

12 July 2021

Enquiries: Jenny Elphinstone
Our Ref: ROL 2017_1967/2 (Doc ID 1022139)
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
for Reconfiguring a Lot (1 lot into 4 lots)
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: ROL 2017_1967/2 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 For Appeals (Decision Notice)
- Adopted Infrastructure Charges Notice
- Advice For Making Representations and Appeals (Infrastructure Charges)



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 SP240928

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 Reconfiguring a Lot (1 lot into 4 lots) originally approved on 21 November 2017.

Decision

Date of Decision: 12 July 2021

Decision Details: Approved. The currency period of the Development Approval for Reconfiguring a Lot (1 lot into 4 lots) 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

Development Permit for Operational Work.

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

YOUR REF:

OUR REF: ROL1967/2017 (835222)

28 November 2017

J Marano & S Marano
c/- Veris,
PO Box 7627
CAIRNS QLD 4870

Attention: Michael Tessaro

Dear Sir

**DECISION NOTICE UNDER S 335 SUSTAINABLE PLANNING ACT 2009:
DEVELOPMENT APPLICATION FOR 142R TATI ROAD MIALLO**

With reference to the abovementioned Development Application, which was determined by Council at the Ordinary Meeting held on 21 November 2017, please find attached the relevant Decision Notice.

The Notice includes extracts from the Act with respect to making representations about conditions, negotiated decisions, suspension of the appeal period, and lodging an Appeal.

This notice also includes an Infrastructure Charges Notice issued in accordance with section 648F of the *Sustainable Planning Act 2009*.

Should you have any enquiries in relation to this Decision Notice, please contact Neil Beck of Sustainable Communities on telephone number 07 4099 9451.

Yours faithfully

Paul Hoyer
Manager Sustainable Communities

Att

41.2017.1967

APPLICANT DETAILS

J Marano & S Marano
c/- Veris, PO Box 7627
CAIRNS QLD 4870

ADDRESS

142R Tati Road MIALLO

REAL PROPERTY DESCRIPTION

Lot 73 on SP240928

PROPOSAL

(1 lot into 4 lots)

DECISION

Approved subject to conditions (refer to approval package below).

DECISION DATE

21 November 2017

TYPE

Reconfiguration of a Lot (Development Permit)

REFERRAL AGENCIES

None Applicable

SUBMISSIONS

There were Not Applicable submissions for this application.

FURTHER DEVELOPMENT PERMITS REQUIRED

Development Permit for Operational Work

CODES TO COMPLY WITH FOR SELF-ASSESSABLE DEVELOPMENT

None

DOES THE ASSESSMENT MANAGER CONSIDER THE APPLICATION TO BE IN CONFLICT WITH APPLICABLE CODES, PLANNING SCHEME, STATE PLANNING POLICIES OR PRIORITY INFRASTRUCTURE PLAN (IF YES, INCLUDE STATEMENT OF REASONS)

Not in conflict

APPROVED DRAWING(S) AND/OR DOCUMENT(S)

The term 'approved drawing(s) and/or document(s)' or other similar expression means:

Drawing or Document	Reference	Date
Proposed Lots 1-3 & 5	Drawing No. 32204PP-01 Revision E	16 September 2017

ASSESSMENT MANAGER CONDITIONS:

1. Carry out the approved development generally in accordance with the approved drawing(s) and/or document(s), and in accordance with:
 - a. The specifications, facts and circumstances as set out in the application submitted to Council; and
 - b. The following conditions of approval and the requirements of Council's Planning Scheme and the FNQROC Development Manual.

Except where modified by these conditions of approval

Timing of Effect

2. The conditions of the Development Permit must be effected prior to Council endorsing the Plan of Survey, except where specified otherwise in these conditions of approval.

Drainage

3. Undertake drainage investigations of the site and surrounds to determine the following:-
 - a. The finished surface levels of the lots to achieve immunity from a 100 year ARI event and extent of earthworks required to achieve the required immunity;
 - b. Detail the lawful point of discharge for each allotment along with any necessary drainage easements, the profile of the drainage easement and supporting stormwater calculations;
 - c. Nominate the minimum floor level for the future houses to provide immunity to the 100 year ARI flood event including the appropriate freeboard as required by the Queensland Urban Drainage Manual; and
 - f. Information on the drainage outlet(s) from the proposed development.

The above investigations must be endorsed by an RPEQ and submitted to Council as supporting documentation to an Operational Works application. All works must be undertaken in accordance with approved plans prior to Council endorsing the Plan of Survey.

Fencing

4. A timber paling fence having a minimum height of 1.8 metres is to be installed along the rear boundary of proposed Lots 1 – 3 inclusive. The height of the fence will need to increase in the south western portion of Lot 3 to maintain a minimum height of 1.8 metres above finished lot levels. Details of the fence are to be provided as part of the Operational Works application.

Stockpiling and Transportation of Fill Material

5. Soil used for filling or spoil from the excavation is not to be stockpiled in locations that can be viewed from adjoining premises or a road frontage for any longer than one (1) month from the commencement of works.

Transportation of fill or spoil to and from the site must not occur within:

- a. peak traffic times; or
 - b. before 7:00 am or after 6:00 pm Monday to Friday; or
 - c. before 7:00 am or after 1:00 pm Saturdays; or
 - d. on Sundays or Public Holidays.
6. Dust emissions or other air pollutants must not extend beyond the boundary of the site and cause a nuisance to surrounding properties.

Storage of Machinery and Plant

7. The storage of any machinery, material and vehicles must not cause a nuisance to surrounding properties, to the satisfaction of the Chief Executive Officer.

Sediment and Erosion Control

8. An erosion and sediment control plan (ESC Plan) must be submitted prior the issue of a Development Permit for Operational Works for any filling proposed on the land. The measures detailed on the ESC Plans must be installed / implemented prior to discharge of water from the site, such that no external stormwater flow from the site adversely affects surrounding or downstream properties (in accordance with the requirements of the *Environmental Protection Act 1994*, and the FNQROC Development Manual).

Existing Services

9. Written confirmation of the location of existing services for the land must be provided. In any instance where existing services are contained within another lot, the following applies, either:
 - a. Relocate the services to comply with this requirement; or
 - b. Arrange registration of necessary easements over services located within another lot prior to, or in conjunction with seeking Council endorsement of the Plan of Survey creating the lot.

41.2017.1967

Electricity Supply

10. Written evidence from Ergon Energy advising if distribution substation/s are required within the development must be provided. If required, details regarding the location of these facilities must be submitted to the Chief Executive Officer accompanied by written confirmation from Ergon Energy. Details regarding electricity supply must be provided prior to Council endorsing the Plan of Survey.

Electricity and Telecommunications

11. Written evidence of negotiations with Ergon Energy and the telecommunication authority must be submitted to Council stating that both electricity supply and telecommunications service will be provided to the development prior to Council endorsing the Plan of Survey.

ADVICE

1. This approval, granted under the provisions of the *Sustainable Planning Act 2009*, shall lapse four (4) years from the day the approval takes effect in accordance with the provisions of the *Sustainable Planning Act 2009*.
2. All building site managers must take all action necessary to ensure building materials and / or machinery on construction sites are secured immediately following the first cyclone watch and that relevant emergency telephone contacts are provided to Council officers, prior to commencement of works.
3. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.

Infrastructure Charges Notice

4. A charge levied for the supply of trunk infrastructure is payable to Council towards the provision of trunk infrastructure in accordance with the Adopted Infrastructure Charges Notice, a copy of which is attached for reference purposes only. The original Adopted Infrastructure Charges Notice will be provided under cover of a separate letter.

The amount in the Adopted Infrastructure Charges Notice has been calculated according to Council's Adopted Infrastructure Charges Resolution.

Please note that this Decision Notice and the Adopted Infrastructure Charges Notice are stand-alone documents. The Sustainable Planning Act 2009 confers rights to make representations and appeals in relation to a Decision Notice and an Adopted Infrastructure Charges Notice separately.

The amount in the Adopted Infrastructure Charges Notice is subject to index adjustments and may be different at the time of payment. Please contact Development Assessment and Coordination at Council for review of the charge amount prior to payment.

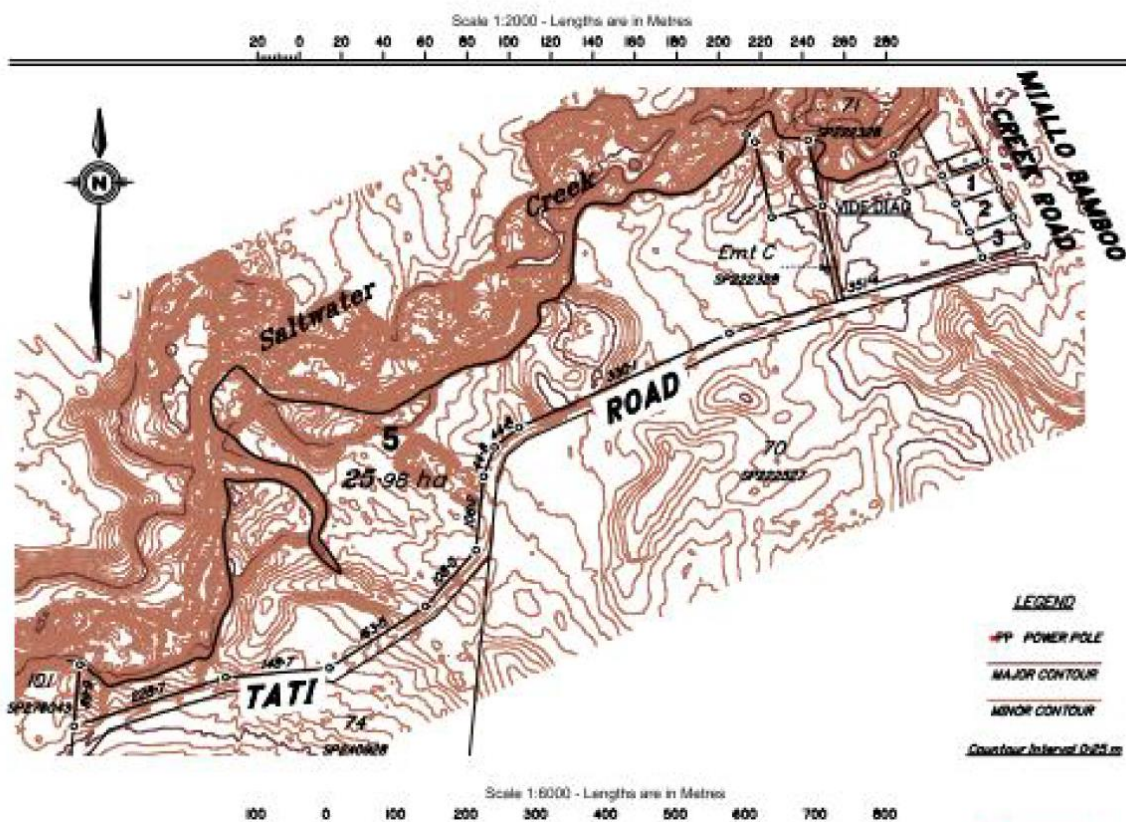
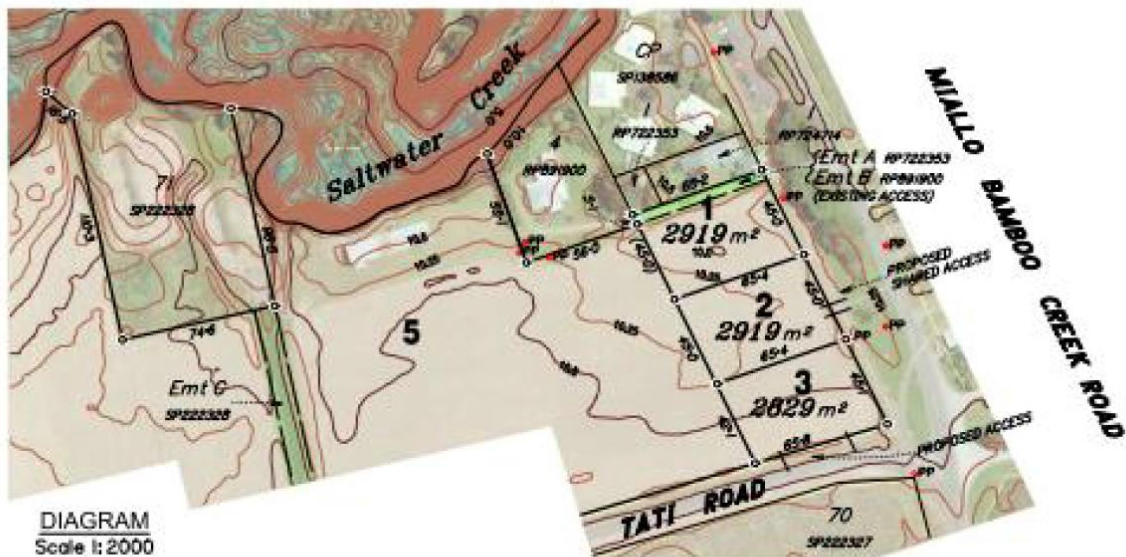
The time when payment is due is contained in the Adopted Infrastructure Charges Notice.

41.2017.1967

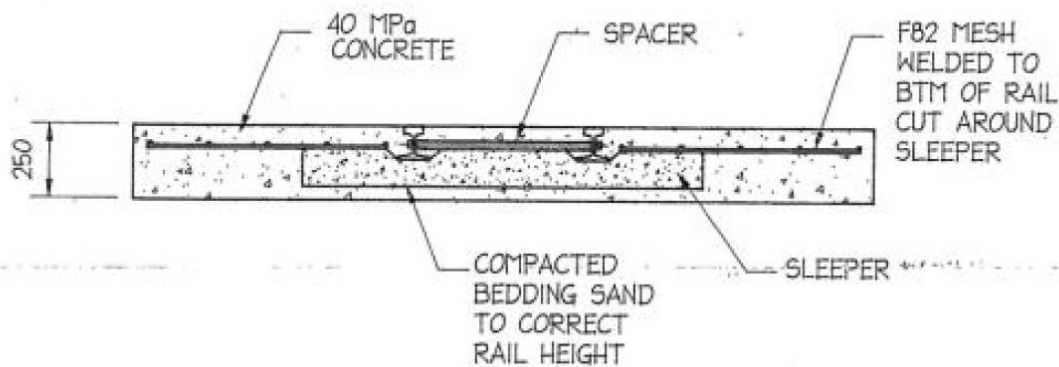
RIGHTS OF APPEAL
Attached

End of Decision Notice

41.2017.1967

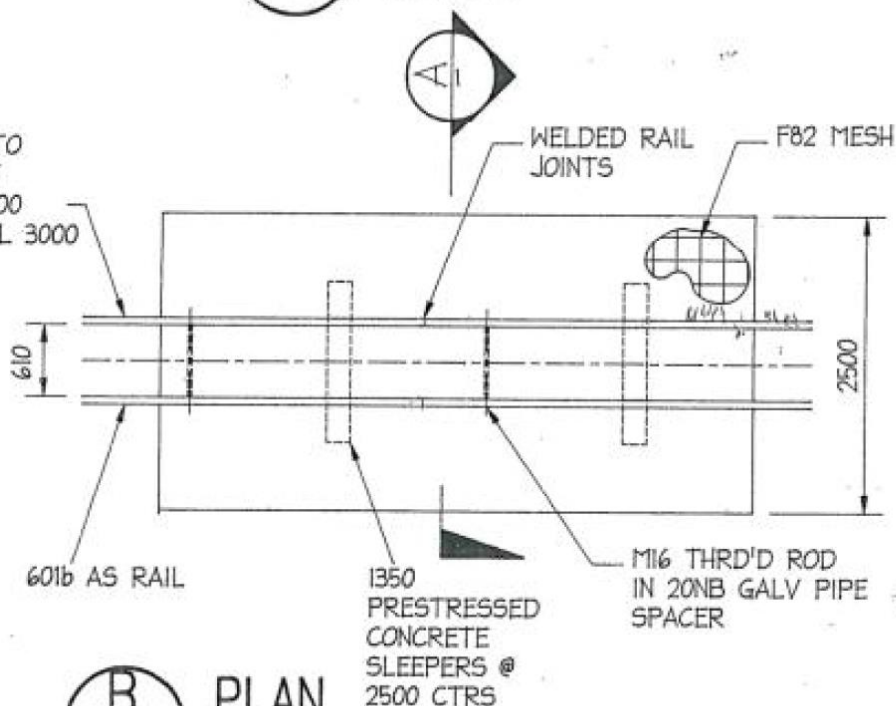


<p>THESE RECORDS AND DRAWINGS ARE UNBIDDABLE AND ARE NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN PERMISSION OF THE ENGINEER.</p> <p>IMPORTANT NOTES: These notes are an integral part of this plan. This plan has been prepared for Salvatore & Joseph Marano for the purposes of a proposed plan. It is not to be used by any other person or for purposes or for any other purpose and is subject to the following limitations: The dimensions, areas and total number of lots shown herein are subject to Local Authority approval, field survey and preparation of final plan of survey.</p> <p>Copyright © Queensland Surveying Pty Ltd a Vero Company 14/04/2011</p>	<p>Referenced - Existing Structures - Existing Services - Existing Topography - Existing Roads - Existing Fences - Existing Easements - Existing Rights of Way - Existing Other</p>	<p>SPONSOR DANIEL DAVIES PT LTD</p>	<p>Locality LOCAL AUTHORITY LOCALITY VERIFICATION METHOD VERIFICATION DATE LEVEL ORDER STATE SURVEYED DESIGNED DRAWN CHECKED PLOT DATE COMPUTER FILE REF</p>	<p>Proposed Reconfiguration of a Lot For Salvatore & Joseph Marano</p> <p>Proposed Lots 1-3 & 5</p> <p>Cancelling Lot 73 on SP240828</p>
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A SECTION
SCALE 1:20

MIN DIST TO RAIL JOINT
WELDED 1000
MECHANICAL 3000



B PLAN
SCALE 1:50

ORIGINAL



Raw Sugar Manufacturing
Apiculture

Telephone (075) 98 1480
Facsimile (075) 981828

PO Box 97
Mossman 4873
Queensland
Australia

CANE RAILWAY
STANDARD ROAD
CROSSING

A	REDRAWN ISSUED FOR CONSTRUCTION	DF	2/4/97	
Rev	Description	By	Date	App
	TITLE		Scale: 1:20, 1:40	Date
		Drn	HOLLONAY	8/4/96
		Chk		
		App		
		DRG No	19/145	REVA

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

Benchmark Reference	Alternative Measure/Comment
Environmental Management Zone Code PO10 Lot reconfiguration results in no additional lots.	<p>The development is considered to be consistent with the Code purposes. It is significant that this area of the land, that is included in the Environmental Management Zone does not in itself contain any natural significance or physical constraint.</p> <p>It is considered that in light of the economic impact of the Covid-9 pandemic that an extension be granted to enable the development to be undertaken as had been expected and anticipated.</p>

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.

12 July 2021

Enquiries: Jenny Elphinstone
Our Ref: ROL 2017_1967/2 (Doc ID 1022139)
Your Ref: 35345-001-01

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

Email Michael.Tessaro@braziermotti.com.au

Attention Mr Michael Tessaro

Dear Sir

**Adopted Infrastructure Charge Notice
For Development Application Reconfiguring a Lot (1 lot into 4 lots)
At 142 Tati Road Miallo
On Land Described as Lot 73 on SP240928**

Please find attached the Adopted Infrastructure Charges Notice issued in accordance with section 119 of the *Planning Act 2016*.

The amount in the Adopted Infrastructure Charges Notice has been calculated according to Council's Adopted Infrastructure Charges Resolution.

Please also find attached extracts from the Act regarding the following:

- your right to make representations to Council about the Adopted Infrastructure Charges Notice; and
- your Appeal rights with respect to the Adopted Infrastructure Charges Notice.

Please quote Council's application number: ROL 2017_1967 in all subsequent correspondence relating to this matter.

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.

- Adopted Infrastructure Charges Notice
- Rights to Make Representations and Appeals Regarding Infrastructure Charges

Adopted Infrastructure Charges Notice



2018 Douglas Shire Planning Scheme version 1.0 Applications

ADOPTED INFRASTRUCTURE CHARGES NOTICE

S & J Marano		N/A		0	
DEVELOPERS NAME		ESTATE NAME		STAGE	
142 Tati Road		Lot 73 on SP240928		155751	
STREET No. & NAME		LOT & RP No.s		PARCEL No.	
ROL (1 into 4 lots)		ROL 2017_1967/2		4	
DEVELOPMENT TYPE		COUNCIL FILE NO.		VALIDITY PERIOD (year)	
1022120		1		Payment before the signing and dating of the Survey Plan	
DSC Reference Doc . No.		VERSION No.			

Infrastructure Charges as resolved by Council at the Ordinary Meeting held on 23 February 2021 (Came into effect on 1 March 2021)

	Charge per Use	rate	Floor area/No.	Amount	Amount Paid	Receipt Code & GL Code
0						
0						
Proposed Demand						
3 or more bedroom dwelling	4	per 3 or more bedroom dwelling	24,143.38	4	96,573.50	
Total Demand					96,573.50	
Existing Credit						
Charge per m2 of industrial GFA	1 lot	Charge per m2 of industrial GFA Non-sewer area reduction	24,143.38	1	24,143.38	
Total credit					33,800.73	
					57,944.10	Code 895 GL 7470.0135.0825

Required Payment or Credit **TOTAL** **\$38,629.40**

Prepared by	Jenny Elphinstone	7-Jul-21	Amount Paid	
Checked by	Daniel Lamond	12-Jul-21	Date Paid	
Date Payable	ROL - Before the Local Government approves the plan of subdivision		Receipt No.	
Amendments		Date	Cashier	

Note:

The Infrastructure Charges in this Notice are payable in accordance with Sections 119 and 120 of the *Planning Act 2016* as from Council's resolution from the Ordinary Meeting held on 23 February 2021.

Charge rates under the Policy are subject to indexing.
Any Infrastructure Agreement for trunk works must be determined and agreed to prior to issue of Development Permit for Operational Work.

Charges are payable to: Douglas Shire Council. You can make payment at any of Council's Business Offices or by mail with your cheque or money order to Douglas Shire Council, PO Box 723, Mossman QLD 4873. Cheques must be made payable to Douglas Shire Council and marked 'Not Negotiable.' Acceptance of a cheque is subject to collection of the proceeds. Post dated cheques will not be accepted

Any enquiries regarding Infrastructure Charges can be directed to the Development & Environment, Douglas Shire Council on 07 4099 9444 or by email on enquiries@douglas.qld.gov.au

Subdivision 5 Changing charges during relevant appeal period

124 Application of this subdivision

This subdivision applies to the recipient of an infrastructure charges notice given by a local government.

125 Representations about infrastructure charges notice

- (1) During the appeal period for the infrastructure charges notice, the recipient may make representations to the local government about the infrastructure charges notice.
- (2) The local government must consider the representations.
- (3) If the local government—
 - (a) agrees with a representation; and
 - (b) decides to change the infrastructure charges notice;the local government must, within 10 business days after making the decision, give a new infrastructure charges notice (a *negotiated notice*) to the recipient.
- (4) The local government may give only 1 negotiated notice.
- (5) A negotiated notice—
 - (a) must be in the same form as the infrastructure charges notice; and
 - (b) must state the nature of the changes; and
 - (c) replaces the infrastructure charges notice.
- (6) If the local government does not agree with any of the representations, the local government must, within 10 business days after making the decision, give a decision notice about the decision to the recipient.
- (7) The appeal period for the infrastructure charges notice starts again when the local government gives the decision notice to the recipient.

126 Suspending relevant appeal period

- (1) If the recipient needs more time to make representations, the recipient may give a notice suspending the relevant appeal period to the local government.
- (2) The recipient may give only 1 notice.
- (3) If the representations are not made within 20 business days after the notice is given, the balance of the relevant appeal period restarts.
- (4) If representations are made within the 20 business days and the recipient gives the local government a notice withdrawing the notice of suspension, the balance of the relevant appeal period restarts the day after the local government receives the notice of withdrawal.

**Division 3 Development approval conditions
about trunk infrastructure**

**Subdivision 1 Conditions for necessary trunk
infrastructure**

127 Application and operation of subdivision

- (1) This subdivision applies if—
 - (a) trunk infrastructure—
 - (i) has not been provided; or
 - (ii) has been provided but is not adequate; and
 - (b) the trunk infrastructure is or will be located on—
 - (i) premises (the *subject premises*) that are the subject of a development application, whether or not the infrastructure is necessary to service the subject premises; or
 - (ii) other premises, but is necessary to service the subject premises.

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

- (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.