

All communications to be addressed to:
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FOR FURTHER INFORMATION

DA 2015/72
PLEASE QUOTE THIS REFERENCE

xx July 2017

Newton Denny Chapelle
PO Box 1138
LISMORE NSW 2480

NOTICE OF DETERMINATION
under Section 81(1)(a) of the *Environmental Planning and Assessment Act 1979* (as amended).

The development application has been determined by granting consent subject to conditions.

APPLICANT	Newton Denny Chapelle
LAND	Lot 1 DP 307050
LOCATION	45 Anzac Drive GENEVA
ZONE	Zone R1 General Residential / Zone RU1 Primary Production
PROPOSED DEVELOPMENT	Subdivision (1 lot into 25 lots)
DETERMINATION MADE ON	-
CONSENT TO OPERATE FROM	-
CONSENT TO LAPSE ON	-

DEVELOPMENT CONSENT

Conditions of approval

- (1) The development shall generally be in accordance with the following plans:

<i>Reference No.</i>	<i>Revision</i>	<i>Name of Plan</i>	<i>Date</i>
14/319	F	PLAN 5- PROPOSED SUBDIVISION	28.03.17
14/319	B	ENGINEERING SERVICES PLAN	28.03.17
14/319	-	PLAN- BUFFER ZONES (as amended in red)	24.11.15

except where otherwise provided by the conditions of this development consent.

- (2) In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent prevail.
- (3) Prior to the issue of a Subdivision Certificate the proponent must submit to Council a report addressing compliance with all relevant conditions of this consent.
- (4) This development consent is limited to a period of five (5) years in accordance with Section 95(1) of the *Environmental Planning and Assessment Act 1979*.
- (5) The proponent is to appoint a principal certifying authority, being the Council or an accredited certifier in respect of subdivision work involved in the development.

DEVELOPER CONTRIBUTIONS AND SERVICING CHARGES

- (6) Payment of contributions levied under Section 94 of the *Environmental Planning and Assessment Act 1979* and Section 64 of the *Local Government Act 1993* are required. Kyogle Council levies these contributions for the provision of public amenities and services in such a manner as will meet the increased demand for those amenities and services arising from this development.

The rate and amount to be paid as at the date of this notice is \$14,613.87 per additional lot, as described in the Schedule. This amount remains valid for a period of three (3) months from date of issue. Following this period any unpaid contributions will be subject to annual indexation in line with Consumer Price Index (CPI) Brisbane as published by the Australian Bureau of Statistics. Indexation adjustments must be included in the final calculation of the contribution amount and paid to Council.

All contributions relevant to a particular stage of the development must be paid prior to Council granting a Subdivision Certificate for that stage. Where the total contribution payable exceeds \$10,000, payment to Council must be by bank cheque or cash (personal cheques are not acceptable).

The contributions set out in the schedule are exclusive of any GST (if any) and where the provision of any services or the construction of any infrastructure or any other thing with those contributions occurs, then in addition to the amount specified above the Applicant will pay to the Council the GST (as defined below) which is payable by the Council in respect of the provision of such services or construction of any infrastructure or any other thing.

If the contributions set out in the schedule, or part thereof, are to be met by the dedication of land or other approved Material Public Benefit, then the Applicant will pay to Council the GST (defined below) applicable to the value of land dedicated or (Material Public Benefit) which is payable by the Council in respect of the provision of such services or construction of any infrastructure or any other thing.

GST means any tax levy charge or impost under the authority of any GST Law (as defined by the GST Act) and includes GST within the meaning of the GST Act.

The GST Act means *A New Tax System (Goods and Services Tax) Act 1999* or any amending or succeeding legislation.

- (7) In accordance with Section 94EC of the EP&A Act and Clause 146 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation), a certifying authority must not issue a construction certificate for building or subdivision work under a development consent unless it has verified that each condition therein requiring the payment of monetary contributions has been satisfied.

The certifier must ensure that the applicant provides a receipt(s) confirming that contributions have been fully paid and copies of such receipts must be included with copies of the certified plans provided to the Council in accordance with Clause 142(2) of the EP&A Regulation.

Failure to follow this procedure may render such a certificate invalid.

The only exception to the requirements are where a works in kind, material public benefit, dedication of land or deferred payment arrangement has been agreed by the Council. In such cases, Council will issue a letter confirming that an alternative payment method has been agreed with the applicant.

- (8) Contribution rates will be adjusted in accordance with the Consumer Price Index - Brisbane (CPI - Brisbane), as published by the Australian Bureau of Statistics - in accordance with the following formula:

$$RC = \frac{C \times \text{Current Index}}{\text{Previous Index}}$$

where

RC = Revised contribution rate applicable at the time of payment

C = Previous contribution rate

Current Index is the Consumer Price Index at the date of the review of the contribution.

Previous Index is the Consumer Price Index applicable at the time of issue of the consent.

Contributions are subject to annual and a yearly pro rata indexation.

- (9) If the contributions are not paid within the quarter in which the consent is granted, the contribution payable will be adjusted and the amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment in accord to the following:

$$C_p = C_{dc} + \frac{[C_{dc} \times (C_q - C_c)]}{C_c}$$

where

C_p is the amount of the contribution calculated at the time of payment

C_{dc} is the amount of the original contribution as set out in the development consent.

C_q is the contribution rate applicable at the time of payment.

C_c is the contribution rate applicable at the time of the original consent.

LANDSCAPING

- (10) Prior to issue of a construction certificate for subdivision work a landscape plan prepared by a suitably qualified practitioner is to be submitted to Council for approval. The landscape plan must include the following details:

- Existing and proposed lot boundaries, location of underground services, roads and footpaths.
- Proposed street tree planting generally as shown on approved 'Engineering Services Plan'- including locations, species and specifications for planting stock.
- Design and construction details of a boundary fence to be erected along the Anzac Drive frontage of Lots 1-8. The fence is to present an attractive, uniform appearance of the estate when viewed from Anzac Drive.
- Design and construction details of a fence to be erected along the eastern property boundary between the Anzac Drive frontage and the end of the road reserve adjacent Lot 25. The fence is to be an 1,800 mm high timber paling fence that has at least a 25 mm overlap between palings.
- Proposed treatment of all disturbed ground surfaces within road reserves, such as turfing or seeding.
- Proposed plant numbers and species for landscape buffer planting as shown on approved 'Buffer Zones' plan.
- Specifications for soil preparation, planting and mulching.
- Specifications for weed control, plant establishment, maintenance and monitoring procedures and timeframes.

- (11) Landscape works within a particular stage of the development are to be carried out in accordance with the approved landscape plan prior to release of a Subdivision Certificate for that stage.
- (12) To ensure successful establishment of landscaping, a maintenance period shall apply to all landscape works where the ownership of the asset is to pass to Council. A 3 year maintenance period shall apply from the completion of the landscape construction work and its approval by Council. Within that time the developer is responsible for ensuring that plants (including turfing and seeding) establish successfully, weeds are absent and any defects are rectified. At the end of the maintenance period Council will inspect the asset and any works that are defective, do not conform to the plans and specifications, are not properly maintained or have not established successfully shall be the responsibility of the developer to rectify.
- (13) Prior to Council certifying that completed landscape works have been carried out in accordance with approved plans, payment of a bond for landscape works is required. The bond is to be available to remediate any landscape works that have not established successfully or maintained properly. The bond is to be calculated at 10% of the cost of the works. Bond monies will be refunded at the conclusion of the 3 year maintenance period where they are not required for remediation of landscape works that have not been maintained or established to the satisfaction of Council.

TELECOMMUNICATIONS AND ELECTRICITY SUPPLY

- (14) Underground power must be installed along all street frontages that service the development.
- (15) Prior to the issue of the Subdivision Certificate Council must be supplied with written advice from Essential Energy or an authorised provider stating that each proposed lot has been provisioned with electrical power, including the full length of any battle-axe handles where applicable, and that easements for electricity purposes satisfactory to Essential Energy are supplied on the linen plan over existing and proposed electricity lines pursuant to Section 88B of the *Conveyancing Act 1919*.
- (16) The developer must make arrangements for the supply of telecommunications infrastructure (including National Broadband Network) to each proposed lot and a Telecommunications Infrastructure Provisioning letter from Telstra or an alternative authorised provider must be supplied to Council prior to the issue of the Subdivision Certificate.

FLOODING

- (17) Fencing located across any easement or open channel must permit the unimpeded flow of flood waters and prevent the accumulation of flood debris.

WATER SUPPLY

- (18) The proponent shall provide water reticulation to service the development. The works shall include a conventional water reticulation that comprises a water service to each allotment. Water reticulation works shall be designed and constructed in accordance with the Northern Rivers Local Government Development Design & Construction Manual. Any costs shall be the responsibility of the proponent.

- (19) The water supply connection shall be designed, installed and maintained to prevent contaminants from being introduced into the Kyogle Council's potable water supply system.

Full details of the proposed backflow method and cross connection controls shall be designed and installed in accordance with NSW Code of Practice for Plumbing and Drainage and submitted prior to the release of the Subdivision Certificate.

- (20) The water supply service shall be sized to service the whole development.
- (21) Water connections must be effectively disconnected. Where it is required to remove the existing water meter, this is to be done by Council at the applicant's expense.
- (22) No retaining wall structures shall be constructed on land within any water easement/s or above any water pipes on the land.

SEWERAGE

- (23) The proponent shall provide sewerage reticulation to service the development. The works shall include a conventional gravity sewer reticulation that provides a sewer junction to service the lowest ground level of each allotment. Sewerage works shall be designed and constructed in accordance with the Northern Rivers Local Government Development and Design & Construction Manual. Any costs shall be the responsibility of the proponent.
- (24) The proponent is responsible for ensuring that the existing sewer pipe is not damaged while performing the works. If the existing sewer pipe is damaged during the course of performing the works, the proponent will:
- notify Kyogle Council immediately when the damage occurs, and
 - pay any costs to Council in repairing the damage.
- (25) The proponent, at no cost to Council, is to dedicate an easement 3 m wide over the sewer main as directed by Council.
- (26) Concrete encasing of Council's sewer main shall be required where any structure falls within a line:
- i) within a distance from the main measured by projecting a 45° angle from the invert of the main to surface level.

OR

- ii) within 1.5m clear of the sewer main.
- (27) No retaining wall structures shall be constructed on land within any sewerage easement/s or above any sewerage pipes on the land.
- (28) The proposed development is to be connected to Council's sewerage system. A connection fee applies (see current fees and charges).

STORMWATER DRAINAGE

- (29) The proponent shall make satisfactory provision for stormwater to be directed through piped drains that are designed and constructed in accordance with the Northern Rivers Local Government Development Design and Construction Manuals. The extent of these works is not limited to the subject land, and is to include upgrading of the existing stormwater system from CH 1840 Anzac Drive, through to and including CH 1517 Anzac Drive. All costs shall be the responsibility of the proponent.
- (30) Full design plans of the proposed engineering works shall be submitted to and approved by Council prior to commencement of these works. Such plans shall be accompanied the fee, as adopted at the time of the relevant payment as indicated in Council's Schedule of Fees and Charges.
- (31) No retaining wall structures shall be constructed on land within drainage easement/s or above any water drainage pipes on the land.
- (32) Inter allotment drainage shall be provided for those lots not able to discharge stormwater to the road gutter or a drainage easement, in accordance with the requirements of the Northern Rivers Local Government Development Design and Construction Manuals.
- (33) All drainage lines are to be contained within a 3 metre wide easement to be created at the time of subdivision.
- (34) Measures shall be put in place to control stormwater runoff. These control measures shall be in place prior to the commencement of works and shall prevent soil erosion and the transport of sediment from the development site into either:
- adjoining land
 - natural drainage courses
 - constructed drainage systems, or
 - waterways
 - public road reserve

All disturbed areas shall be stabilised and revegetated. Turfing or another approved seeding method shall be undertaken in each part of the development within 14 days of completion of earthworks. Topsoil shall be preserved for site revegetation wherever possible.

- (35) The proponent is responsible for ensuring that the existing stormwater pipe is not damaged while performing the works. If the existing stormwater pipe is damaged during the course of performing the works, the proponent will:
- notify Council immediately when the damage occurs, and
 - pay any costs to Council in repairing the damage.
- (36) The discharge of stormwater from the site shall be limited to the pre-development flow for an ARI of 10 years and a time of concentration of 6 minutes. On-site retention of stormwater shall be encouraged to achieve this requirement. Full design details shall be submitted for approval before site works commence.

- (37) All stormwater from the site shall be disposed of without causing nuisance to adjoining properties.

ROADS AND PATHWAYS

- (38) The proponent shall provide the following roads and pathways including ancillary infrastructure to service the development. Infrastructure shall be designed and constructed in accordance with the Northern Rivers Local Government Development and Design Manual. The proponent shall be responsible for all costs associated with the works. Required works are:
- a) Widening of the southern side of Anzac drive fronting all lots with access from Anzac Drive being proposed lots 6, 7 and 8 of the development to 5.5m from the centreline.
 - b) Construction of the intersection between Anzac Drive and the new internal road to meet the requirements of Austroads "Guide to traffic engineering Part 5- Intersections at grade"
 - c) Construction of the proposed road to meet Northern Rivers Local Government Development and Design Manual requirements for a Local Street ie 7m carriageway width with 25mm asphaltic cement wearing surface, mountable kerb and 3.5 metre minimum verge width and 20 metre diameter cul de sac
 - d) Construction of footpath for the full length of the proposed road to meet Northern Rivers Local Government Development and Design Manual requirements ie minimum of 1.2m wide and providing connectivity to Council existing footpath network
 - e) Street lighting to be provided at the proposed intersection and at a minimum of every 100m along the proposed new road. Street lights are to be hooded to prevent light spill onto adjoining properties.
- (39) Full design plans of the proposed engineering works shall be submitted to and approved by Council prior to commencement of these works. Such plans shall be accompanied by the fee, as adopted at the time of the relevant payment and indicated in Council's Schedule of Fees and Charges.
- (40) The grade from the road pavement to each lot shall permit the construction of vehicular access in accordance with the Northern Rivers Local Government Development Design and Construction Manual. Engineering design plans shall provide evidence of the feasibility of lot access.
- (41) Road names proposed for the subdivision shall be submitted for Council consideration prior to lodgement of the Subdivision Certificate. A suitable name for any new road/s shall be subject to Council approval and public consultation.
- (42) Prior to carrying out any works within a public road reserve, the proponent shall complete an application under Council's Road Reserve Management Plan and receive written approval from Council. Satisfactory arrangements for restoration with Council's Infrastructure Works Department shall also be required, with all works constructed according to Council's Development, Design and Construction Manuals (as amended). All costs shall be the responsibility of the proponent.
- (43) A certified "Works as Executed" plan from a suitably qualified Engineer or Registered Surveyor is to be submitted before the release of the Subdivision Certificate certifying

that the works have been constructed in accordance with the drawings and to the levels specified.

- (44) A maintenance period shall apply to all construction carried out on development where the ownership of the asset is to pass to Council. The maintenance period shall extend from the completion of the construction and subsequent approval by Council, for six months. Within that time the developer is responsible for any omissions or defects. At the end of the maintenance period Council will inspect the asset and any work found not conforming to the plans and specifications shall be the responsibility of the developer to rectify. The maintenance bond shall be returned at the completion of the maintenance period and subsequent defect free approval by Council.

Construction (contract) price Bond

up to \$50,000 - 10% of contract price (minimum bond \$1,000)

over \$50,000 \$5,000 plus 5% of balance over \$50,000

- (45) There shall be no loss of support to the Councils foot path area as a result of excavation within the site. Details of how this support will be maintained during construction shall be submitted for the Councils approval prior to the commencement of any work.
- (46) Land is to be dedicated as public road at no cost to Council to accommodate the proposed new road or roads. Road reserve widths are to be in accordance with the Northern Rivers Local Government Development and Design Manual, or wider where required.
- (47) Council must be notified in writing, prior to commencement of construction of any existing damage to kerb and gutter or footpaths, or other infrastructure adjoining the development site.

Absence of notification signifies that no damage exists and the applicant is therefore liable for the cost of reinstatement of any damage attributable to the development, which may be necessary after the completion of the construction works. Where areas are disturbed by the passage of construction vehicles, these areas are to be graded and restored to original level and condition.

- (48) No vehicular accesses may be constructed or opened onto a Council road without the prior written approval of Council.

AMENITY

- (49) Prior to the issue of a Subdivision Certificate for Lots 8,16 and 17, a fence is to be constructed along the western boundary of the development site. The fence is to be an 1,800 mm high timber paling fence that has at least a 25 mm overlap between palings. The fence is to be maintained at all times.
- (50) To avoid potential amenity impacts from grazing on adjoining lots, the vegetated buffer planting as shown approved plan 'Buffer Zones' on lots 18 and 19 (being Lots 17 and 18 in revised subdivision layout plan) is to be implemented. This is to occur prior to issue of Subdivision Certificate.

- (51) A covenant to require the maintenance of vegetated buffers at all times is to be secured through an instrument on the titles of Lots 17 and 18 established under Section 88B of the *Conveyancing Act 1919*.
- (52) To avoid potential impacts on residential lots a restriction on the use of proposed Lot 19 to preclude the use of the rural zoned remainder of the land for broad scale cultivation or horticulture (not including cultivation for remediation or improvement of pastures) is required. The restriction is to be secured through an instrument on the title of proposed Lot 19 established under Section 88B of the *Conveyancing Act 1919*.

DRAFT

Notes:

1. If you do not agree with this determination you can apply to Council for a review under Section 82A of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979).

An application for review must be made within one year from the date of this notice, and must be accompanied by the prescribed fee. This provision does not apply to designated development or integrated development. (Please contact Council for details).

2. If you are dissatisfied with Council's determination, you can appeal to the Land and Environment Court under Section 97 of the EP&A Act 1979 within 6 months from the date of this notice.
3. Before you start any building or subdivision works you must obtain a Construction Certificate from Council or an accredited certifier.
4. It is an offence under the *National Parks and Wildlife Act 1974* to destroy, deface or damage an Aboriginal relic. If during works on site any Aboriginal relic is discovered then you should immediately stop work and contact representatives of the National Parks and Wildlife Service and the Local Aboriginal Land Council.
5. The *Native Vegetation Act 2003* requires consent for the clearing of remnant native vegetation or protected regrowth from the Northern Rivers Catchment Management Authority. It is the proponent's responsibility to consult the Northern Rivers Catchment Management Authority to determine the need or otherwise for their approval and you should not construe the granting of this development consent as notification to you that the NSW Native Vegetation Act does not apply. The NSW Native vegetation Act 2003 may have direct application to your proposal and you should obtain advice about this matter directly from the Northern Rivers Catchment Management Authority.
6. It is the applicant's responsibility to advise Council of any changes to contact details in a timely manner. Council will not be held responsible for any lost documents, delays or missed inspections if any of the details are in any way not up-to-date. Should duplicate documents be required they will incur an additional fee in this circumstance.

Your attention is drawn to extracts from the Act printed on the following page.

Yours faithfully

Manfred Boldy
DIRECTOR PLANNING & ENVIRONMENTAL SERVICES

Enc.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**DIVISION 8 – APPEALS AND RELATED MATTERS****(100,510)****Appeal by an applicant – development applications**

97 (1) An applicant who is dissatisfied with the determination of a consent authority with respect to the applicant's development application (including a determination on a review section 82A) may appeal to the Court within 6 months after:

- (a) the date on which the applicant received notice, given in accordance with the regulations, of the determination of that application, or
- (b) the date on which that application is taken to have been determined under section 82(1).

(2) An applicant who is dissatisfied with a decision that a consent authority, or a person specified by the consent authority, is not satisfied as to a matter, being a specified aspect of the development that is to be carried out to the satisfaction of the consent authority, or person, pursuant to a condition imposed under section 80A(2), may appeal to the Court within 6 months after:

- (a) the consent authority or person notifies the applicant of its decision, or
- (b) the date on which the applicant's request is taken to have been determined under section 80A(3).

(3) An applicant who is dissatisfied with a decision that a consent authority is not satisfied as to a matter, being a matter as to which it must be satisfied before a "deferred commencement" consent under section 80(3) can operate, may appeal to the Court within 6 months after the consent authority notifies the applicant of its decision.

(4) If an appeal has been made under this section relating to a development application for consent to carry out designated development, each objector to that application is to be given notice by the consent authority of that appeal and is, on application made to the Court in accordance with rules of court within 28 days after the date of the notice, entitled to be heard at the hearing of the appeal as if he, she or it were a party of the appeal.

- (5) If
- (a) An appeal has been made under this section relating to a development application, and
 - (b) the application is one:
 - (i) in relation to which the concurrence of a Minister or public authority is required under this Act, or
 - (ii) for consent to carry out integrated development that involves an approval body (within the meaning of Division 5).

That Minister, public authority or approval body must be given notice by the consent authority of that appeal and is, on application made to the Court in accordance with rules of court within 28 days after the date of the notice, entitled to be heard at the hearing of the appeal as if he, she or it were a party of the appeal.

(6) An appeal under this section relating to a development application for consent to carry out designated development in respect of which an objection has been made in accordance with the regulations must not be heard by the Court until after the expiration of the time within which an objector may appeal to the Court under section 98.