

12 July 2021

Enquiries: Jenny Elphinstone
Our Ref: OP 2018_2505/2 (Doc ID 1022157)
Your Ref: 35345-001-01

Administration Office
64 - 66 Front St Mossman
P 07 4099 9444
F 07 4098 2902

Joseph & Salvatore Marano
c/- Brazier Motti
PO Box 1185
Cairns QLD 4870

Email Michael.Tessaro@braziermotti.com.au

Attention Mr Michael Tessaro

Dear Sir

**Application for Request for Extension to the Currency Period
Operational Work (Engineering) excluding Landscape and Lighting Works associated
with the ROL at 142 Tati Road Miallo
On Land Described as Lot 73 on SP240928**

Please find attached the Decision Notice for the above-mentioned development application.

Please quote Council's application number: OP 2018_2505/2 in all subsequent correspondence relating to this development application.

Should you require any clarification regarding this, please contact Jenny Elphinstone on telephone 07 4099 9444.

Yours faithfully



For
Paul Hoyer
Manager Environment & Planning

encl.

- Decision Notice
 - Approved Drawing(s) and/or Document(s)
 - Reasons for Decision
- Advice Appeals (Decision Notice)



Decision Notice

Approval

Given under sections 86 and 87 of the Planning Act 2016

Applicant Details

Name: Joseph & Salvatore Marano

Postal Address: C/- Brazier Motti
PO Box 1185
Cairns QLD 4870

Email: Michael.Tessaro@braziermotti.com.au

Property Details

Street Address: 142 Tati Road Miallo

Real Property Description: Lot 73 on SP: 240928

Local Government Area: Douglas Shire Council

Details of Proposed Development

Application for a six (6) year extension to the period of currency for the Development Permit for Operational Works (Engineering) excluding Landscape and Lighting Works associated with the Reconfiguring of a Lot.

Decision

Date of Decision: 12 July 2021

Decision Details: Approved. The currency period of the Development Approval for Operational Works (Engineering) excluding Landscape and Lighting Works associated with the Reconfiguring of a Lot is extended for a further six (6) years up to and including 21 May 2028.

Existing Approval

A copy of the existing approval is attached.

Further Development Permits

None applicable.

Rights of Appeal

The rights to appeal to a Tribunal or the Planning and Environment Court against decisions about a development application are set out in Chapter 6, Part 1 of the *Planning Act 2016*.

A copy of the relevant appeal provisions is attached.

Existing Approval



PO Box 723 Mossman Qld 4873
www.douglas.qld.gov.au
enquiries@douglas.qld.gov.au
ABN 71 241 237 800

Administration Office
64 - 66 Front St Mossman
P 07 4099 9444
F 07 4098 2902

9 March 2020

Enquiries: Neil Beck
Our Ref: OP 2018_2505/2 (944224)
Your Ref: 1377 L02

Jim Papas Civil Engineering Designer Pty Ltd
PO Box 2347
MAREEBA QLD 4880

Email: admin@jpced.com.au

Dear Sir

**Extension of Currency Period – Operational Works Approval OP2505/2018
142R Tati Road Miallo**

In accordance with section 87 of the *Planning Act* 2016, please be advised that Council has extended the currency period of the approval up to 21 November 2021 as requested.

Should you wish to discuss this matter further, please contact Neil Beck on telephone 07 4099 9444.

A handwritten signature in black ink, appearing to read "Paul Hoyer".

For
Paul Hoyer
Manager Environment & Planning

YOUR REF:
OUR REF: OP2505/2018 (847166)

Administration Office
64 - 66 Front St Mossman
P 07 4099 9444
F 07 4098 2902

19 March 2018

Jim Papas Civil Engineering Designer
PO Box 2347
MAREEBA QLD 4880

Dear Sir

**DECISION NOTICE FOR OPERATIONAL WORKS -
142R TATI ROAD MIALLO**

Please find attached the relevant Decision Notice for the above Operational Works.

In addition to the Decision Notice, Council provides the following 'Advice Statement' which relates to issues that are relevant to the proposed works:

1. The Consulting Engineer is to present all contractors with a copy of this Decision Notice and the Council approved plans, prior to the commencement of works.

Should you require further information or assistance, please contact Neil Beck of Development Assessment & Coordination on telephone 07 4099 9451.

Yours faithfully


Paul Hoyer
Manager Sustainable Communities

Att

Copy: Copy: Co-ordinator Water & Waste – Peter White
Manager Infrastructure – Michael Kriedemann

44.2018.2505
1/8

YOUR REF:
OUR REF: OP2505/2018 (847166)

Administration Office
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19 March 2018

**DECISION NOTICE FOR OPERATIONAL WORKS N/A
142R TATI ROAD MIALLO**

PROPOSAL:
Operational Works

TYPE OF DEVELOPMENT:
Operational Work

REAL PROPERTY DESCRIPTION:
Lot 73 on SP240928

REFERRAL AGENCY CONDITIONS:
None applicable

FURTHER DEVELOPMENT PERMITS OR APPROVALS REQUIRED:
None applicable

DECISION DATE:
19 March 2018

DECISION:
Approved subject to conditions

TYPE OF APPROVAL:
Development Permit

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ASSESSMENT MANAGER CONDITIONS:

1. The proposed works are permitted subject to any alterations:
 - a. found necessary by Chief Executive Officer at the time of examination of Engineering drawings or during construction of the works because of particular engineering requirements and.
 - b. to ensure the works comply in all respects with the requirements of the *FNQROC Development Manual* and good engineering practice.

All works must be carried out in accordance with the approved plans, conditions and specifications, to the requirements and satisfaction of the Chief Executive Officer.

Drainage Works

2. Amend the plans to include a concrete invert in the drainage swale in order to deliver stormwater to Tati Road. The gradient of the invert of the swale drain does not achieve the minimum grade of 0.5% under the *FNQROC Development Manual*.

Soil and Water Management

3. All works must be in accordance with Section CP1.13 and D5 of the *FNQROC Development Manual*, and must comply with the following:
 - a. A copy of the contractor's Erosion and Sediment Control (ESC) Plan is to be submitted to Council and endorsed by the Consulting Engineer. Measures nominated by the ESC plan must be implemented prior to commencement of any works. In particular, the ESC Plan must address the Institution of Engineers' *Australia Guidelines for Soil Erosion and Sediment Control and the Environment Protection (Water) Policy* and Clauses CP1.06, CP1.13 and D5.10 of Council's *FNQROC Development Manual*.
 - b. During the construction period, the Consulting Engineer and Council shall randomly audit and inspect ESC measures for compliance with the Engineer endorsed contractor's ESC Plan.
 - c. It is the contractor's responsibility to ensure that the ESC Plan is updated and amended to reflect any changes in the filling methodology. All such amendments shall be approved by the Engineer and presented to Council.
 - d. The contractor shall be held responsible for any rectification works required to clean up dust, pollutants and sediments that may leave the site as a result of construction activities.
 - e. The contractor or their representative shall be responsible for communicating with third parties affected by any dust, pollutants or sediment leaving the site as a result of any construction activity that is associated with the project site.

The endorsed ESC Plan must be submitted to Council prior to the commencement of works.

Hours of Work

4. Work involving the operation of construction plant and equipment of any description, shall only be carried out on site during the following times:

- a. 6:30 am to 6:00 pm, Monday to Saturday;

no work is permitted on Sundays or Public Holidays.

Any variations to the above working hours must be authorised by the Chief Executive Officer, prior to the commencement of such works.

APPROVED PLANS AND SPECIFICATIONS:

Generally in accordance with the following drawings submitted by Jim Papas Civil Engineering Designer Pty Ltd subject to any alterations made by conditions of Development Permit for Operational Work .

Drawing Description	No	Rev
General Arrangement Plan & Notes	1377-C01	A
Soil & Water Management Plan & Notes	1377-C02	A
Outlet Drain – Longitudinal & Cross Section	1377-C03	A

REASON FOR DECISION

1. The proposed works is required in order to provide flood immunity for the lots in accordance with Planning Scheme requirements.
2. The proposed works does not result in the clearing of vegetation or taking place within existing drainage lines.
3. The proposed development is generally consistent with the Planning Scheme and associated codes for undertaking earthworks.

Other

For information relating to the transitional provisions of the *Planning Act 2016* log on to www.dsdp.qld.gov.au . To access the *FNQROC Development Manual*, Local Laws and other applicable Policies log on to www.douglas.qld.gov.au .

RIGHTS OF APPEAL

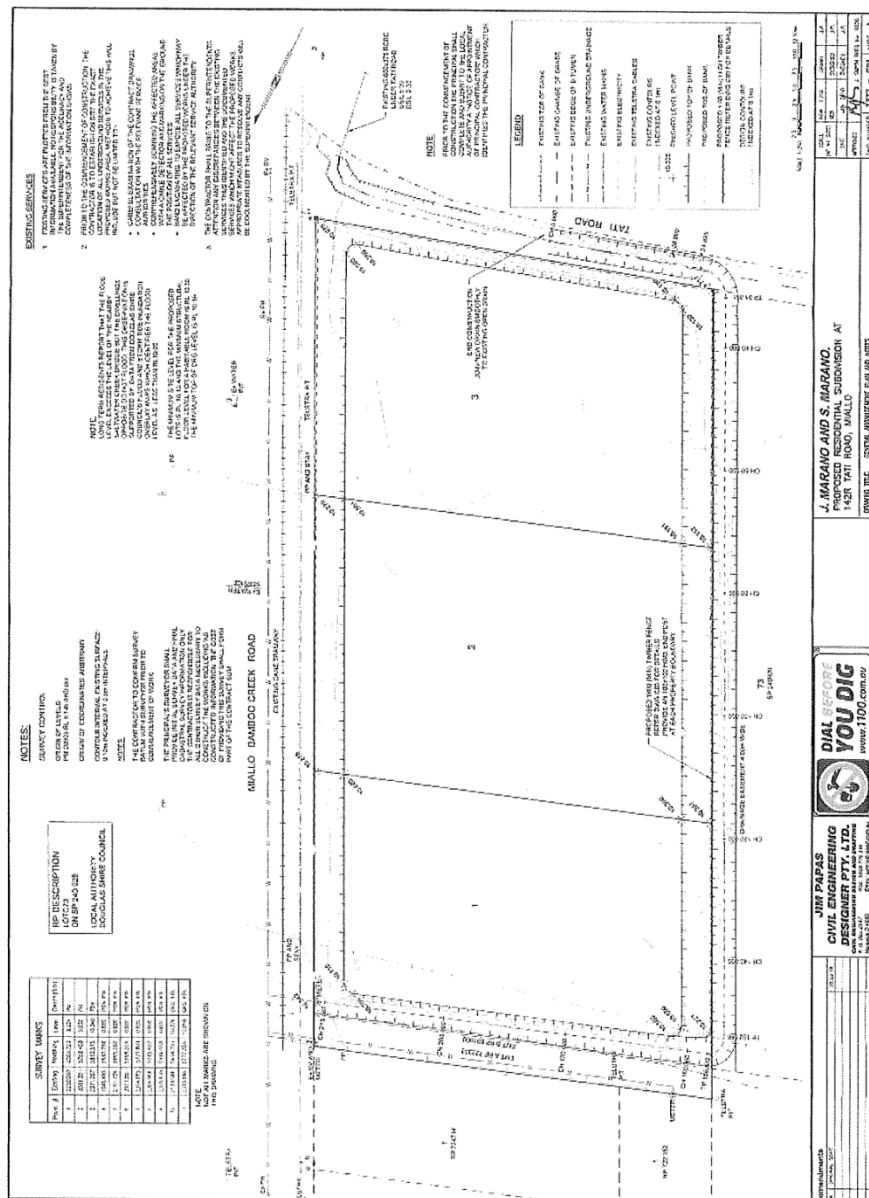
Attached

End of Decision Notice

Att Approved Plan - Appendix A

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Appendix A – Approved Plans



Reasons for Decision

1. The reasons for this decision are:
 - a. Sections 86 and 87 of the *Planning Act 2016*;
 - b. to ensure the development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme Version 1.0; and
 - c. to ensure compliance with the *Planning Act 2016*.
2. Findings on material questions of fact:
 - a. the application for an extension was properly lodged to the Douglas Shire Council 7 July 2021 under sections 86 and 87 of the *Planning Act 2016*;
 - b. the application contained information from the applicant which Council reviewed together with Council's own assessment against the 2017 State Planning Policy and the 2018 Douglas Shire Planning Scheme Version 1.0 in making its assessment manager decision.
3. Evidence or other material on which findings were based:
 - a. the development triggered assessable development under the Assessment Table associated with the Rural Zone Code and the Environmental Management Zone;
 - b. Council undertook an assessment in accordance with the provisions of section 87 of the *Planning Act 2016*; and
 - c. the applicant's reasons have been considered and the following findings are made:
 - i. through the conditions of the approvals the development satisfactorily meets the Planning Scheme benchmarks.

Non-Compliance with Assessment Benchmarks

None applicable.

Extracts from the Planning Act 2016 – Appeal Rights

Planning Act 2016
Chapter 6 Dispute resolution

[s 229]

- (2) The person is taken to have engaged in the representative's conduct, unless the person proves the person could not have prevented the conduct by exercising reasonable diligence.
- (3) In this section—
 - conduct* means an act or omission.
 - representative* means—
 - (a) of a corporation—an executive officer, employee or agent of the corporation; or
 - (b) of an individual—an employee or agent of the individual.
 - state of mind*, of a person, includes the person's—
 - (a) knowledge, intention, opinion, belief or purpose; and
 - (b) reasons for the intention, opinion, belief or purpose.

Chapter 6 Dispute resolution

Part 1 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

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Current as at 1 October 2020

Authorised by the Parliamentary Counsel

- (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.

Part 2 Development tribunal

Division 1 General

233 Appointment of referees

- (1) The Minister, or chief executive, (the *appointer*) may appoint a person to be a referee, by an appointment notice, if the appointer considers the person—
 - (a) has the qualifications or experience prescribed by regulation; and
 - (b) has demonstrated an ability—
 - (i) to negotiate and mediate outcomes between parties to a proceeding; and
 - (ii) to apply the principles of natural justice; and
 - (iii) to analyse complex technical issues; and
 - (iv) to communicate effectively, including, for example, to write informed succinct and well-organised decisions, reports, submissions or other documents.