

20 December 2018

Enquiries: Jenny Elphinstone  
Our Ref: ROL 2960//2018 (Doc ID 885490)  
Your Ref:

Administration Office  
64 - 66 Front St Mossman  
P 07 4099 9444  
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Katandra Farming Pty Ltd  
PO Box 89  
MOSSMAN QLD 4873

Attention Mrs Grace Cavallaro

[grace@kentlen.com.au](mailto:grace@kentlen.com.au)

Dear Madam

**DEVELOPMENT APPLICATION FOR CODE ASSESSABLE  
RECONFIGURATION OF A LOT (2 LOTS INTO 2 LOTS BOUNDARY  
REALIGNMENT) AT L12 HERITAGE LANE AND 6325R CAPTAIN COOK  
HIGHWAY, PORT DOUGLAS ON LAND DESCRIBED AS  
LOT 12 ON N157447 AND LOT 4 ON N157389**

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

Please quote Council's application number: ROL 2960/2018 in all subsequent correspondence relating to this development application.

Should you require any clarification regarding this, please contact Jenny Elphinstone on telephone 07 4099 9482.

Yours faithfully

  
**PAUL HOYE**  
Manager Sustainable Communities

encl.

- Decision Notice
- Approved Plans

**DOUGLAS SHIRE COUNCIL  
DECISION NOTICE  
APPROVAL (WITH CONDITIONS)  
(GIVEN UNDER SECTION 63 OF THE PLANNING ACT 2016)**

Council refers to your development application detailed below which was properly made on 17 December 2018. Please be aware that Douglas Shire Council has assessed your application and decided it as follows.

**1. Applicant's details**

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Name: Katandra Farming Pty Ltd  
Postal Address: PO Box 89  
MOSSMAN QLD 4873

**2. Location details**

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Street address: L12 Heritage Lane and 6325R Captain Cook Highway, Port Douglas  
Real property description: Lot 12 on N157447 and Lot 4 on N157389  
Assessment Manager: Douglas Shire Council

**3. Details of the proposed development**

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Development Permit for Reconfiguring of Lot (Boundary realignment, 2 lots into 2 Lots).

**4. Decision**

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Decision details: Approved in full with conditions  
These conditions are set out in Schedule 1.

The reasons for this decision are:

1. Sections 60, 62 and 63 of the *Planning Act 2016*:
  - a. the approved plan(s) and document(s) as per A below;
  - b. the Conditions and advices as per B below;
  - c. to ensure the development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme; and
  - e. to ensure compliance with the *Planning Act 2016*.
2. Findings on material questions of fact:
  - a. the development application was properly lodged to the Douglas Shire Council on 17 December 2018 under section 51 of the *Planning Act 2016* and Part 1 of the Development Assessment Rules; and
  - b. the development application contained information from the applicant which Council reviewed together with Council's own investigation of assessment

against the State Planning Policy and the 2018 Douglas Shire Planning Scheme 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;
- b. Council undertook an assessment in accordance with the provisions of sections 60, 62 and 63 of the *Planning Act 2016*; and
- c. the applicant's reasons have been considered and the following findings are made:
  - i. Subject to conditions the development satisfactorily meets the Planning Scheme requirements.

A. Approved plans and specifications.

Copies of the following plans, specifications and/or drawings are enclosed.

Drawing/report title	Prepared by	Date	Reference no.	Version/ issue
Proposed Reconfiguration of a Lot (Boundary Realignment 2 Lots into 2 Lots)	Google Earth	13 December 2018	As submitted with the application (Council document ID 885073)	N/A

B. Conditions

This approval is subject to the conditions in Schedule 1. cision details: Development Permit approved in full with conditions. These conditions are set out in Schedule 1.

**5. Further development permits**

None required.

**6. Properly made submissions**

Not applicable — No part of the application required public notification.

**7. Referral agencies for the application**

Not applicable

**8. Currency period for the approval**

This approval, granted under the provisions of the *Planning Act 2016*, shall lapse two (2) years from the day the approval takes effect in accordance with the provisions of Section 85 of *Planning Act 2016*.

## **9. Rights of appeal**

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The rights of applicants to make representations and 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*.

Schedule 2 includes extracts from the Development Assessment Rules and the *Planning Act 2016* that sets down these rights.

## **SCHEDULE 1 CONDITIONS AND ADVICES IMPOSED BY THE ASSESSMENT MANAGER**

### **PART 1 – CONDITIONS IMPOSED BY THE ASSESSMENT MANAGER**

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;
  - 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 the issue of a Compliance Certificate for the Plan of Survey, except where specified otherwise in these conditions of approval.

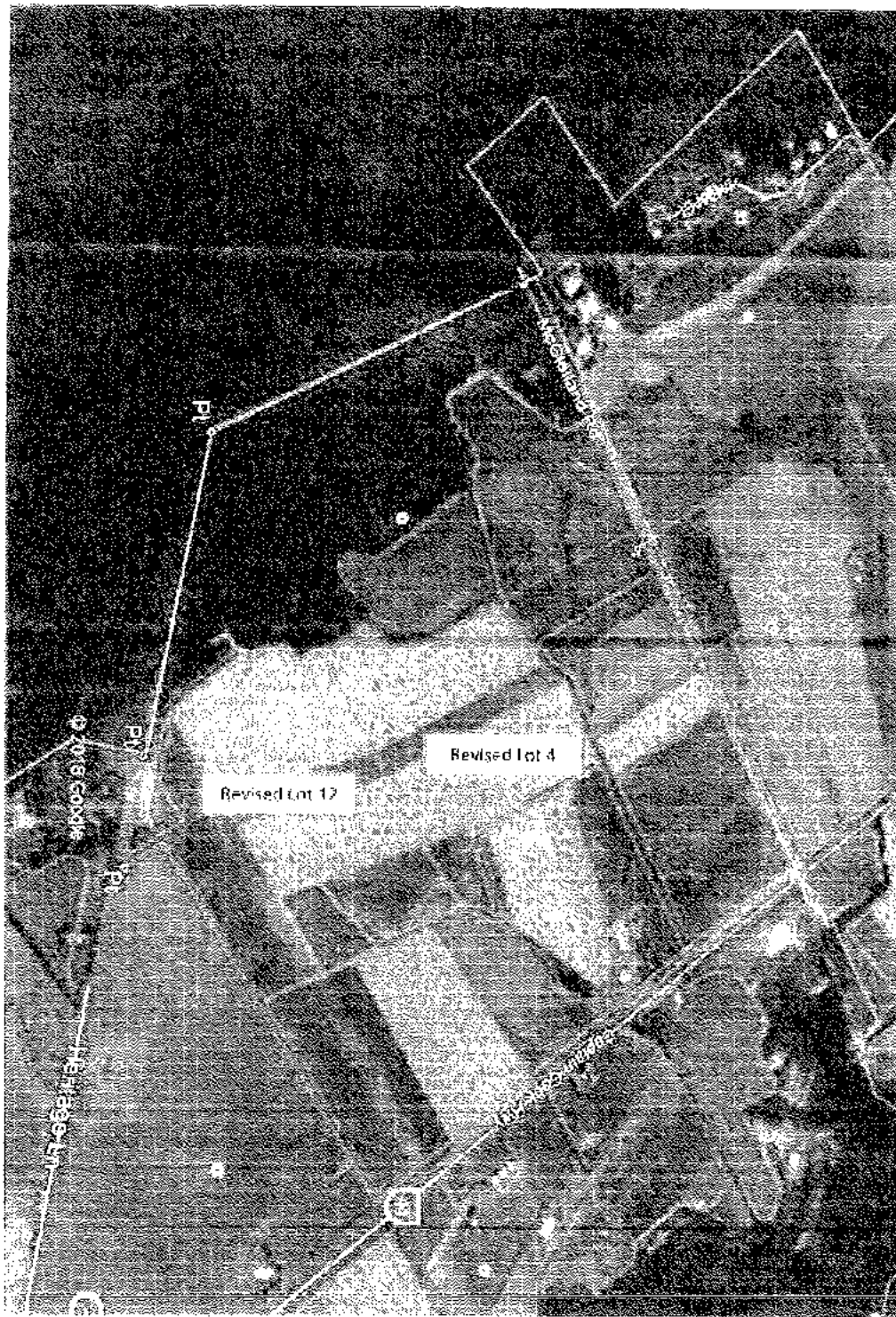
#### **Shade house variation**

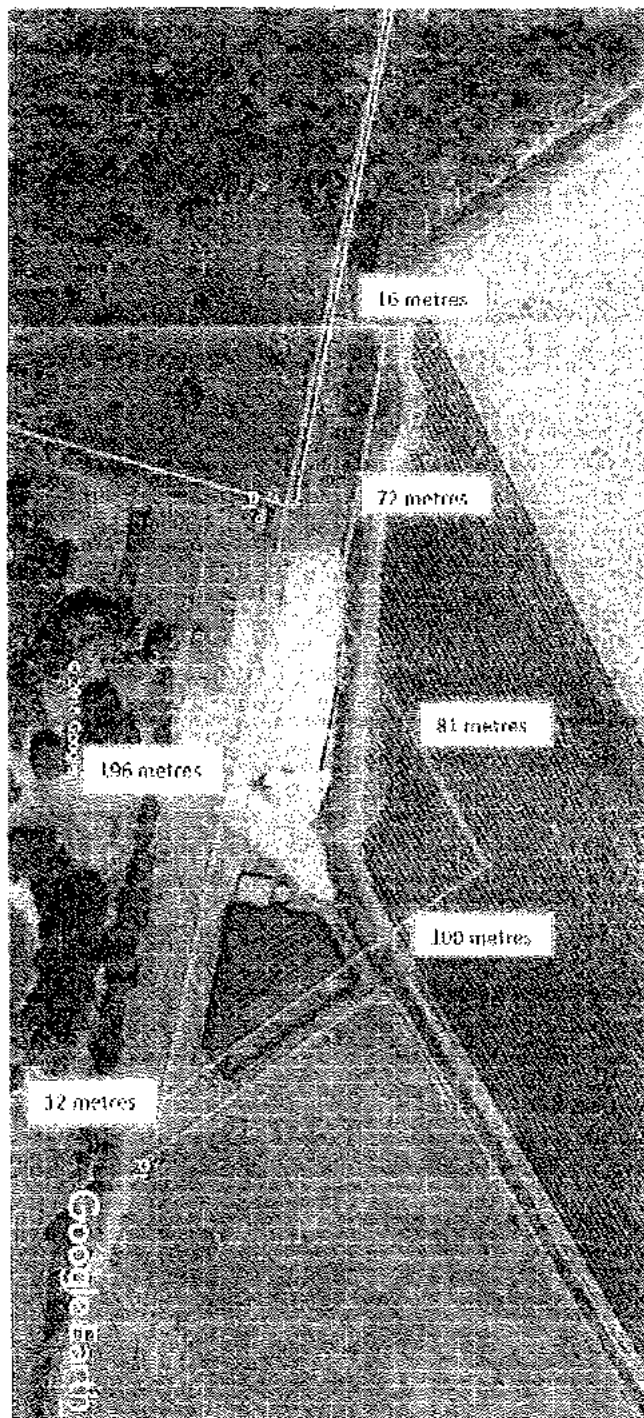
3. All parts of the shade house that are located in the area of the proposed Revised Lot 4, sugar cane production lot, must be removed prior to the lodgement of the survey plan for signing and dating.

### **PART 2 – ADVICE NOTES**

1. This approval, granted under the provisions of the *Planning Act 2016*, shall in accordance with the provisions of Section 339 and Section 341 of the *Planning Act 2009*.
2. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.
3. Council has no concern with the siting of the shade house adjacent to the new common boundary between the Revised Lot 4 and Revised Lot 12.

Attachment 1. Approved Plans





## SCHEDULE 2 – RIGHTS TO MAKE REPRESENTATIONS AND RIGHTS OF APPEAL

### Extract for Development Assessment Rules – Rights to make representations

#### Part 7: Miscellaneous

##### 29. Missed referral agency

- 29.1. This section applies if, at any time before the application is decided, an applicant has not referred the application to a referral agency referred to in section 55 (1) of the Act or to another referral agency for all referral requirements under section 55(2) of the Act in the time provided to refer the application (a *missed referral agency*).<sup>12</sup>
- 29.2. A party to the application may, by notice given to each other party to the application, advise the parties that the applicant has not referred the application in accordance with section 54(1) of the Act.
- 29.3. Despite section 31.1(a) and subject to section 31.4 where notice has been given under section 29.2, the application does not lapse as a result of a missed referral agency.<sup>13</sup>
- 29.4. The applicant must refer the application in accordance with section 5.1, as if 'the day after part 1 has ended' is 'after the day the applicant gave or received notice about a missed referral agency'.
- 29.5. Part 2 and part 3 apply to the missed referral agency once action is taken under section 29.4.
- 29.6. Despite section 11.1, any referral agency referred the development application as a result of this section may make an information request.
- 29.7. If a notice about a missed referral agency is given before part 5 starts, then part 5 cannot start before part 2 has ended in relation to the missed referral agency.<sup>14</sup>
- 29.8. If part 4 applies to the application, the giving of a notice under this section has no effect on any actions already undertaken under part 4.

##### 30. Representations about a referral agency response

- 30.1. An applicant may make representations to a concurrence agency at any time before the application is decided, about changing a matter in the referral agency response.<sup>15</sup>

##### 31. Lapsing of the application

- 31.1. An application lapses if the applicant does not carry out the following actions in the prescribed period, including any further agreed period under the relevant section—
- (a) give the referral agency material to each referral agency that is party to the application and advise the assessment manager when the referral agency material was given under section 5, section 27 or section 29, as relevant to the application;<sup>16</sup> or

<sup>12</sup> As provided for under section 5.

<sup>13</sup> As set out in section 31.4, this section has no effect where a missed referral notice has already been given about the missed referral agency.

<sup>14</sup> Section 23.2 describes the effect on the decision period if part 5 had already commenced before notice about the missed referral had been given.

<sup>15</sup> An applicant may elect, under section 32, to stop the assessment manager's decision period in which to take this action. If a concurrence agency wishes to amend their response in relation to representations made under this section, they must do so in accordance with section 28.

<sup>16</sup> This provision is subject to section 29.3.



- (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 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, table 1, item 1—each principal submitter for the development application; and
  - (d) for an appeal about a change application under schedule 1, table 1, item 2—each principal submitter for the change application; and
  - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); 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 by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.
- (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 Other appeals

- (1) Subject to this chapter, 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.

