

Conditions of approval



What are conditions?

Conditions set out the circumstances in which the approved development may proceed. Conditions can:

- Limit how long a use or works may continue for;
- State a timeframe in which development must not commence;
- Require compliance with an infrastructure agreement; and
- Require a development or part of a development to be completed within a timeframe.

Conditions often set out measures to protect or manage the environment and maintain amenity. Conditions will also be included that relate to the provision of infrastructure to ensure that the proposed development is adequately serviced.

Conditions are usually included on every development approval, and form part of the development approval package.

In accordance with Section 65 of the *Planning Act 2016* (PA), all conditions are required to be reasonable and relevant, having regard to the proposal and planning requirements.

What is the purpose of conditions?

The purpose of conditions on a development approval is to ensure that the development permitted has the minimal possible adverse impact on the community, including for example, amenity, traffic and the environment.

Can I review draft conditions before a decision is made?

Yes.

Council's Development Assessment Team provide a draft conditions package for all development applications to the Applicant for review and comments before a decision is made.

How can I provide comments regarding draft conditions?

Applicants are provided the opportunity to give feedback on draft conditions and can respond to the Assessment Manager in three ways.

- Advise that you accept the conditions and do not wish to make representations;
- Make written representations;
- Advise that you wish to schedule a meeting to discuss the draft conditions. Council's Development Assessment Team will only agree to a meeting, if the Applicant under Part 7, Item 32 of the Development Assessment Rules agrees to stop the decision period for ten business days so as to allow sufficient time to meet with Council's Development Assessment Team to discuss the draft conditions.

If a response is not received by Council within 48 hours of the issue of draft conditions, Council's Assessment Team will finalise the application.

Does Council have to agree with my representations?

No.

Issuing draft conditions is not a formal requirement under PA. Council will review your representations and amend conditions which are deemed to be acceptable. Whilst agreement is desirable, the purpose of the draft conditions process is to reduce points of potential disagreement that helps to reduce subsequent formal negotiation or appeal processes under the DA system.

For any condition in which Council does not agree to amend under the draft conditions package, the applicant can request a negotiated decision by Council under Section 75 of PA to formally negotiate the conditions of approval.



Once a decision is made, can I appeal conditions of approval?

Yes.

The PA provides the opportunity for an applicant to negotiate conditions of a development approval, after the decision notice has been received.

Are conditions enforceable by the law?

Yes.

Conditions are an integral part of an approval and it is an offence under the PA to:

- breach a development condition; or
- not comply with a development condition.

Who is bound by the terms of the conditions?

The conditions of a development approval bind each and every individual and company who undertake any work under the development approval. The development approval and conditions are also binding on the land, regardless of a change in ownership.

Can Council include conditions relating to development infrastructure?

Yes.

Council can impose conditions for development to supply trunk infrastructure or other infrastructure to developments. Trunk infrastructure is generally infrastructure that is larger in size and serves multiple developments or areas, such as higher order roads or parks. Non-trunk infrastructure is usually that infrastructure provided internally within a development site, such as local roads and water supply pipes in a new subdivision.

Council can apply conditions where a development requires trunk infrastructure for it to be serviced. The trunk infrastructure to be provided can either be identified in Council's Local Government Infrastructure Plan (LGIP) or it can be different infrastructure but provide the same level of service that the LGIP anticipates. Where the LGIP does not identify the needed trunk infrastructure, the Council can still impose a condition for its construction but only where the development is consistent with the planning assumptions about the land made in the LGIP.

Sections 127 and 128 of PA details the circumstances in which Council can condition trunk infrastructure (roads, water supply, sewerage and stormwater drainage).

Many developments also require non-trunk infrastructure. Council can impose conditions for this type of infrastructure to:

- supply infrastructure internal to the development;
- connect the development to external infrastructure; and
- protect or maintain the safety or efficiency of existing infrastructure.

Council Decision Notices clearly outline which conditions relate to infrastructure and whether the infrastructure to be provided is trunk or non-trunk infrastructure.

What can't Council condition?

Section 66 of PA details that conditions must not:

- require a person other than the Applicant to carry out works required for the development;
- require a person to enter into an infrastructure agreement;
- require an access restriction strip;
- not be inconsistent with a condition of an earlier approval, unless the Applicant agrees in writing to the later condition;
- limit the time a development approval has effect for a use or work forming part of a network of community infrastructure, other than State-owned or State-controlled transport infrastructure.


Conditions imposed by the Council must also be:


- Relevant to, but not an unreasonable imposition, on the development; and
- Reasonably required in relation to the development or the subsequent use of the land.

For further information

Please visit Council's website at:
bundaberg.qld.gov.au

or contact the Duty Planner, Development Assessment on:

 1300 883 699

 duty.planner@bundaberg.qld.gov.au