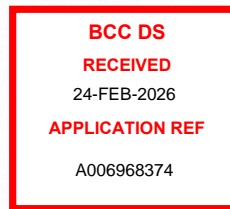


In the Planning and Environment  
Court  
Held at: Brisbane



No. 631 of 2019

Between: **MACKENZIE DEVELOPMENTS PTY LTD** Applicant  
(ACN 114 928 264)  
And: **BRISBANE CITY COUNCIL** Respondent

### ORIGINATING APPLICATION

Filed on 22/02/2019

Filed by: Connor O'Meara Solicitors  
Service Address: Level 4, 10 Eagle Street, Brisbane 4000  
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**MACKENZIE DEVELOPMENTS PTY LTD (ACN 114 928 264)** of c/- Connor O'Meara, Solicitors, Level 4, 10 Eagle Street, Brisbane in the State of Queensland applies to the Planning and Environment Court at Brisbane, for orders that:

1. The development approval granted by this Honourable Court on 14 June 2018 in Planning and Environment Court Appeal No. 1410 of 2017 for a development permit for a material change of use for a multiple dwelling (23 units) ("*Development Approval*") in respect of land described as Lot 38 on SP 209244 and situated at 36 Alexander Close, Mackenzie, in the State of Queensland ("*the Land*") be changed ("*the Change Application*")

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Originating Application  
Filed on behalf of the Applicant  
Form PEC-2

CONNOR O'MEARA  
Solicitors  
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BRISBANE 4000  
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00014808.DOCX

pursuant to sections 78 and 81 of the *Planning Act 2016*, in the following ways:

(a) change the approved drawings and documents as follows:

Drawing or Document	Number	Plan Date
Proposed Site Plan	DA. 1001 Issue <u>G</u> (Amended in Red <del>24-APR-2018</del> ) <u>C</u>	<del>05-APR-2018</del> <u>04-FEB-2019</u>
Proposed Levels and Retaining Walls	DA. 1004 <u>2</u> Issue <u>F</u> <u>C</u>	<del>24-NOV-2016</del> <u>04-FEB-2019</u>
Site Access Layout	DA. 1005 <u>3</u> Issue <u>G</u> <u>F</u>	<del>24-NOV-2016</del> <u>04-FEB-2019</u>
Type 1A – Plans and Elevations	DA. 1.2001 Issue <u>G</u> <u>F</u>	<del>24-NOV-2016</del> <u>04-FEB-2019</u>
Type 1B – Plans and Elevations	DA. 1.2002 Issue <u>G</u> <u>F</u>	<del>24-NOV-2016</del> <u>04-FEB-2019</u>
Type 2A – Plans and Elevations	DA.2.2001 Issue <u>G</u> <u>F</u>	<del>24-NOV-2016</del> <u>04-FEB-2019</u>
Type 2B – Plans and Elevations	DA.2.2002 Issue <u>G</u> <u>F</u>	<del>24-NOV-2016</del> <u>04-FEB-2019</u>
Site Elevations and Sections Sheet 1	DA.3001 Issue <u>G</u> <u>F</u>	<del>24-NOV-2016</del> <u>04-FEB-2019</u>
Site Elevations and Sections Sheet 2	DA.3002 Issue <u>G</u> <u>F</u>	<del>24-NOV-2016</del> <u>04-FEB-2019</u>
Concept Stormwater Layout Plan	GSK104 Issue 1 (Amended in Red <del>10-APR-2018</del> )	03-FEB-2016
<u>Preliminary Stormwater Layout Plan</u>	<u>18528-P001 Rev A</u>	<u>02-NOV-2018</u>
<u>Preliminary Details</u>	<u>18528-P002 Rev A</u>	<u>31-OCT-2018</u>
<u>Site Staging and Easements Plan</u>	<u>DA.1004 Issue G</u>	<u>04-FEB-2019</u>

(b) to permit the development to be undertaken in two stages;

(c) make the following changes to conditions:

(i) change condition 8 to alter the configuration of the Environmental Protection Zone by:

*Enter into an environmental covenant with Brisbane City Council pursuant to Section 97A of the Land Title Act 1994 to ensure the appropriate management of the area identified as the 'Environmental Protection Zone' on approved drawing 'Proposed Site Plan', reference DA.1001 Issue G, dated 5 April 2018 and amended in red 24 April 2018.*

*'Environmental Protection Zone' on approved drawing 'Proposed Site Plan', reference DA.1001 Issue C, dated 10 June 2015 and amended 4 February 2019.'*

- (ii) change condition 13 to alter the configuration of the Environmental Protection Zone by:

**"13 Environmental Protection Zone**

*Retain, protect and maintain all vegetation and ecological features within the approved Environmental Protection Zone shown on approved drawing 'Proposed Site Plan' reference DA.1001 Issue G, dated 5 April 2018 and amended in red 24 April 2018. DA.1001 Issue C, dated 10 June 2015 and amended 4 February 2019, except as approved by condition 13(a).*

*The following requirements must be met and maintained to support the approved Environmental Protection Zone".*

- (iii) change condition 13(a) to allow temporary access in the Environmental Protection Zone by:

**"13(a) Restrictions Within Approved Environmental Protection Zone**

*No part of any building or structure (including but not limited to swimming pools, tennis courts, retaining walls, tanks), no facilities associated with the development, no open space, no recreation areas, no landscaping, no on-site stormwater drainage (except as identified on 'Preliminary Stormwater Layout Plan' Drawing Number 18528-P001 Revision A dated 2 November 2018), no on-site wastewater treatment, no areas of disturbance (including excavation and filling), no storage/stockpiles of materials, no on-site parking, no access and no manoeuvring areas and no bushfire management measures must be located on any part of the site within the approved Environmental Protection Zone, other than for the*

*purposes of manoeuvring vehicles, materials, equipment and scaffolding or the implementation of safe work methodologies during construction and only in consultation with a Council approved aborist within the "3m EPZ offset for temporary construction fencing" as identified on the Approved Plans, whether for temporary, short-term or long-term periods unless otherwise agreed in writing by Development Services."*;

- (iv) change condition 22 to alter the design of the approved retaining walls by:

**"22 Retaining Walls**

*Design and construct all retaining walls and associated fences, in accordance with the relevant Brisbane Planning Scheme Codes and including the following:*

*All retaining walls including the footings, must be located wholly within the property boundary of the site where works are occurring.*

*Retaining walls to stabilise excavation must be set back off property boundaries to accommodate subsoil drainage without encroachment into the neighbouring property. This set back may vary depending on the height, structure and design of the retaining wall, including loadings from neighbouring properties, and to provide a surface drain along the top of the retaining wall.*

*Retaining walls that are greater than 1.0m in height must be vertically and horizontally tiered by a ratio of 1:1 unless an alternative has been approved by Development Services, except where instability issues are identified by a Registered Professional Engineer Queensland. In such cases, retaining walls may be constructed as advised by a Registered Professional Engineer Queensland.*

*Runoff from surface drains and subsoil drainage associated with the retaining wall must be collected and conveyed to a lawful point of discharge and must not cause any ponding, nuisance or disturbance to adjacent property owners  
Retaining walls in excess of 1.0m in height must be designed and certified by a Registered Professional Engineer Queensland.*

*Retaining walls facing onto Council property (including the road reserve and parkland) must not be constructed from timber."*;

- (v) change condition 29 to alter the configuration of the stormwater drainage by:

**"29 Site Drainage – Major**

*Provide an internal drainage system to collect stormwater run-off from all proposed lots, roofed and developed surface areas and any run-off onto the site from adjacent areas and convey the collected run-off to a lawful point of discharge, in accordance with the relevant Brisbane Planning Scheme Codes and approved drawing '~~Concept Stormwater Layout Plan~~' reference ~~CSK104 Issue 1, dated 3 February 2016 and amended in red 10 April 2018.~~ 'Preliminary Stormwater Layout Plan' Drawing Number 18528-P001 Revision A dated 2 November 2018.*

*Note: The stormwater design must ensure the stormwater runoff from the site does not adversely impact on flooding or drainage (peak discharge and duration for all storm events up to the 1% AEP event) of properties that are upstream, downstream or adjacent to the site. Some developments may require implementation of one or more mitigation measures to offset adverse impacts, (e.g. stormwater detention, rainwater tanks, and upgrade of stormwater drainage infrastructure).*

*Note: Guidance for the preparation of drawings and/or documents to comply with this condition is provided in the Brisbane Planning Scheme";*

and

- (d) such further or other orders as the Court deems appropriate.

**The grounds** relied on are:

1. The Land:

- (a) is described as Lot 38 on SP29244;
- (b) is situated at 36 Alexander Close, Mackenzie
- (c) with respect to City Plan 2000:

- (i) is included in the Low Density Residential Zone;
  - (ii) is included in a priority koala assessable development area under the State Planning Policy; and
  - (d) comprises an area of approximately 10,210m<sup>2</sup>.
2. The effect of the Change Application is:
- (a) making provision for the approved development to be delivered in two stages;
  - (b) relocating the approved pedestrian pathways at the entrance to the Land to reduce earthworks and provide compliant grades;
  - (c) redesign of the approved retaining walls to a 'single-span' design;
  - (d) clearly identifying the boundary for the environmental protection zone ("EPZ") which will allow for:
    - (i) the necessary changes to the retaining wall;
    - (ii) access, maintenance and inspection;
    - (iii) provision of a three-metre rehabilitation buffer zone within the EPZ to allow manoeuvring of vehicles, materials, equipment and scaffolding during construction as well as safe work methodologies;
    - (iv) the stormwater concrete headwalls to be located within the EPZ as approved by the Development Approval; and

(e) redesign of the proposed stormwater outcome.

3. The proposed changes are "*minor changes*" for the purposes of section 81 of the *Planning Act 2016* as:

(a) the changes would not result in a substantially different development;

**Particulars**

(i) no new uses are proposed;

(ii) the proposed changes do not result in the Development Approval applying to new land;

(iii) the proposed changes do not result in any change to the built form in terms of scale, bulk and appearance;

(iv) the proposed changes do not change the ability of the development to operate as intended;

(v) the proposed changes do not remove a component that is integral to the operation of the development;

(vi) the proposed changes do not have any impact on traffic flow and the transport network;

(vii) the proposed changes do not result in any new impacts nor do they increase the severity of known impacts;

- (viii) the proposed changes do not remove an incentive or offset component that would have balanced a negative impact of the development; and
  - (ix) the proposed changes do not have an impact on infrastructure provision, location or demand;
- (b) if the application for the Development Approval were remade including the changes, the changes:
- (i) would not cause the inclusion of prohibited development in the application;
  - (ii) would not cause referral to a referral agency;
  - (iii) would not cause referral to extra referral agencies;
  - (iv) would not cause a referral agency to assess the application against, or have regard to, matters prescribed by regulation under section 55(2) of the *Planning Act 2016*; and
- (c) would not cause public notification if public notification was not required for the development application.
4. Having regard to all the circumstances, the changes to the Development Approval are appropriate and ought be approved.
5. In the premises, the Court should approve the changes sought by the Applicant.

**PARTICULARS OF THE APPLICANT:**

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(ACN 114 928 264)  
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*Connor O'Meara*

.....  
**CONNOR O'MEARA**

Solicitors for the Applicant

Dated: 22/02/2019

If you are named as a respondent in this notice of appeal and wish to be heard in this appeal you must:

- (a) within 10 business days after being served with a copy of this Notice of Appeal, file an Entry of Appearance in the Registry where this notice of appeal was filed or where the court file is kept; and
- (b) serve a copy of the Entry of Appearance on each other party.

The Entry of Appearance should be in Form PEC – 5 for the Planning and Environment Court.

If you are entitled to elect to be a party to this appeal and you wish to be heard in this appeal you must:

- (a) within 10 business days of receipt of this Notice of Appeal, file a Notice of Election in the Registry where this Notice of Appeal was filed or where the court file is kept; and
- (b) serve a copy of the Notice of Election on each other party.

The Notice of Election should be in Form PEC – 6 for the Planning and Environment Court