

Our Reference: MCUI/2021/6070  
CS Portal Reference: N/A  
Officer: Sophie Spencer  
Contact: 4688 6808  
Email: [development@tr.qld.gov.au](mailto:development@tr.qld.gov.au)

**Development Application Decision Notice**  
**APPROVAL**  
*Planning Act 2016 Section 63*

Wagner Corporation Pty Ltd  
C/- Precinct Urban Planning (Paul Kelly)  
PO Box 3038  
TOOWOOMBA QLD 4350

Email: [paul@precinctplan.com.au](mailto:paul@precinctplan.com.au)

5 May 2022

Dear Sir

**Location:** 99-117 Hayden Street East, KEARNEYS SPRING QLD 4350  
**Property Description:** Lot 12 SP187254, Emt B RP216771  
**Relevant Planning Scheme:** *Toowoomba Regional Planning Scheme 2012*

The Development Application for Preliminary Approval – Impact – Material Change of Use and Reconfiguring a Lot including a Variation Request, for the abovementioned property has been assessed and approved in full with Conditions. It is considered that the approved development generally complies with the relevant assessment benchmarks or can be conditioned to comply. The decision was made on 28 April 2022. The following provides all the relevant details:

#### Details of Approval

Preliminary Approval – Impact – Material Change of Use and Reconfiguring a Lot including a Variation Request

#### Referral Agencies

Concurrence Agencies Name & Address: N/A

Advice Agencies Name & Address: Town Planning  
Ergon Energy  
GPO Box 1461  
Brisbane QLD 4001  
Email: [townplanning@ergon.com.au](mailto:townplanning@ergon.com.au)

#### Conditions and Advices

Assessment Manager's Conditions: As per attached Schedule 1

Advice Agency Response: As per attached Schedule 2

### Further Development Permits Required

- N/A

### Further Plans/Documents for Endorsement

The following documents/plans require Endorsement:

- N/A

### Variation Approval

A variation approval under Section 61 of the *Planning Act 2016* has been granted and the assessment manager has approved a variation to the local planning instrument: *Toowoomba Regional Planning Scheme 2012 Version 26*. Any development resulting from this approval will be assessed in accordance with the approved Variation Approval Document.

### Submissions

Number of properly made submissions: 2 (see attached list of names and addresses)

### Rights of Appeal

Attached is an extract from the *Planning Act 2016* which details your appeal rights regarding this decision.

The *Planning Act 2016* is available on the Office of the Queensland Parliamentary Counsel website via:

<https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2016-025>.

Yours faithfully



Matthew Coleman  
Principal Planner, Development Services



# TOOWOOMBA REGIONAL COUNCIL

A.B.N. 997 8830 5360

## SCHEDULE 1

### PRELIMINARY APPROVAL FOR A VARIATION APPROVAL

<b>APPLICATION NUMBER:</b>	MCUI/2021/6070
<b>APPLICANT:</b>	Wagner Corporation Pty Ltd
<b>LOCATION:</b>	99-117 Hayden Street East, KEARNEYS SPRING QLD 4350
<b>PROPERTY DESCRIPTION:</b>	Lot 12 SP187254, Emt B RP216771
<b>APPROVED DEVELOPMENT:</b>	Preliminary Approval for Material Change of Use and Reconfiguring a Lot including a Variation Request
<b>ZONING / PRECINCT:</b>	Low-medium Density Residential Zone & Open Space Zone / Urban Residential Precinct

#### A. ASSESSMENT MANAGER'S CONDITIONS:

##### PLANNING

##### TYPE OF APPROVAL

1. This Preliminary Approval is for Material Change of Use and Reconfiguring a Lot including a Variation Approval.

##### PARAMETERS OF APPROVAL

2. All future development within the Variation Approval Area must be undertaken in accordance with the provisions of the Variation Approval Document as amended, 'West Street Variation Scheme' Version 2, prepared by Precinct Urban Planning and dated December 2021, and the applicable Codes and Planning Scheme Policies contained in *Toowoomba Regional Planning Scheme 2012 Version 26* subject to the conditions of this Development Approval and subject to the following amendments to the Variation Approval Document:
  - 2.1 Removal of the text "Eagle Heights" in Clause 3.2, as struck out in red.
3. The Variation Approval Document 'West Street Variation Scheme' as amended varies the effect of the *Toowoomba Regional Planning Scheme 2012 Version 26* for the Variation Approval Area pursuant to Section 43(7) of the *Planning Act 2016* as stated within the Variation Approval Document as amended.
4. Where the Variation Approval Document 'West Street Variation Scheme' as amended, does not state the way in which the approval will vary the effect of the Planning Scheme, the provisions contained in the *Toowoomba Regional Planning Scheme 2012 Version 26* will take effect.
5. Unless otherwise stated, all conditions must be complied with prior to the commencement of use or prior to Council's endorsement of the Plan of Subdivision, whichever occurs first.

## VARIATION APPROVAL AREA

6. The Variation Approval Area is the area identified as the 'Existing Open Space To Be Removed 8,484m<sup>2</sup>' on the Approved Plan below:

**Plan No:** Drawing Number PR13 Issue P2

**Description:** West Street Variation Scheme Area – Zone Map, prepared by Kehoe Meyers and dated 18/10/2021

**Amendments:** Nil

## VARIATION APPROVAL DOCUMENT

7. The Codes and Policies applicable to development within the Variation Approval Area are the *Toowoomba Regional Planning Scheme 2012 Version 26* Codes and Policies, unless otherwise specified in the Variation Approval Document 'West Street Variation Scheme' as amended.
8. The category of development and assessment applicable to development within the Variation Approval Area is in accordance with the *Toowoomba Regional Planning Scheme 2012*, unless otherwise specified in the Variation Approval Document 'West Street Variation Scheme' as amended.
9. The Variation Approval Document 'West Street Variation Scheme' varies the effect of the *Toowoomba Regional Planning Scheme 2012 Version 26* for the Variation Approval Area pursuant to Section 43(7) of the *Planning Act 2016* by:
- 9.1 Changing the category of development and assessment for the Variation Approval Area in accordance with the Variation Approval Document 'West Street Variation Scheme' as amended; and
- 9.2 Providing Statements of Intent (Planning Intent and Outcomes) and applicability of assessment benchmarks contained within *Toowoomba Regional Planning Scheme 2012*, for the Variation Approval Area.
10. The category of development and assessment for future Development Applications for Material Change of Use and Reconfiguring a Lot within the Variation Approval Area must be in accordance with the category of development and assessment specified within the Variation Approval Document 'West Street Variation Scheme' as amended.

## CURRENCY PERIOD

11. This Variation Approval has a currency period of five (5) years from the date this Development Approval starts to have effect.

## B. ADVICES:

## OTHER LAWS & REQUIREMENTS

- 1) This Development Approval relates to development requiring approval under the *Planning Act 2016* only. It is the approval holder's responsibility to obtain any other necessary approvals, licenses or permits required under State and Federal legislation or Council local law, prior to carrying out the development. Information with respect to other Council approvals, licenses or permits may be found on the Toowoomba Regional Council website. For information about State and Federal requirements please consult with these agencies directly.
- 2) Carrying out works on a road or interfering with the road or its operation will require a permit under *Subordinate Local Law No. 1.15 (2020)*. The application form can be found on Council's website at [www.tr.qld.gov.au](http://www.tr.qld.gov.au). For further information contact the Road Operations Branch through Council's Customer Service Centre on 131 872.

- 3) The development has only been assessed in accordance with the provisions of the *Toowoomba Regional Planning Scheme 2012*. No assessment has been made in respect of the provisions of the *Building Code of Australia* and/or the *Queensland Development Code*.

**WHEN APPROVAL STARTS TO HAVE EFFECT**

- 4) This Development Approval starts to have effect in accordance with the provisions of Section 71 of the *Planning Act 2016*.

**WHEN APPROVAL LAPSES**

- 5) This Development Approval will lapse in accordance with the provisions contained in Sections 85 and 88 of the *Planning Act 2016*, unless otherwise stated elsewhere within this Development Approval.

**ABORIGINAL CULTURAL HERITAGE ACT 2003**

- 6) There may be a requirement to establish a Cultural Heritage Management Plan and/or obtain approvals pursuant to the *Aboriginal Cultural Heritage Act 2003* ("ACH Act").

The ACH Act establishes a cultural heritage duty of care which provides that: "A person who carries out an activity must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage." It is an offence to fail to comply with the duty of care. Substantial monetary penalties may apply to individuals or corporations breaching this duty of care. Injunctions may also be issued by the Land Court, and the Minister administering the ACH Act may also issue stop orders for an activity that is harming or is likely to harm Aboriginal cultural heritage or the cultural heritage value of Aboriginal cultural heritage.

You should contact the Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) Cultural Heritage Unit on 07 3247 6212 to discuss any obligations under the ACH Act.

**C. ATTACHMENTS:**

- Advice Agency Response Schedule 2
- Approved Development Plans
- Approved Documents
- Appeal provisions pursuant to the *Planning Act 2016*.

**SCHEDULE 2**

**ADVICE AGENCY RESPONSE**

**ERGON ENERGY**



420 Flinders Street, Townsville QLD 4810  
PO Box 1090, Townsville QLD 4810  
[ergon.com.au](http://ergon.com.au)

22 October 2021

Wagner Corporation Pty Ltd  
c/- Precinct Urban Planning  
PO Box 3038  
Toowoomba QLD 4350

Attention: Paul Kelly  
Via email: [paul@precinctplan.com.au](mailto:paul@precinctplan.com.au)

Dear Paul,

**Pre-application Referral Agency Response – Preliminary Approval for a Variation Request to vary the effect of the *Toowoomba Regional Planning Scheme 2012* over land in the Open Space Zone at 99-117 Hayden Street East, Kearneys Spring (Lot 12 on SP187254)**

**Our Ref: HBD 7562327**

We refer to the abovementioned proposed Development Application, material for which has been provided to Ergon Energy for pre-application assessment.

In accordance with Schedule 10, Part 9, Division 2 of the *Planning Regulation 2017*, the proposed application has been assessed against the purposes of the *Electricity Act 1994* and *Electrical Safety Act 2002*. This notice is provided in accordance with sections 56 and 57 of the *Planning Act 2016*.

Should the Assessment Manager decide to approve the proposed Variation Request, being the adoption of use rights and assessment provisions consistent with the Low-medium Density Residential Zone and Urban Residential Precinct, Ergon advises the following in relation to the development:

1. The development is to be carried out in accordance with the plans identified below. Any changes to these plans should be resubmitted to Ergon for further review and comment.

Approved Plans			
Title	Plan Number	Rev.	Date
West Street Variation Scheme Area – Zone Map	PR13	P2	18 October 2021
West Street Variation Scheme Area	PR14	P4	18 October 2021

**Have you seen our fact sheets?**

See the 'considerations when developing around electricity infrastructure' section of our website [www.ergon.com.au/referralagency](http://www.ergon.com.au/referralagency)

2. The conditions of any easements in favour of Ergon must be maintained at all times.

Pursuant to section 54(4) of the *Planning Act 2016*, the Applicant is not required to refer to Ergon a future Development Application for the proposed development, providing the Development Application is:

- a) the same, or not substantially different from the proposed Development Application detailed in this notice; and
- b) made to the Assessment Manager within six months of the date of this notice.

Should you require further information regarding this matter, feel free to contact the undersigned on 0455 403 399 or email [townplanning@ergon.com.au](mailto:townplanning@ergon.com.au).

Yours faithfully,



Benjamin Freese  
Town Planner

**Have you seen our fact sheets?**

See the 'considerations when developing around electricity infrastructure' section of our website [www.ergon.com.au/referralagency](http://www.ergon.com.au/referralagency)

**List of Submitters:-**

Nola Lorraine Passmore  
19 Hennenlotter Court  
KEARNEYS SPRING QLD 4350

Fred Daniells  
582 West Street  
KEARNEYS SPRING QLD 4350

## Chapter 6, Part 1 of the Planning Act 2016 Appeal rights

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

- (1) Schedule 1 states—
  - (a) matters that may be appealed to—
    - (i) either a tribunal or the P&E Court; or
    - (ii) only a tribunal; or
    - (iii) only the P&E Court; and
  - (b) the person—
    - (i) who may appeal a matter (the **appellant**); and
    - (ii) who is a respondent in an appeal of the matter; and
    - (iii) who is a co-respondent in an appeal of the matter; and
    - (iv) who may elect to be a co-respondent in an appeal of the matter.
- (2) An appellant may start an appeal within the appeal period.
- (3) The **appeal period** is—
  - (a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency; or
  - (b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
  - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or
  - (d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
  - (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or
  - (f) for an appeal relating to the *Plumbing and Drainage Act 2018*—
    - (i) for an appeal against an enforcement notice given because of a belief mentioned in the *Plumbing and Drainage Act 2018*, section 143(2)(a)(i), (b) or (c)—5 business days after the day the notice is given; or
    - (ii) for an appeal against a decision of a local government or an inspector to give an action notice under the *Plumbing and Drainage Act 2018*—5 business days after the notice is given; or
    - (iii) otherwise—20 business days after the day the notice is given; or
  - (g) 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, section 1, table 1, item 1—each principal submitter for the application whose submission has not been withdrawn; and
- (d) for an appeal about a change application under schedule 1, section 1, table 1, item 2—each principal submitter for the application whose submission has not been withdrawn; and
- (e) each person who may elect to be a co-respondent for the appeal other than an eligible submitter for a development application or change application the subject of the appeal; and
- (f) for an appeal to the P&E Court—the chief executive; and
- (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.

#### (4) The **service period** is—

- (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
  - (b) otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
  - (6) A person elects to be a co-respondent to an appeal by filing a notice of election in the approved form—
    - (a) if a copy of the notice of appeal is given to the person—within 10 business days after the copy is given to the person; or
    - (b) otherwise—within 15 business days after the notice of appeal is lodged with the registrar of the tribunal or the P&E Court.
  - (7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department's website for this purpose.

### 231 Non-appealable decisions and matters

- (1) Subject to this chapter, section 316(2) 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 the 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, any tribunal or another entity; and
- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, any 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.