

YOUR REF: PR108240/OCK/MD/L76441
OUR REF: ROL 1952/2017 (D#822436)

Administration Office
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P 07 4099 9444
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1 August 2017

Byron and Vicki Kurth
C/ RPS Australia East Pty Ltd
PO BOX 1649
CAIRNS QLD 4870

owen.caddick-king@rpsgroup.com.au

Attention: Mr Owen Caddick-King

Dear Sir

**DECISION NOTICE UNDER SECTIONS 324, 334-336 SUSTAINABLE
PLANNING ACT 2009: DEVELOPMENT APPLICATION FOR
59R CREES ROAD CRAIGLIE**

With reference to the abovementioned Development Application, which was determined by Council at the Ordinary Meeting held on 1 August 2017, please find attached the relevant Decision Notice.

The Notice includes extracts from the Act with respect to lodging an Appeal.

Should you have any enquiries in relation to this Decision Notice, please contact Jenny Elphinstone of Development Assessment and Coordination on telephone number 07 4099 9482.

Yours faithfully


Paul Hoyer
Manager Sustainable Communities

Att

DECISION NOTICE DETAILS

SECTIONS 324, 334-336 SUSTAINABLE PLANNING ACT 2009

APPLICANT DETAILS

Byron and Vicki Kurth
C/ RPS Australia East Pty Ltd
PO BOX 1649
CAIRNS QLD 4870

ADDRESS

59R Crees Road, Craiglie

REAL PROPERTY DESCRIPTION

Lot 144 on SP113652

PROPOSAL

Development Permit for Reconfiguration of a Lot, 1 into 2 Lots

DECISION

The Development Application was refused.

DECISION DATE

1 August 2017

PLANNING GROUNDS FOR REFUSAL

1. The proposed development does not comply with the 2006 Douglas Shire Planning Scheme (as amended) codes: Rural Areas and Rural Settlements Locality Code; the Rural Planning Area Code; and the Reconfiguration of a Lot Code for a Rural Planning Area. The development creates lots which are not of an appropriate size and configuration to retain and sustain the utility and productive capacity of the land for rural purposes. The proposed development will fragment rural land, in particular good quality agricultural land that is identified as Class A and Class B Agricultural Land Classification. The development is incapable of being conditioned to achieve compliance with the required codes;

DECISION NOTICE DETAILS
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2. The development is inconsistent with the proposed 2017 Douglas Shire Planning Scheme in regards to: the Rural Zone Code; the Landscape Values Overlay Code; the Environment Performance Code; and the Reconfiguring A Lot Code. The development is incapable of being conditioned to achieve compliance with the required codes;
3. The fragmentation of agricultural land and the size and configuration of the proposed lots is development that is inconsistent with the Far North Queensland Regional Plan 2009-2031, the State Planning Policy 2016, and the State Planning Policy 2017;
4. There is no identified need for the smaller lots in the rural area in order to achieve the outcomes of: the State Planning Policy 2016, the State Planning Policy 2017, the Far North Queensland Regional Plan 2009-2031, the current Planning Scheme or the proposed Planning Scheme; and
5. There are insufficient grounds to justify approval despite the conflicts with the State Planning Policy 2016, the State Planning Policy 2017, the Far North Queensland Regional Plan 2009-2031, the current Planning Scheme and the proposed Planning Scheme.

TYPE

Reconfiguration of a Lot

REFERRAL AGENCIES

None Applicable

SUBMISSIONS

There were no submissions for this application.

RIGHTS OF APPEAL

Attached

End of Decision Notice

- (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—