

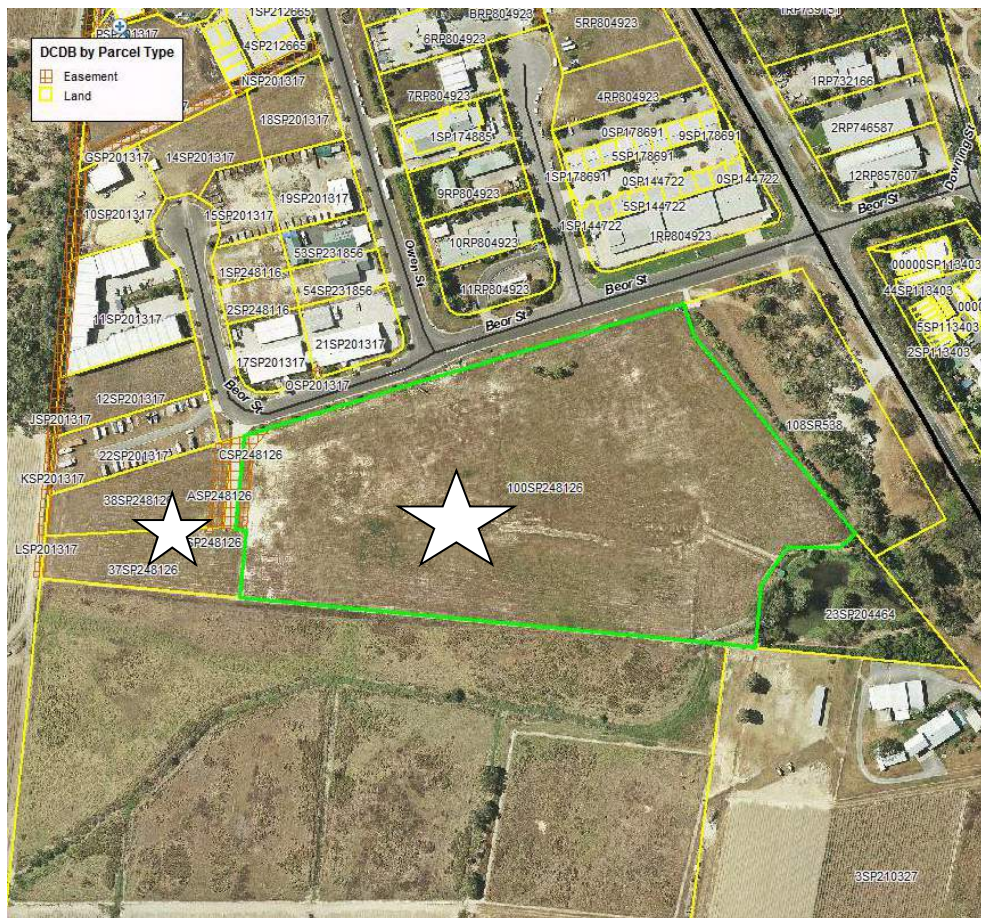
ORDINARY MEETING	
5 MAY 2015	5.5

REQUEST FOR PERMISSIBLE CHANGE & EXTENSION OF RELEVANT PERIOD
 RECONFIGURING A LOT (1 LOT INTO 19 LOTS) – 15-41, 43 AND 45 BEOR
 STREET CRAIGLIE

Jenny Elphinstone: Senior Planning Officer CA 2876/2008 #452869

<u>PROPOSAL:</u>	REQUEST FOR PERMISSIBLE CHANGE & EXTENSION OF RELEVANT PERIOD RECONFIGURING A LOT (1 LOT INTO 19 LOTS)
<u>APPLICANT:</u>	WAKS DEVELOPMENTS PTY LTD C/- GILVEAR PLANNING PTY LTD PO BOX 228 BABINDA QLD 4861
<u>LOCATION OF SITE:</u>	15-41, 43 AND 45 BEOR STREET, CRAIGLIE
<u>PROPERTY:</u>	LOT 37, 38, 100 ON SP248126
<u>LOCALITY:</u>	PORT DOUGLAS AND ENVIRONS
<u>PLANNING AREA:</u>	RURAL
<u>PLANNING SCHEME:</u>	DOUGLAS SHIRE PLANNING SCHEME 2008
<u>REFERRAL AGENCIES:</u>	DEPARTMENT OF STATE DEVELOPMENT, INFRASTRUCTURE AND PLANNING
<u>NUMBER OF SUBMITTERS:</u>	NOT APPLICABLE
<u>STATUTORY ASSESSMENT DEADLINE:</u>	29 MAY 2015
<u>APPLICATION DATE:</u>	12 AUGUST 2014
<u>APPENDIX:</u>	1. EXISTING APPROVAL 2. CONCURRENCE AGENCY ADVICE 3. SUPPORTING INFORMATION TO PLANNING REPORT

LOCALITY PLAN



RECOMMENDATION:

- A. That Council approves the request for a permissible change to the Negotiated Decision Notice issued 13 August 2007 for a combined approval of the reconfiguration of land component of the application for Lots 37, 38, 100 on SP248126 (previously known as Lot 83 on SR274) located at 15-41, 43 and 45 Beor Street, Craigie whereby:

1. Condition 20 is amended as follows:

20. Plan of Development

The approved plan of reconfiguration and carrying out of any works on the premises associated with this development must be in accordance with the following approved plan/s of reconfiguration.

Title	Plan No.	Date
Proposal Plan (stage 2)	8294-10	21/9/06
Reconfiguration of a Lot, Proposed Stage 2 Craigie Business Park	RPS Drawing No. PR108905-17	31 July 2014

2. A new condition, 29A, is inserted after Condition 29 as follows:

29A. Stormwater Drainage Design

Stormwater drainage from Lots 37 and 38 must be provided in a piped underground form beneath the easements and carriage way over Lot 37 to discharge onto Lots 36 and 39 (currently known as Lot 100 on SP248126) and to be disposed of to the satisfaction of the Chief Executive Officer.

3. A new Condition 33A is inserted after Condition 33 as follows:

33A. The Applicant must provide six (6) car spaces in the area Easement C to the satisfaction of the Chief Executive Officer.

4. Condition 38 is amended as follows:

~~38. Council acknowledges that with Stage One (1) of the proposal the applicant intends to provide a land component of 4000m² to the Paws and Claws organisation, together with \$200,000 worth of works in lieu and a monetary contribution equivalent to 9% of the total open space and recreation required for Stage One (1) and Stage Two (2) of the development.~~

~~With Stage 2 of the development the applicant is required to contribute the balance of the contribution 43.9% as land in the south-eastern portion of the site as indicated n the plan of development.~~

Council acknowledges that Park was provided (including the provision of upgrading works) through Stage 1 of the Industrial Estate and that provision is complemented with a financial deed of gift of \$200,000 to the Homeless Animal Society and Boarding Kennels Incorporated IA20194. These provisions of land, upgrading works and deed of gift satisfy the provision of Park and must be provided prior to the issue of a Compliance Certificate for the Plan of Survey.

EXECUTIVE SUMMARY:

Post adoption of the current Planning Scheme the former Douglas Shire Council approved the development of the Craiglie Industrial Estate in a two staged development. Stage 1 was completed in full. Only part of Stage 2 has been completed to date. The Applicant has sought a four year extension of time for the Stage 2 approval (CA 69). Having regard to the need to meet current FNQROC Development Manual Standards and the provision of suitable and appropriate stormwater the applicant has also sought to amend the approval. The amendments with bring the development back into line with current standards. There is no longer a need for a new facility for the local homeless animal shelter at this location and the previously arranged monetary support has been varied to be provided through a deed of gift. The report recommends the approval be amended and on this basis and the extension for four years also be supported.

TOWN PLANNING CONSIDERATIONS:

Background

Park was provided through the development Stage 1 that included the upgrading of Teamsters Park, provision of additional land adjacent to Teamsters Park and rehabilitation and drainage works to those existing and proposed Park lots.

The combined approval (CA 69) forms Stage 2 of the Craiglie Industrial Estate developed by Waks Developments Pty Ltd. At the time the land was included in the Rural (Agricultural) Zone of the 1996 Douglas Shire Planning Scheme. The former Douglas Shire Council approved the development permitting the reconfiguration and the industrial use of the new lots being consistent with the then draft 2006 Planning Scheme. The approval also provided for Lot 37 to be developed as a new cattery/kennel facility for Paws and Claws.

The original design featured roads of 20m width, new road between Lots 36 to 38 and the associated operational work detailed six car spaces in this new road. The original operational work design included underground stormwater drainage for Lots 37 and 38, part of which lead to an easement over the adjacent lots to the east leading to the new road.

At the time the application was lodged (for CA 69) and approved the Park land had not been transferred from Stage 1 of the development (CA 61). Council issued a Negotiated Decision on 13 August 2007 approving all parts of the application subject to conditions. The final subdivision plan is included in Appendix 3. The subdivision plan creating the park is also included in Appendix 3. It is understood that the rehabilitation works to the wetland and the adjacent Park were undertaken.

Condition 38 of the approval required the provision of land and money. The condition is worded as follows.

38. *Council acknowledges that with Stage One (1) of the proposal the applicant intends to provide a land component of 4000m² to the Paws and Claws organisation, together with \$200,000 worth of works in lieu and a monetary contribution equivalent to 9% of the total open space and recreation required for Stage One (1) and Stage Two (2) of the development.*

With Stage 2 of the development the applicant is required to contribute the balance of the contribution 43.9% as land in the south-eastern portion of the site as indicated on the plan of development.

Cairns Regional Council endorsed a Survey Plan creating the existing Lots 37, 38 and a balance lot, being Lot 100. This Survey Plan approved an alternative arrangement changing the new road between lots 36, 37 and 38 to a driveway with reciprocal easements. There was no provision of car spaces in the easement area and stormwater was to be collected via the constructed, inverted profiled driveway.

For Stage 2 the Applicant had intended to donate the land and provide a monetary assistance for the Cattery, Kennels and Caretaker's Residence.

The Homeless Animal Society has not continued with the development of a new facility at this location. The Park lot is now known as Lot 23 on SP204464 was transferred to Council in February 2008.

Cairns Regional Council approved extensions to the period of approval and the Negotiated Decision is due to expire on 15 May 2015.

The Applicant maintains ownership of Lots 37, 38 and the balance of the land, being Lot 100 on SP248126.

Operational Work

An application for operational work was previously lodged to develop the industrial lots of Stage 2 with Cairns Regional Council. The application was accompanied by a bond for Bond for \$88,500, being for construction security on Stage 2 Operational Work. The original plan nominated the construction of a road to lots 36, 37 and 38 together with onsite car parking and underground stormwater drainage. However what has been constructed to date is an inverted driveway from Beor Street to lots 37, 38 and the land to the west (currently Lot 100) and an expectation that stormwater be carried overland along the inverted driveway to Beor Street. Cairns Regional Council approved a Survey Plan whereby the road is land with easements in favour of the adjacent lots. There is no parking provided adjacent to the driveway and the existing easement documents do not allow the parking of vehicles.

Council Officers have undertaken discussions with the Applicant and his consultant regarding the inconsistency of the works constructed to date and those initially intended in respect to parking, access and stormwater for Lots 37, 38 and the current lot 100. As a result of these discussions the Applicant indicated willingness to provide parking, for the underground stormwater for Lots 37 and 38 to discharge to Lot 100 and also to amend the easement documents to enable correct use of the driveway/parking area. These works are to be lodged as an amendment to the Operational Work approval.

Applicant's Request

The Applicant has requested the Negotiated Decision Notice CA 69 be amended as follows.

- a. The new road to the east has road reserve width of 21m, reflecting the current standard under the FNQROC Development Manual;
- b. The design allows for the variation from road to driveway and easements for the servicing of lots 36, 37 and 38; and
- c. Condition 38 is amended to reflect the provision of Park to be by way of land (of land now known as Lot 23 on SP 204464) and a monetary deed of gift to the Homeless Animal Society and Boarding Kennels Incorporated IA20194.

The Applicant has also requested an extension to CA 69 for a further four years bringing the expiry period to 15 May 2019.

Officer Comment

No concern is raised with the amended layout provided the ultimate industrial design of the access and stormwater represent current engineering standards as per the FNQROC Development Manual. It is noted that the Applicant has indicated willingness to achieve such compliance, even with the currently created lots 37 and 38 and will seek to amend the approval for Operational Work accordingly. Council still holds a significant monetary bond for these works and no further lots will be created or the bond released until these works have been satisfactorily completed. The conditions of the approval can be suitably amended to reflect the current requirements.

Although Park has been provided through Stage 1 the Applicant remains committed to providing monetary assistance to the local homeless animal shelter. This provision has been made in the form of a deed of gift. The deed is included in Appendix 3. The conditions of the approval can be amended to reflect this arrangement.

S388 Sustainable Planning Act

In deciding a request to extend an approval the *Sustainable Planning Act 2009* requires Council to determine the application having regard to the following criteria:

- (a) *the consistency of the approval, including its conditions, with the current laws and policies applying to the development, including, for example, the amount and type of infrastructure contributions, or charges payable under chapter 8, parts 2 and 3; and*
- (b) *the community's current awareness of the development approval; and*
- (c) *whether, if the request were refused—*
 - (i) *further rights to make a submission may be available for a further development application; and*
 - (ii) *the likely extent to which those rights may be exercised; and*
- (d) *the views of any concurrence agency for the approval given under section 385.*

(a) Consistency with the approval with current requirements

Under the current Planning Scheme, the land South of Beor Street is included within the Rural Planning Area and the land north of Beor Street is included in the Industry Planning Area of the Port Douglas and Environs Locality. All of these lands are included in the Special Management Area, Service Industry Precinct – Craiglie.

The Planning Scheme as adopted in 2006 included Acceptable Solutions and Performance Criteria for this land, being that development of the industrial land meet specific future demand scenarios. At that time it was not envisaged that there would be need for further industrial land during the life of the 2006 Scheme. These clauses are contrary to the Development Approval of the then Council supporting both the reconfiguration and industrial use of all land west of Owen Street and south of Beor Street in August 2007. That is, by one year into the Scheme the need for additional industrial land had been sufficiently established. This situation may have arisen from the lengthy period during which Council considered the then new Scheme and the increase in local development activity.

As the original approval was post the Scheme gazettal it is considered that the development remains consistent with the current scheme.

Concern with the particular construction detail, resulting from the survey plans approved to date, can be suitably rectified through amended conditions and the construction of additional minor works.

(b) The community's current awareness of the development approval

The Applicant has maintained a very large sign on the land promoting the development the land is mown, has road, kerb and channel and appears and part of the industrial estate. The driveway to lots 37 and 38 has been constructed.

(c) Rights for Further Submissions

Should the application be refused a new application would be required and this would be impact assessable development. Given the uptake of land in Stage 1 it is likely that a new application would be also be supported. It is unlikely that submissions would be received given the extent of development to the site frontage along Beor Street (road with a sealed pavement kerb and channel and the neighbouring rural land to the south and west. Land further to the west is physically separated by a drain.

(d) Concurrence Agency Views

The State has provided advice that there is no objection to the change or extension. Details of the concurrence agency advice is included in Appendix 2.

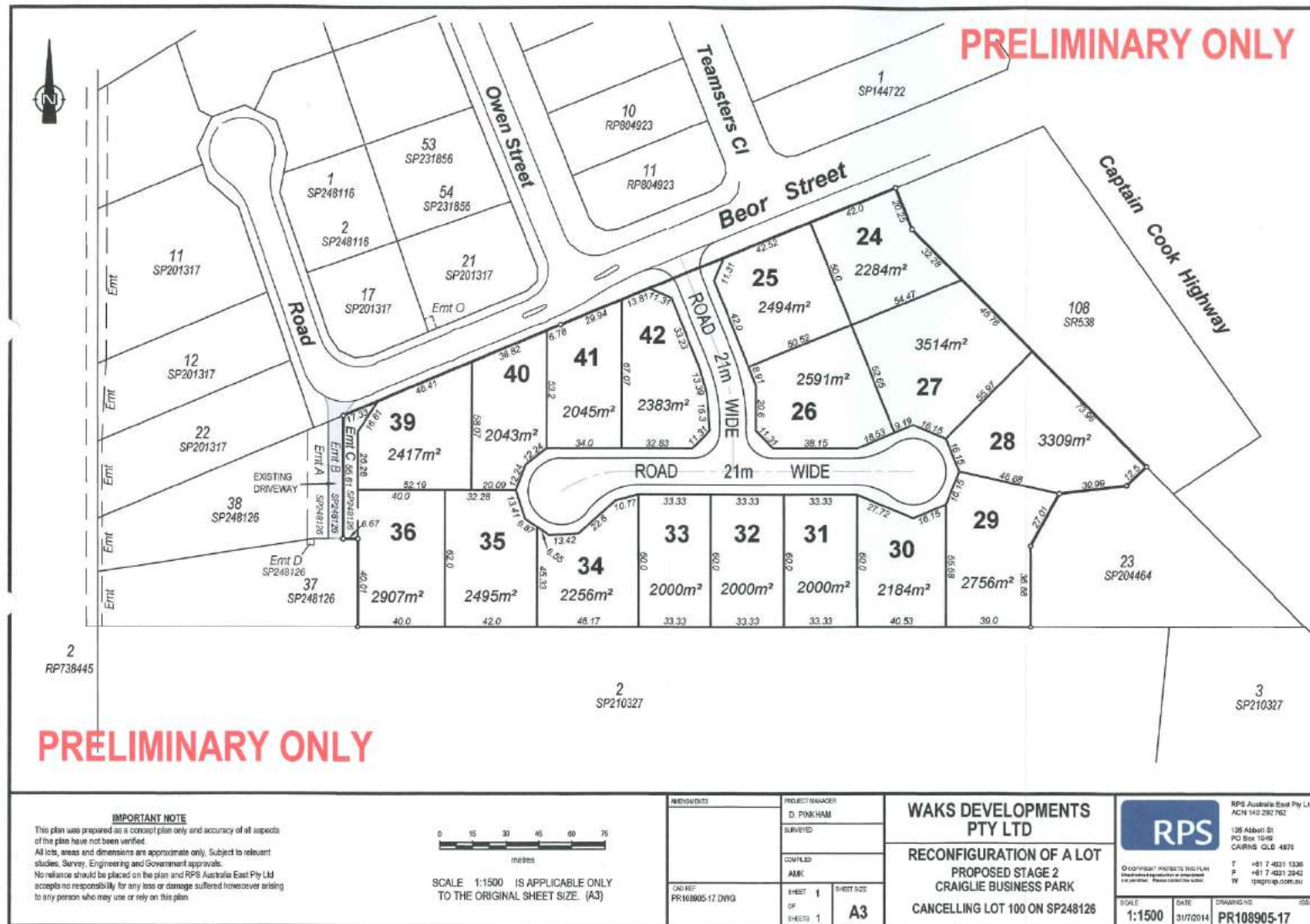
ADOPTED INFRASTRUCTURE CHARGES

The original approval included conditions requiring the payment of developer contributions for water and sewer. Contributions were paid by the Applicant to the former Douglas Shire Council on 26 July 2007 thereby suitably meeting this requirement. No further infrastructure charges are applicable.

COUNCIL'S ROLE

Under the *Sustainable Planning Act 2009* and the *Sustainable Planning Regulation 2009*, Council is the assessment manager for the application.

APPENDIX 1: APPROVED AMENDED PLAN(S) & DOCUMENT(S)



APPENDIX 2: CONCURRENCE AGENCY CONDITIONS & REQUIREMENTS



Department of
State Development,
Infrastructure and Planning

Our reference: SPD-0814-010287

Your reference:

Date: 21 August 2014

Ms Linda Cardew
Chief Executive Officer
Douglas Shire Council
PO Box 723
MOSSMAN QLD 4873

Dear Ms Cardew

Notice about request for permissible change—relevant entity

43 Beor - Craiglie, Douglas Shire - QLD; 45 Beor - Craiglie, Douglas Shire - QLD;
(Given under section 373(1) of the *Sustainable Planning Act 2009*)

The Department of State Development, Infrastructure and Planning received a copy of the request for a permissible change under section 372(1) of the *Sustainable Planning Act 2009* on 11 August 2014 advising the department, as a relevant entity, of the request for a permissible change made to the responsible entity under section 369 of the *Sustainable Planning Act 2009*.

The department understands that the proposed changes are as follows:

- That Condition 20 of the Negotiated Decision Notice, issued 13 August 2007 change the referencing with respect to Plan No. 8294-10 dated 21/09/06 to Plan No. PR108905-17 dated 31/07/2014.
- In summary effectively: (a) altering access to lots 37 and 38; (b) modifying internal access for the balance of lots within Stage 2 to comply with FNQROC Development Manual

The department has considered the proposed changes to the development approval and advises that it has no objection to the change being made.

If you require any further information, please contact Angela Foster, Principal Planning Officer, on 4037 3233, or via email angela.foster@dsdip.qld.gov.au who will be able to assist.

Yours sincerely



Robin Clark
Manager (Planning)

cc Waks Developments Pty Ltd
 K/- Kristy Gilvear, Gilvear, Planning
 kristy@gilvearplanning.com.au



Department of
**State Development,
Infrastructure and Planning**

Our reference : SPD-0814-010291
Your reference :

Date: 21 August 2014

Ms Linda Cardew
Chief Executive Officer
Douglas Shire Council
PO Box 723
MOSSMAN QLD 4873

Dear Ms Cardew

Notice about request to extend relevant period

43 Beor - Craiglie, Douglas Shire - QLD; 45 Beor - Craiglie, Douglas Shire - QLD;
(Given under section 385 of the *Sustainable Planning Act 2009*)

The Department of State Development, Infrastructure and Planning received written notice under section 383(1)(a) of the *Sustainable Planning Act 2009* on 11 August 2014 advising the department, as a concurrence agency, of the request to extend the relevant period. The proposed extension to the relevant period is for a further four (4) years until 25 August 2018.

The department has considered the request to extend the relevant period and advises that it has no objection to the extension being approved. Please also note the requirements of 'condition 2' of the concurrence agency response dated 2 November 2006 requiring the development to undertake road works to upgrade the Captain Cook Highway and Boer Street intersection.

If you require any further information, please contact Angela Foster, Principal Planning Officer on 40373233 or via email angela.foster@dsdip.qld.gov.au who will be able to assist.

SPD-0814-010291

Yours sincerely

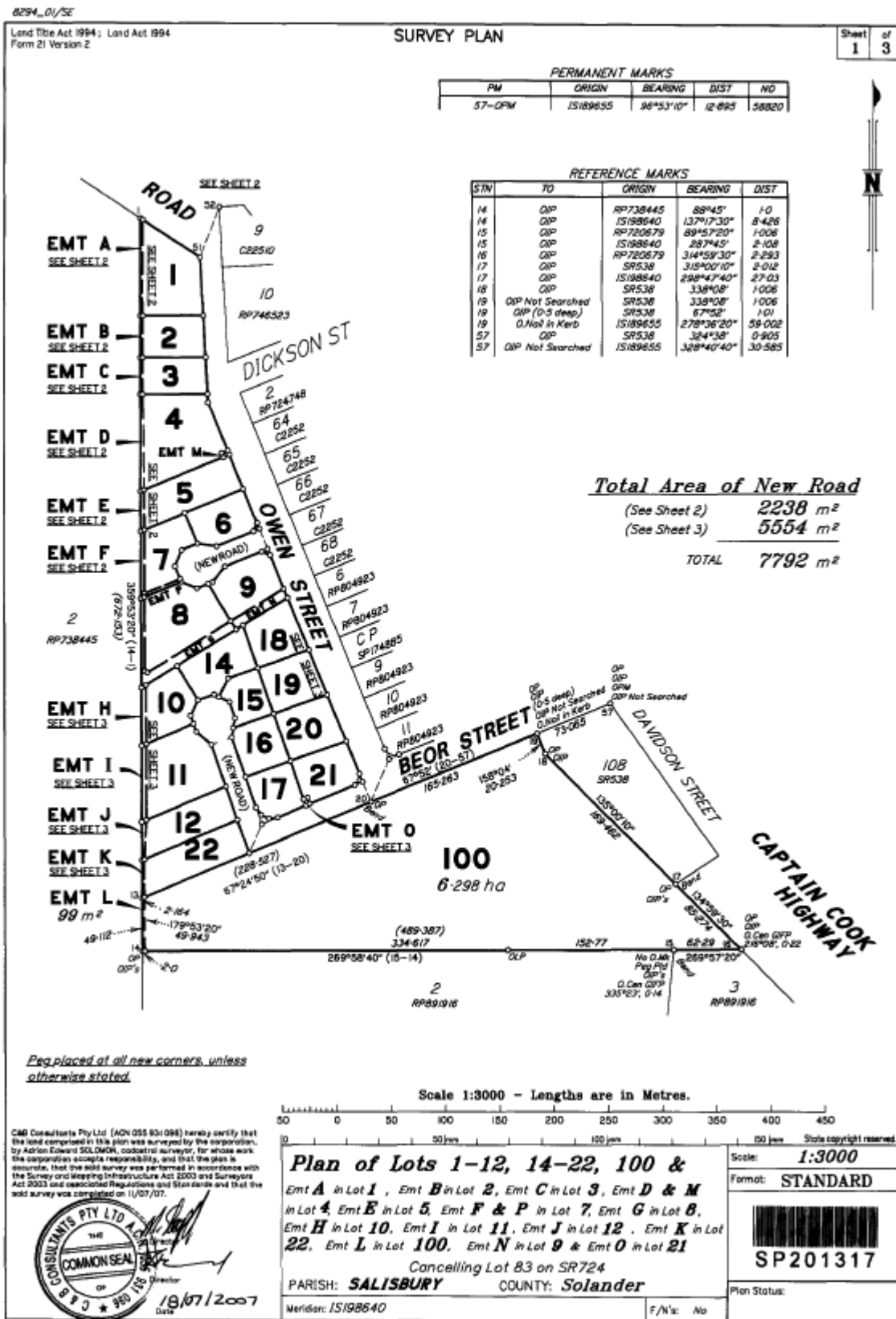
A handwritten signature in blue ink that reads "Robin Clark".

Robin Clark
Manager (Planning)

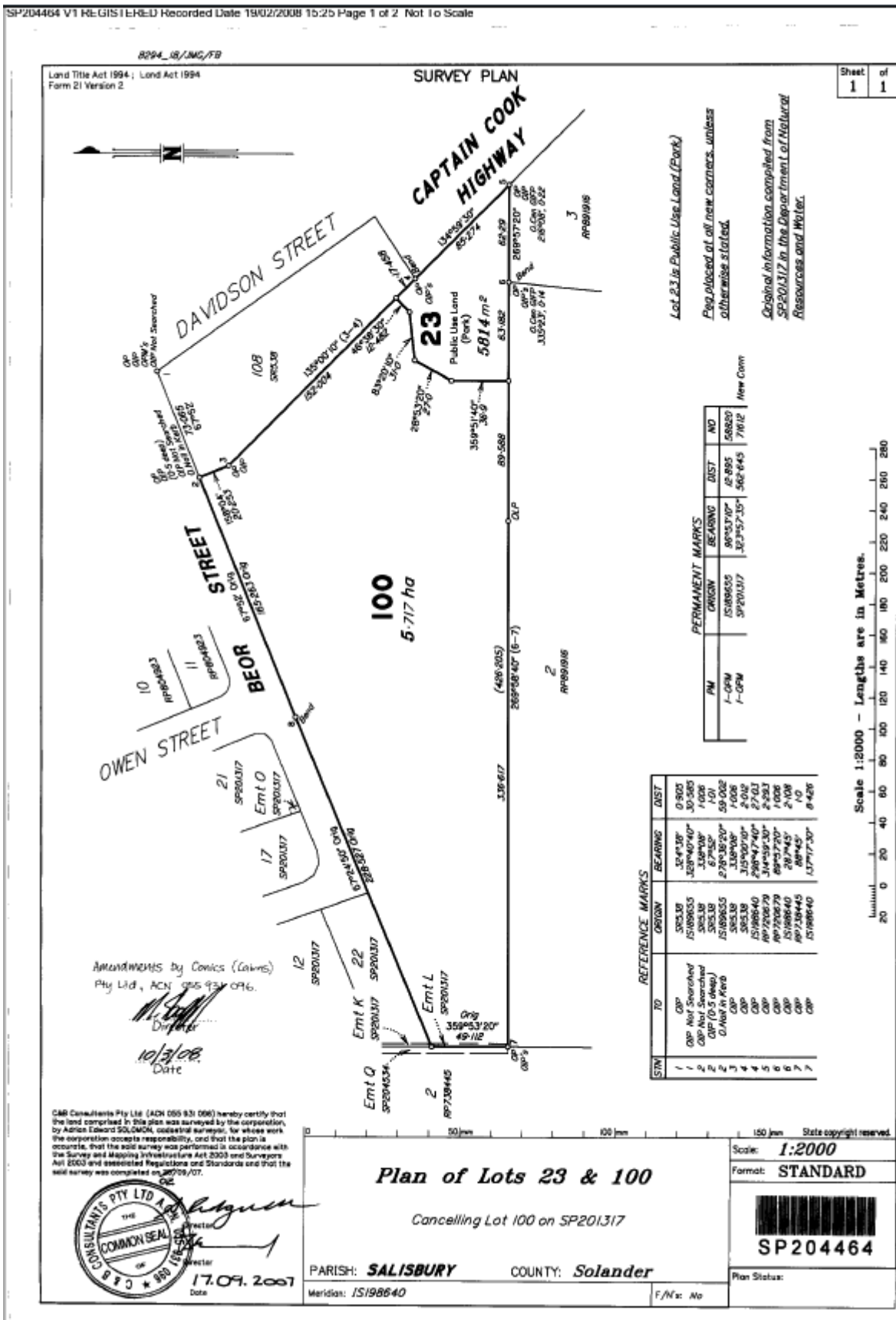
cc Waks Developments Pty Ltd
 K/- Kristy Gilvear, Gilvear, Planning
 kristy@gilvearplanning.com.au

APPENDIX 3: SUPPORTING INFORMATION TO PLANNING REPORT ORIGINAL SUBDIVISION PLAN

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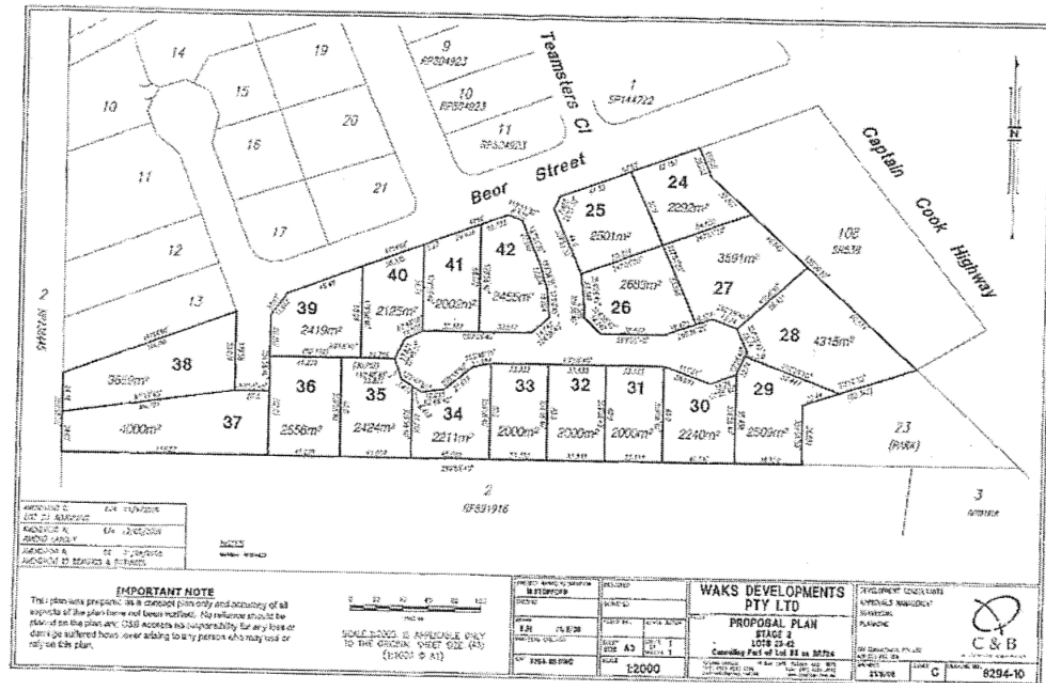
Park Land





Approved Plan for CA 61

Plan of Reconfiguration



DEED OF GIFT

PARTIES

WAKS DEVELOPMENTS PTY LTD ACN 116 396 573

(Donor)

AND

**HOMELESS ANIMAL SOCIETY AND BOARDING
KENNELS INC IA 20194**

(Paws & Claws)

DEED OF GIFT

Marino Moller
Lawyers
PO Box 57
Port Douglas Qld 4877
Ph: 07 4081 6700
Fax: 07 40899 5421
Email: arthur.timms@marinomoller.com.au
Ref: AVT.130667

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This Deed of Gift is made this 18TH day of MARCH 2015.

BETWEEN: WAKS DEVELOPMENTS PTY LTD ACN 116 396 573 ("the Donor")

AND: HOMELESS ANIMAL SOCIETY AND BOARDING KENNELS INC IA 20194 trading as Paws & Claws Kennels Port Douglas ("Paws & Claws")

BACKGROUND

- A. The Donor has partly developed and is continuing to develop a service industry subdivision known as Craiglie Business Park.
- B. The Donor proposed to donate a lot to be developed in Craiglie Business Park to Paws & Claws.
- C. Paws & Claws is seeking to develop an animal refuge providing a caring environment for neglected and homeless dogs and cats as well as offering a boarding service for dogs and cats.
- D. Paws & Claws has located a property that Paws & Claws desires to acquire for these purposes.
- E. The Donor and Paws & Claws have agreed that the Donor will make a cash gift to Paws & Claws in lieu of a gift of land in Craiglie Business Park.

THE GIFT

1. Definitions and Interpretation

1.1 Definitions

In this Deed unless the context otherwise requires:-

"Craiglie Business Park" and "Park" means the lots created or to be created by subdivisions (reconfigurations) of original Lot 83 on Crown Plan SR724 Parish Salisbury with new lots to proposed to be created from Lots 37, 38 and 100 on SP 248126.

"Donor" means and includes Waks Developments Pty Ltd ACN 116 396 573, its successors and assigns.

"Gift" means the sum of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00).

"Kennels" means the kennels and other structures intended to be constructed by Paws & Claws on the Land with the consent of the Donor.

"Paws & Claws" means Homeless Animal Society and Boarding Kennels Inc IA 20194 trading as Paws & Claws Kennels Port Douglas and its successors and assigns approved in writing by the Donor.

1.2 Interpretation

(1) Reference to:

- (a) One gender includes the other;
- (b) The singular includes the plural and the plural includes the singular;
- (c) A person includes a body corporate;
- (d) A Party includes the Party's executors, administrators, successors and permitted assigns;
- (e) A statute, regulation or provision of a statute or regulation (Statutory Provision) includes all regulations and amendments to that Statutory Provision and any Statute passed in substitution for that Statute or incorporating any of its provisions to the extent that they are incorporated;
- (f) Money is to Australian dollars, unless otherwise stated;
- (g) All times are Cairns local time, unless otherwise stated; and
- (h) Words and phrases defined in the Douglas Shire Council Town Planning Scheme have the same meaning in this Deed.

(2) "Including" and similar expressions are not words of limitation.

(3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

(4) Headings and any table of contents or index are for convenience only and do not form part of this Deed or affect its interpretation.

(5) A provision of this Deed must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of the Deed or the inclusion of the provision of the Deed.

(6) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

2. THE GIFT

2.1 Subject to the provisions of this Deed the Donor agrees to gift the sum of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) to Paws & Claws.

2.2 Paws & Claws acknowledges and agrees that Gift shall only be used for the purpose of purchase of land on which it intends to construct kennels, providing an animal refuge for neglected and homeless dogs and cats and providing a boarding service for dogs and cats. Paws & Claws must not use the Gift for any other purpose without the prior written consent of the Donor.

2.3 Paws & Claws acknowledges that the Gift shall be in lieu of the previous proposed gift of land in Craiglie Business Park and Paws & Claws agrees that all previous proposals

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and arrangements for the Donor to gift land in Craiglie Business Park to Paws & Claws are superseded by the proposed Gift and of no longer further force and effect.

2.4 The Gift in lieu of the donation of land in Craiglie Business Park is subject to and conditional upon the approval of the Douglas Shire Council in all respects on terms and conditions to the absolute satisfaction of the Donor and Paws & Claws

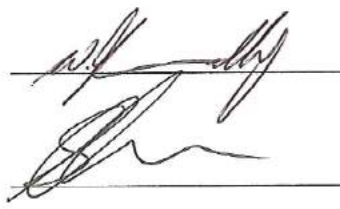
2.5 The Donor shall make the Gift within fourteen (14) days of Council Approval.

3. **SEVERABILITY**

If any of the provisions of this Deed shall be adjudged invalid, unlawful or unenforceable for any reason by a Court of competent jurisdiction, such invalidity or unenforceability or illegality (unless deletion of such provision or provisions which substantially alter the intention of the parties hereto, expressed or implied) will not affect the operation, construction or interpretation of any other provision of this Deed with the intent that the invalid or unenforceable or illegal provisions will be treated for all purposes as severed from this Deed.

Executed as Deed.

Signed for and on behalf of Waks
Developments Pty Ltd ACN 116 396
573 in accordance with its Constitution
and Section 127(1) of the Corporations
Act 2001




Witness

The Common Seal of Homeless Animal
Society and Boarding Kennels Inc
IA20194 was hereunto affixed this 13th
day of MARCH 2015 by the authority
of the Management Committee in the
presence of MICHAEL KERR
a Member of the Committee and
SUSAN RAE
the Secretary who certify they are the
proper officers to affix the seal and
in the further presence of:




Witness

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