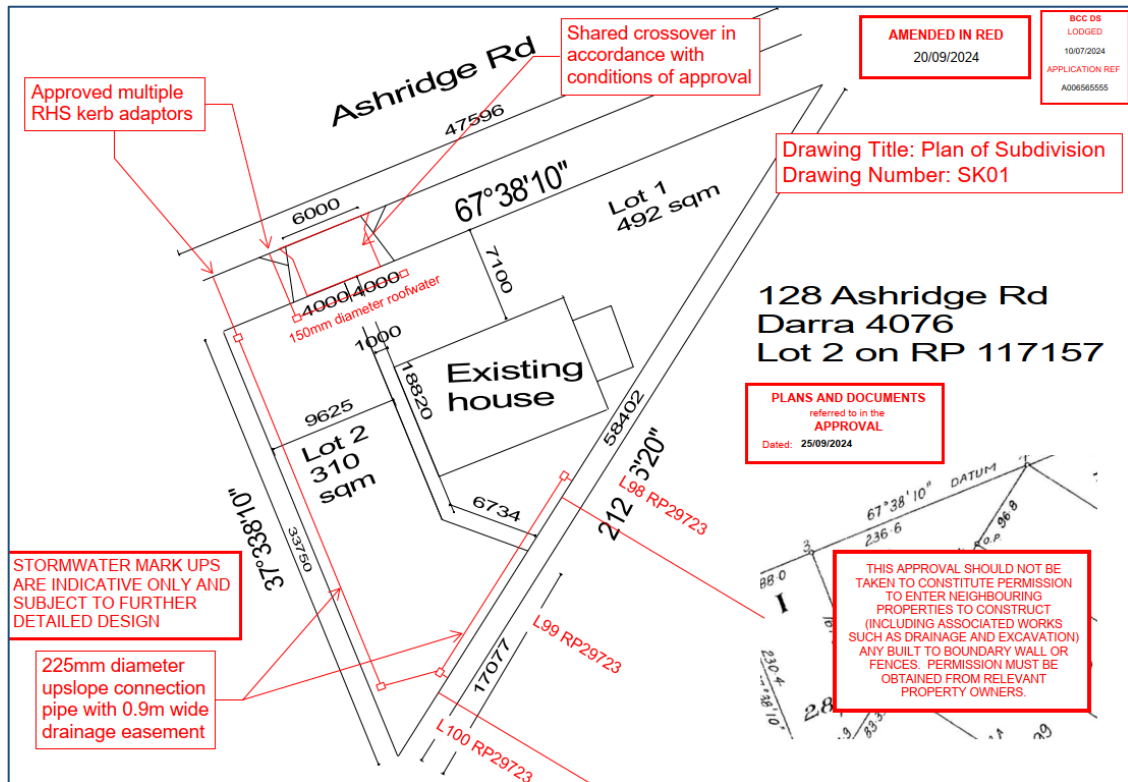


Figure 2: Extract from the Council approved subdivision plan (Source: Council Development.i, A006565555)

- 2.6 I have been asked to comment on whether there is a requirement for an Operational Works application for stormwater works to be submitted to Council following the approval of the proposed (reconfiguration of a lot) application.
- 2.7 Part 5.8 of City Plan contains the table of assessment for Operational work. Table 5.8.1 is repeated below:

Zone	Categories of development and assessment	Assessment benchmarks
Any zone	Assessable development—Code assessment	
	If <u>filling or excavation</u> , where resulting in a retaining wall greater than 1m or an increase in depth or height of the ground level or finished design level by 1 vertical metre or more	<u>Filling and excavation code</u> <u>Operational work code</u>
	If <u>filling or excavation</u> for an artificial stormwater channel	<u>Filling and excavation code</u> <u>Operational work code</u> The applicable <u>zone code</u>

	<i>If other operational work preceding a ROL or MCU which is assessable development</i>	Operational work code Prescribed secondary code
	<i>If prescribed tidal work</i>	Prescribed tidal work code Prescribed secondary code The applicable zone code
	Assessable development—Impact assessment	
	<i>If extracting gravel, rock, sand or soil from the place where it occurs naturally</i>	The planning scheme including: Extractive industry code
	Accepted development	
	<i>Any other operational work not listed in this table.</i>	

Editor's note—The above categories of development and assessment apply unless otherwise prescribed in the [Regulation](#).

Editor's note—The default category of assessment is accepted unless otherwise prescribed in the [Regulation](#).

- 2.8 In my opinion the triggers for code or impact assessable development listed in table 5.8.1 would not be engaged following approval because:
- (a) the stormwater works would not involve filling or excavation of the type described in the table;
 - (b) the works would not precede a ROL or MCU which was assessable²;
 - (c) the works are not prescribed tidal work; and
 - (d) the works do not involve extracting gravel, rock, sand or soil from the place where it occurs naturally.
- 2.9 I note that the tables of assessment for the Neighbourhood Plan and Overlays that apply to the site do not reference operational work.
- 2.10 In my experience a requirement for submission of an operational works application, following approval of a material change of use or reconfiguration of a lot application, is identified in the conditions of approval. That requirement is not present in the conditions of approval for the approved development on the subject land. I note however that conditions 17 and 18 include additional requirements for the design of the stormwater works. Specifically:
- (a) Condition 17(a) requires the submission of 'As Constructed' drawings (of the stormwater works required by condition 17) prepared and certified by an RPEQ or a Queensland Building and Construction Commission licensed hydraulic consultant, prior to Council's notation on the plan of subdivision.
 - (b) Condition 18(a) requires stormwater drawings and engineering calculations, to be prepared and certified by an RPEQ in accordance with the relevant Brisbane Planning Scheme Codes, prior to works commencing.
 - (c) Condition 18(c) requires 'As Constructed' drawings prepared and certified by a Registered Professional Engineer Queensland or a Queensland Building and Construction Commission

² Rather it follows an ROL which was assessable.

licensed hydraulic consultant (where applicable) to be submitted to Council, prior to Council's notation on the plan of subdivision.

3. TOWN PLANNING CONTEXT

- 3.1 The relevant planning scheme at the time the development application was made with Council was *Brisbane City Plan 2014 v29.00*, effective 8 December 2023 – hereon referred to as ‘City Plan’. The version of City Plan current at the time of preparing this report is v32.00, effective 14 March 2025.
- 3.2 The subject site is identified in the Low-medium density residential (Up to 3 storeys) zone of the City Plan and is mapped in a number of overlays (as summarised in Table 2).
- 3.3 According to Council’s contour mapping, over the approximate 47m width of the property, the subject site generally falls from 39m (in the eastern corner) to 35m (to the western boundary) AHD.

Table 2 – Local Planning Context Summary

Local Government Area	Brisbane City Council
Planning Scheme	<i>Brisbane City Plan 2014 (v29.00)</i>
Strategic Framework	Suburban Living Area
Zone	Low-medium density residential (Up to 3 storeys) zone
Neighbourhood Plan	Darra-Oxley district neighbourhood plan <ul style="list-style-type: none"> • Darra centre precinct • Darra residential sub-precinct
Overlays	Airport environs overlay <ul style="list-style-type: none"> • Obstacle Limitation Surfaces – Conical limitation surface boundary • Procedures for air navigation surfaces (PANS) • Bird and bat strike zone – Distance from airport 3 - 8km • Light intensity – Zone D – 450 Candela – 1500m wide 4500m from runway strip • Light intensity – Within 6km – Max intensity of light sources 3 degrees above horizon
	Bicycle network overlay
	Community purposes network overlay
	Critical infrastructure and movement network overlay <ul style="list-style-type: none"> • Critical infrastructure and movement planning area sub-category
	Dwelling house character overlay
	Road hierarchy overlay
	Streetscape hierarchy overlay

- 3.4 I have reviewed the changes to City Plan (including mapping) between versions 29 and 32. Pertinent to this proceeding, I note that:
- (a) there are no differences in the mapping identified over the subject site; and
- (b) there is no material change to the assessment benchmarks contained in the Low-medium density residential zone code, the applicable overlay codes, the Darra – Oxley neighbourhood plan code or any of the triggered ‘other development’ codes, including the Subdivision code.

4. ASSESSMENT FRAMEWORK FOR THE PROPOSED DEVELOPMENT

- 4.1 The proposed development sought a Development Permit for the Reconfiguration of a Lot (1 into 2 lots), consisting of the following:
- (a) Proposed Lot 1 – 492m² in size and the retention of the existing Dwelling house;
 - (b) Proposed Lot 2 – 310m² in size and a vacant, new lot.
- 4.2 In City Plan, Reconfiguring a Lot is made assessable by the Tables of assessment in part 5. In accordance with Table 5.6.1, the development application was subject to code assessment.
- 4.3 For code assessable development applications, the *Planning Act 2016* (the Act) specifies that an assessment is to be carried out only against the identified assessment benchmarks and having regard to any matters prescribed in a regulation³.
- 4.4 City Plan identifies the following codes as assessment benchmarks (with the table of assessment referenced in brackets):
- (a) Subdivision code (Table 5.6.1);
 - (b) Low-medium density residential zone code (Table 5.6.1);
 - (c) Darra-Oxley district neighbourhood plan code (Table 5.9.19.B);
 - (d) Bicycle network overlay code (Table 5.10.3);
 - (e) Community purposes network overlay code (Table 5.10.7A);
 - (f) Road hierarchy overlay code (Table 5.10.18);
 - (g) Streetscape hierarchy overlay code (Table 5.10.20); and
 - (h) in accordance with Table 5.3.5.1, the prescribed secondary codes are:
 - i. Filling and excavation code;
 - ii. Infrastructure design code;
 - iii. Landscape work code;
 - iv. Outdoor lighting code;
 - v. Park planning and design code;
 - vi. Stormwater code;
 - vii. Transport, access, parking and servicing code; and
 - viii. Wastewater code.
- 4.5 Section 60(2) of the Act establishes the decision framework by which assessment managers are to act when deciding code assessable development applications. As paraphrased below, the assessment manager:
- (a) must decide to approve the development to the extent it achieves compliance with all of the assessment benchmarks; and
 - (b) may decide to approve the development despite non-compliance with some of the assessment benchmarks;

³ Section 45(3) of the Act

- (c) may impose development conditions as part of its approval; and
 - (d) may refuse a development application where it does not comply with some or all assessment benchmarks and where compliance cannot be achieved through development conditions.
- 4.6 City Plan establishes the framework by which compliance is considered to have been achieved with the nominated assessment benchmarks. Section 5.3.3(4)(c) of City Plan provides that for code assessable development “... *that complies with the purpose, overall outcomes and the performance outcomes or acceptable outcomes of the code complies with the code*”.

5. ISSUES IN DISPUTE

- 5.1 This appeal relates to conditions 7, 12, 17, 18 and 24 (Disputed Conditions) of the Respondent's decision notice. In consideration of the Respondent's List of Reasons Why Disputed Conditions Should Be Imposed and Notice Of Any Alternative Conditions (Respondent's Reasons), dated 31 January 2025, I understand that Condition 12 is no longer disputed and the issues in dispute relate to the following conditions which are repeated below:

(a) Condition 7:

7) Grant Easements

Grant the following easement(s) as may be required:

(i) Easements, in favour of Brisbane City Council for:

- Underground drainage and access purposes (no less than 900mm wide) over the drainage infrastructure provided for the upstream lots to preserve the rights of upstream owners

Timing: As part of the plan of subdivision notated by Council, and then to be maintained.

7(a) Submit Plan of Subdivision and Documentation (Council Easement in Gross)

Submit to, and obtain approval from, Development Services a plan of subdivision showing the easement and a request for Council to prepare the necessary easement documentation to demonstrate compliance with the requirements of this condition.

Note: Easements in favour of the Brisbane City Council must have the necessary easement documentation prepared by the Brisbane City Council, free of cost to Council.

Timing: Prior to submission of the request pursuant to Schedule 18 of the Planning Regulation 2017 for Council's notation on the plan of subdivision necessary to comply with this condition or give effect to this approval.

7(b) Submit Plan of Subdivision and Documentation (other Easement)

Submit to, and obtain approval from, Development Services, a plan of subdivision showing the easement and the necessary easement documentation to demonstrate compliance with the requirements of this condition.

Note: Easements not in favour of the Brisbane City Council must have the necessary documentation prepared by the applicant's private solicitors.

Timing: As part of the submission of the request pursuant to Schedule 18 of the Planning Regulation 2017 for Council's notation on the plan of subdivision necessary to comply with this condition or give effect to this approval.

7(c) Lodge Notated Plan and Documentation

Lodge the plan of subdivision notated by Council pursuant to Schedule 18 of the Planning Regulation 2017 and the necessary easement documentation with the Registrar of Titles for the relevant Queensland State Government Authority.

Timing: As part of the registration of the plan of subdivision notated by Council.

PROOF OF FULFILMENT

Evidence of the registration of the necessary easement documentation. Timing: Within one month of the registration of the easement documentation.

(b) Condition 17

17) On Site Drainage - Minor

Provide a stormwater connection to all new or existing allotments and provide drainage infrastructure to ensure stormwater run-off from all roof and developed surface areas will be collected internally and piped in accordance with the relevant Brisbane Planning Scheme Codes to the existing kerb and channel in Ashridge Road and generally as shown on the APPROVED Plan of Subdivision SK01 received 10 JUL 2024 and as amended in red. The development site must be filled to create a usable building pad for proposed Lot 2 and to achieve a lawful point of discharge via gravity to the kerb and channel. A charged system does not achieve an acceptable lawful point of discharge.

NOTE:

- Guidance for the preparation of drawings and/or documents to comply with this condition is provided in the Brisbane Planning Scheme Policies.
- Queensland Building and Construction Commission licensed hydraulic consultants may design the stormwater system for sites less than 2000m² with an upstream catchment servicing no more than 4 residential lots.
- Where external works are required and infrastructure will be handed over to Council (e.g. Stormwater pipes 375mm or greater and/or manholes within the road reserve, etc), the applicant will be required to request a Pre-Start with Council and ensure all future owned Council assets follow the On/Off Maintenance process in accordance with Councils Infrastructure Installation & Construction Requirements Manual.
- Guidance for requesting a pre-start and co-ordinating the On/Off Maintenance process can be found on Council's website (<https://www.brisbane.qld.gov.au/planning-and-building/applying-and-post-approval/on-and-off-maintenance-approvals>)

17(a) Submit As Constructed Drawings

Submit to Development Services As Constructed drawings prepared and certified by a Registered Professional Engineer Queensland or a Queensland Building and Construction Commission licensed hydraulic consultant (where applicable).

Timing: Prior to Council's notation on the plan of subdivision.

(c) Condition 18:

18) Up Stream Stormwater Drainage Connection - Minor

Provide a stormwater drainage connection for Lot(s) 98 and 99 on RP29723 designed for ultimate developed catchment conditions and connected to the existing kerb and channel in Ashridge Road being the lawful point of discharge, generally as shown on the APPROVED Plan of Subdivision SK01 received 10 JUL 2024 and as amended in red. The development site must be filled to create a usable building pad for proposed Lot 2 and to achieve a lawful point of discharge via gravity to the kerb and channel.

Note:

- All upslope stormwater connections to existing private properties must extend to the property boundary of the relevant property being ultimately serviced by that connection.

PROOF OF FULFILMENT

Certification from a Registered Professional Engineer Queensland or a Queensland Building and Construction Commission licensed hydraulic consultant (where applicable), confirming that the works have been completed in accordance with the above stormwater drawings.

18(a) Prepare Stormwater Drawings

Prepare stormwater drawings and engineering calculations, certified by a Registered Professional Engineer Queensland in accordance with the relevant Brisbane Planning Scheme Codes.

Note:

- Queensland Building and Construction Commission licensed hydraulic consultants may design the stormwater system for sites less than 2000m² with an upstream catchment servicing no more than 4 residential lots.
- Guidance for the preparation of drawings and/or documents to comply with this condition is provided in the Brisbane Planning Scheme Policies
- A 225mm diameter pipe is the minimum size required to service an upstream development of any kind.

Timing: Prior to site/operational work commencing.

18(b) Implement Certified Stormwater Drawings

Carry out the works in accordance with the above stormwater drawings.

Timing: Prior to Council's notation on the plan of subdivision.

18(c) Submit As Constructed Drawings

Submit to Development Services As Constructed drawings prepared and certified by a Registered Professional Engineer Queensland or a Queensland Building and Construction Commission licensed hydraulic consultant (where applicable).

Note: To be submitted via DA-ComplianceEngineering@brisbane.qld.gov.au and include the site address, A00 reference and Condition number in the subject line.

Timing: Prior to Council's notation on the plan of subdivision.

PROOF OF FULFILMENT

Certification from a Registered Professional Engineer Queensland or a Queensland Building and Construction Commission licensed hydraulic consultant (where applicable), confirming that the works have been completed in accordance with the above stormwater drawings.

(d) Condition 24:

24) Permanent Driveway Crossover

Provide a 6.0 metre wide Residential Type shared permanent driveway crossover to the Ashridge Road frontage(s) of the site in accordance with the relevant Brisbane Planning Scheme Codes and located as shown on the approved DRAWINGS AND DOCUMENTS.

Written consent must be obtained from the Program, Planning and Integration Arboriculture (PPI Arb) prior to any works occurring that will either impact on or require removal of a street tree (this includes pruning, excavation or fill within the root zone/canopy of the tree)

At all times during construction of the crossover, safe pedestrian access along the site frontage must be maintained.

Note: No further driveway permit is required however additional footway permits or lane closure permits may be required for footpath/verge closures and/or lane closures. These permits must be obtained prior to construction of the crossover.

- 5.2 In my experience, approvals granted by Council are subject to a number of conditions which relate to the proposed development. These include both 'standard' conditions which are applied to all developments and conditions which are specific to the proposal. Specific conditions may appear on some approvals but not others due to the level of risk posed by some developments and/or features/constraints of some developments that may not be present in others. In some cases conditions relate to requirements in assessment benchmarks, while others seek to ensure the development is undertaken in accordance with the proposal and to the appropriate standard (including engineering standards).
- 5.3 The Disputed Conditions are what I would describe as specific conditions, arising due to features of the development. That is not to say that they are uncommon, rather that they are not required to be applied to every approval.
- 5.4 Conditions 7 and 18 relate to stormwater drainage for upstream properties. The following section identifies the planning purpose of the conditions and the assessment benchmarks that establish this purpose.

Upstream Stormwater Drainage Connection

- 5.5 In my experience the provision for upstream stormwater connection is a common consideration in the assessment of development applications for a Material Change of Use or Reconfiguration of a Lot, where upstream land is anticipated for redevelopment by City Plan. Examples of redevelopment might include further subdivision, or replacement of an existing use with another (for example the replacement of house with a number of townhouses). Redevelopment of this type may generate additional stormwater (as a result of additional impervious area) and cannot always be directed to the street. In such circumstances the absence of a downstream stormwater connection may prevent the redevelopment from occurring. To put it another way, provision of a stormwater connection for upstream properties can assist in facilitating development of those upstream properties as anticipated by City Plan.
- 5.6 Upstream stormwater connections are one way in which City Plan seeks development to be considered not in isolation, but rather in conjunction with the circumstances of its surroundings. Other circumstances, while not present in this instance, include the provision of sewer connections and/or vehicular or pedestrian access to roads or public open space.
- 5.7 I have identified the following assessment benchmarks (applicable to the proposed development) that I consider reflect the above planning purpose and requirement to provide stormwater connections for upstream properties (bold added):

- (a) Subdivision code, Overall outcome (2)(g):

Development for reconfiguring a lot provides infrastructure and services that:

- i. *comply with the relevant standards in the planning scheme....*

- (b) Subdivision code, Performance outcome PO4:

Development provides for the delivery of infrastructure and maintains the safety, efficiency and capacity of infrastructure networks.

- (c) Subdivision code, Acceptable outcome AO4.1:

Development provides land and works for infrastructure and services in compliance with the:

- i.
- ii. *standards in the Infrastructure design planning scheme policy;*
- iii.
- iv. *codes and planning scheme policies that apply to the site.*

- (d) Subdivision code, Acceptable outcome AO4.2:

*Development provides a stormwater system in compliance with the standards in the Stormwater code **that has sufficient capacity to enable lawful uses appropriate to the intended use for the locality under the planning scheme.***

- (e) Stormwater code, Overall outcome (2)(a);

Development achieves acceptable levels of stormwater run-off quality and quantity by applying water sensitive urban design principles as part of an integrated stormwater management framework.

- (f) Stormwater code, Overall outcome (2)(b);

Development protects public health and safety and protects against damage or nuisance caused by stormwater flows.

- (g) Stormwater code, Overall outcome (2)(f);

Development maintains or enhances the efficiency and integrity of the stormwater infrastructure network.

- (h) Stormwater code, Overall outcome (2)(g);

Development minimises the whole of life cycle cost of stormwater infrastructure.

- (i) Stormwater code, Performance outcome PO1:

Development provides a stormwater management system which achieves the integrated management of stormwater to:

- a. *minimise flooding;*
- b. *protect environmental values of receiving waters;*
- c. *maximise the use of water sensitive urban design;*
- d. *minimise safety risk to all persons;*
- e. *maximise the use of natural waterway corridors and natural channel design principles.*

- (j) Stormwater code, Performance outcome AO1:

Development provides a stormwater management system designed in compliance with the Infrastructure design planning scheme policy.

- (k) Stormwater code, Performance outcome PO2:

*Development ensures that the stormwater management system and site work **does not adversely impact flooding or drainage characteristics of premises which are up slope, down slope or adjacent to the site.***

- (l) Stormwater code, Acceptable outcome AO2.2:

Development provides a stormwater management system which is designed in compliance with the standards in the Infrastructure design planning scheme policy.

- (m) Stormwater code, Performance outcome PO3:

Development ensures that the stormwater management system does not direct stormwater run-off through existing or proposed lots and property where it is likely to adversely affect the safety of, or cause nuisance to properties.

- (n) Stormwater code, Acceptable outcome AO3.4:

Where on private land, all underground stormwater infrastructure is secured by a drainage easement.

- (o) Stormwater code, Performance outcome PO11:

Development provides for the orderly development of stormwater infrastructure within a catchment, having regard to the:

- i. *existing capacity of stormwater infrastructure within and external to the site, and any planned stormwater infrastructure upgrades;*
- ii. ***safe management of stormwater discharge from existing and future up-slope development;***
- iii. *implication for adjacent and down-slope development.*

- (p) Stormwater code, Acceptable outcome AO11.1:

Development with up-slope external catchment areas provides a drainage connection sized for ultimate catchment conditions that is directed to a lawful point of discharge.

- (q) Stormwater code, Acceptable outcome AO11.2:

Development ensures that existing stormwater infrastructure that is undersized is upgraded in compliance with the Infrastructure design planning scheme policy.

- 5.8 The above assessment benchmarks refer to the Infrastructure design planning scheme policy (Infrastructure design PSP). Planning scheme policies provide guidance and advice on how developments can satisfy the requirements of the nominated assessment benchmarks⁴. Chapter 7 of the Infrastructure design PSP details the standards for stormwater drainage with section 7.6 specifically related to the disposal of property stormwater run-off. The standards contained in the Infrastructure design PSP include that:

⁴ Infrastructure design PSP, Chapter 1, section 1.1.1(b)

- (a) provision for stormwater drainage is made where upstream properties would drain through a development site⁵;
- (b) where piped upstream drainage connection is made, the infrastructure is to extend to the boundary of the upstream properties to limit any works from being undertaken in the development site to connect to the network⁶; and
- (c) a minimum pipe size of 225mm diameter is utilised to facilitate the upstream connection⁷.

Upstream Properties

- 5.9 The Respondent's Reasons state that the two lots identified as being upstream/upslope of the subject site are Lots 98 and 99 on RP29723 (40 and 48 Killarney Avenue, Darra). I note that the report of Mr Corrigan confirms this and also identifies that Lot 97 (50 Killarney Ave) is upstream. Lots 98 and 99 are each 1,012m² in area and Lot 97 is 1,176m² in area. Each of the sites share the town planning context of the subject site, as summarised in Table 2 and each contains a single dwelling house constructed near the road frontage, with the balance of the site largely vacant.
- 5.10 In my opinion redevelopment of these properties is likely, having regard to their existing use, their size and the town planning context applicable to them under City Plan. Redevelopment may include (for example):
- (a) Multiple Dwelling (noting that development up to 3 storeys is anticipated via code assessment)
 - (b) Reconfiguring a lot (noting that subdivision where resulting in lots 180m² or greater is anticipated via code assessment)
- 5.11 The extent of impervious area that might occur on lots 97 to 99 will depend on the form of development (e.g. apartments versus townhouses versus conventional houses) which is presently unknown. For example, depending on the proposed design, the upstream catchment might be used as deep planting or landscaping (resulting in minimal additional stormwater) or be fully sealed (resulting in substantial additional stormwater). For this reason I would rely on the development engineer to determine the amount of additional stormwater that should be assumed.
- 5.12 In my opinion Condition 18 appropriately fulfils the planning purpose and requirement of the assessment benchmarks identified above, to provide a stormwater connection for upstream lots. Condition 7 appropriately fulfils the planning purpose of ensuring there is access available to those connections for upstream owners.

Stormwater Connection for proposed development

- 5.13 Condition 17 requires a stormwater connection for new or existing allotments to the existing kerb and channel in Ashridge Road. In my opinion the planning purpose of this condition is to ensure that additional stormwater generated by the development does not cause flooding or nuisance to adjoining land.
- 5.14 As identified earlier, the proposed development was for reconfiguring a lot, resulting in one additional allotment. The existing house is shown on the proposal plans as being retained in

⁵ Infrastructure design PSP, Chapter 7, section 7.6.5(1)

⁶ Infrastructure design PSP, Chapter 7, section 7.6.5(2)

⁷ Infrastructure design PSP, Chapter 7, section 7.6.5(3)

proposed lot 1. In my opinion, having regard to the size (310m²) of proposed Lot 2 and the applicable town planning context, the most likely development outcome is a single dwelling house. In support of this opinion I note that the minimum site area for a dual occupancy⁸ or multiple dwellings⁹ in the Low medium density residential zone is 600m².

- 5.15 The amount of additional stormwater to be generated by an additional dwelling house on proposed lot 2 will depend on the design on that dwelling. To assist I note that the Dwelling House (Small Lot) Code¹⁰ sets a maximum site cover¹¹ of 60%¹² where the lot size is greater than 300m² but less than 400m². On this basis I think it is reasonable to assume that up to 186m² of roof area would result on proposed lot 2.
- 5.16 I note that a new building pad is indicated on the Civil Works plans that were attached to the Applicant's Affidavit of 31 March 2025. Those plans did not form part of the application for reconfiguration of a lot. The location and size of the building pad are what I would expect given the constraints of the lot.
- 5.17 The requirement for additional stormwater connections are one way in which City Plan seeks development to limit its impacts on adjoining land/uses. Other circumstances, while not present in this instance, include the provision of acoustic barriers to prevent noise impacts and landscaping to prevent visual impacts.
- 5.18 The assessment benchmarks that support stormwater connections are similar to those identified in support of Conditions 18 and 7. They include:
 - (a) Subdivision Code, overall outcome 2(g) and performance outcome PO4; and
 - (b) Stormwater Code, overall outcomes 2(b), 2(f) and 2(e) and performance outcomes PO1, PO2, PO3, PO4;
- 5.19 The above assessment benchmarks are included in section 5.7 of this report with the exception of the following:
 - (a) Stormwater code, Overall outcome (2)(e);
Development minimises run-off, including peak flows
 - (b) Stormwater code, Performance Outcome PO4;
Development provides a stormwater management system which has sufficient capacity to safely convey run-off taking into account increased run-off from impervious surfaces and flooding in local catchments.

⁸ 9.3.6 Dual Occupancy Code - AO1

⁹ 9.3.14 Multiple Dwelling Code AO1

¹⁰ A dwelling house that complies with the acceptable outcomes of this code would not require an application to be lodged with Council

¹¹ The definition of site cover in City Plan is Site cover, of development, means the portion of the site, expressed as a percentage, that will be covered by a building or structure, measured to its outermost projection, after the development is carried out, other than a building or structure, or part of a building or structure, that is—

- a. in a landscaped or open space area, including, for example, a gazebo or shade structure; or
- b. a basement that is completely below ground level and used for car parking; or
- c. the eaves of a building; or
- d. a sun shade.

¹² 9.3.8 Small Lot Code – AO8

- 5.20 In my opinion Condition 17 appropriately fulfils the planning purpose and requirement of the assessment benchmarks identified above, to ensure that additional stormwater generated by the development does not cause flooding or nuisance to adjoining land

Shared Driveway for the proposed development

- 5.21 Condition 24 requires the provision of a 6m wide shared driveway for the two proposed allotments. The assessment benchmarks and standard engineering drawings in City Plan seek to achieve safe and efficient access to roads of differing types. I note that Ashridge Road is identified on Council's Road Hierarchy Overlay Map as being a District Road, which is defined as a Major Road¹³.
- 5.22 AO3.3 of the Subdivision code requires that development provides access to a public road other than a Major Road¹⁴. That cannot be achieved by the proposed development¹⁵ so assessment against PO3 is required. At sub-point d, PO3 requires that lot access is designed and constructed to maintain the safety and efficiency of the transport network.
- 5.23 The purpose of a shared driveway (rather than one driveway for each allotment) is to reduce the number of vehicle and pedestrian conflicts on roads which carry significant numbers of vehicles, in order to maintain the safety and function of the road.
- 5.24 I understand that the amendments to the plan which seek a reduction in the width of the driveway are to ensure it aligns with the Transport, access, parking and servicing planning scheme policy, which achieves the safety/efficiency outcomes sought by the planning scheme.
- 5.25 In my opinion Condition 24 appropriately fulfils the planning purpose and requirement of the assessment benchmarks identified above, to ensure that the driveway is of a type that minimises the number of vehicle and pedestrian conflicts on the road, in order to maintain its safety and function.

¹³ Table SC1.2.3.B of City Plan

¹⁴ A similar requirement is at AO7 of the Road Hierarchy Overlay Code, with the corresponding PO7 requiring that development have no significant impact on the safety, efficiency, function, convenience of use or capacity of the [major road](#) network and preserves the function of the road hierarchy.

¹⁵ Because it only has frontage to one road

6. Summary and Response to Instructions

- 6.1 The instructions asked that I prepare a report which
- (a) gives context to the land and its designations;
 - (b) explains the planning scheme assessment benchmarks for the proposed development; and,
 - (c) explains the purpose, from a town planning perspective, of the disputed conditions.
- 6.2 Sections 2 and 3 of this report give context to the land and its designations under City Plan.
- 6.3 Section 4 of this report explains the planning scheme assessment benchmarks for the proposed development.
- 6.4 Section 5 of this report explains the purpose, from a town planning perspective, of the disputed conditions.
- 6.5 It is my opinion that the disputed conditions and reasonable and relevant and absent them, the proposed development would not achieve the identified town planning purposes and would not achieve compliance with the referenced assessment benchmarks.



Kieran Ryan
22 April 2025

ATTACHMENT: Curriculum Vitae



Kieran Ryan

Director



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ABOUT

Kieran has been a town planner in private consultancy for over 17 years. Throughout this time he has worked across all sectors of the business including development applications for private clients, development assessment for Council clients, the preparation of planning schemes and amendments, and expert witness and court work.

QUALIFICATIONS

- Bachelor of Regional and Town Planning, University of Queensland

PROFESSIONAL MEMBERSHIPS

- Corporate member of the Planning Institute of Australia (PIA)
- Member of the Queensland Environmental Law Association (QELA)

CAREER HISTORY

2022 - current	Director / Brisbane Office Manager Reel Planning, Brisbane Office
2019 - 2022	Principal Planner / Brisbane Office Manager Reel Planning, Brisbane Office
2016 - 2019	Principal Planner Reel Planning, Brisbane
2013 - 2016	Senior Town Planner Reel Planning, Brisbane
2007 - 2013	Town Planner Craven Ovenden Town Planning
2005 - 2007	Student Planner Humphreys Reynolds Perkins

AREAS OF EXPERTISE

- Appeals
- Local Government development assessment
- Strategic Planning
- Complex private sector development applications

AWARDS



Planning Institute of Australia Queensland – Division Awards for Planning Excellence 2008 – Merit Award for Regional Planning Study on the Eastern Beaudesert Urban Corridor.

EXPERIENCE

Local Government

Kieran provides regular advice and development assessment services for Councils including Cook Shire Council, Torres Shire Council, South Burnett Regional Council and Western Downs Regional Council. Previously Kieran has provided peer review and/or third party assessment for complex or controversial applications on behalf of Whitsunday Regional Council, Toowoomba Regional Council and Scenic Rim Regional Council. Experience in this role has assisted in understanding internal government processes to assist private sector clients achieve timely outcomes.

Strategic work has involved assisting in the amendment of planning schemes for both South Burnett Regional Council and Western Downs Regional Council as well as assisting in the drafting of the Cook Shire Council Planning Scheme.

Private Sector

Kieran is responsible for providing advice, preparing reports, coordination of technical reports, submission of applications and negotiations relating to complex development applications and planning approvals for a wide range of private sector clients. Particular experience includes:

- Multiple dwelling residential development
- Residential subdivision
- Indoor sport and recreation
- Shopping centres/supermarkets
- Quarries

Expert Witness and Court Work

A large proportion of Kieran's workload involves providing assistance for appeal, resumption and compensation matters in the Planning and Environment and Land Courts. This primarily includes assisting in the preparation of advice, joint reports and expert reports. Kieran has been engaged as an expert witness in the following appeals:

- Greatrex & Ors v Murray & Ors (Supreme Court Appeal 1299/24)
- Simon Juniper v Brisbane City Council & Ors (QPEC 485/24)
- Andrew Lyons v Brisbane City Council (QPEC 2626/23)
- Zendev Pty Ltd v Brisbane City Council & Ors (QPEC 2058/23)
- Adtrude Pty Ltd v Brisbane City Council (QPEC 1184/23)
- Vecchio & Ors v Bundaberg Regional Council & Ors (QPEC 804/23)
- Archer Street Toowong Pty Ltd v Brisbane City Council (QPEC 428/23)
- Jezreel Pty Ltd v Brisbane City Council & Ors (QPEC 3052/22)
- Deleje Pty Ltd v Brisbane City Council & Ors (QPEC 2789/22)
- Manolis v Townsville City Council & Ors (QPEC 2767/22)
- AR Developments Pty Ltd v Brisbane City Council & Ors (QPEC 2618/22)
- Swanbank Industrial Park Pty Ltd v Chief Executive of the Department of Environment & Science (QPEC 2121/22)
- Citymax 4 Pty Ltd v Brisbane City Council (QPEC 2024/22)
- Cylinder Cove Pty Ltd v Townsville City Council & Ors (QPEC 1837/22)
- Newman v Brisbane City Council & Ors (QPEC 1224/22)
- Tan v Brisbane City Council (QPEC 679/22)
- Jaswinder Singh v Brisbane City Council (QPEC 2384/21)
- Wu & Kuo Childcare Pty Ltd v Brisbane City Council & Ors (QPEC 1223/21)
- Drivas v Brisbane City Council & Ors (QPEC 650/21)
- RPD Properties Pty Ltd v Brisbane City Council (QPEC 817/20)
- McIlwain Projects Pty Ltd v Brisbane City Council (QPEC 1588/19)
- Taylor v Brisbane City Council (QPEC 1046/19)
- JPATC Pty Ltd v Brisbane City Council (QPEC 405/19)
- Goddard v Brisbane City Council (QPEC 3236/18)
- Johnson v Brisbane City Council (QPEC 2031/18)
- Eberhard v Brisbane City Council (QPEC 3084/16)
- Dokomo Pty Ltd v Brisbane City Council & Ors (QPEC 4532/15)