

3 November 2017

Our Reference: OP 2247/2017 (D#832788)  
Your Ref: 11 Ti Tree St Trees

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

Mr Steven Bowtell  
23 Dilkera Street  
**BALMORAL QLD 4171**

bowts@bigpond.net.au

Dear Sir

**DEVELOPMENT APPLICATION FOR OPERATIONAL WORK  
FOR VEGETATION DAMAGE (TREE REMOVAL)  
AT 11 TI-TREE STREET, PORT DOUGLAS  
LOT 25 ON RP728667**

Council refers to your development application for operational work for vegetation damage for the removal of two trees lodged with Council on 5 September 2017. Council determined the application at the Ordinary Meeting held on 31 October 2017. Please find attached the Decision Notice.

Council has resolved to issue a Preliminary Approval, not a Development Permit. Conditions of the Preliminary Approval must be achieved prior to lodging a new application for a Development Permit. Please note Advice 4 of the Decision Notice where Council resolved to waive the application fee for the subsequent Development Permit for Operational Work (Vegetation Damage).

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

Yours faithfully

**TRACEY CROUCH**  
**A/Manager Sustainable Communities**

encl. Decision Notice

**DOUGLAS SHIRE COUNCIL  
DECISION NOTICE — APPROVAL (WITH CONDITIONS)  
(GIVEN UNDER SECTION 83 OF *THE PLANNING ACT 2016*)**

In regards to your development application detailed below which was properly made on 5 September 2017 Douglas Shire Council has assessed your application and decided it as follows.

**1. Applicant's details**

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Name: Steven Bowtell  
Postal Address: 23 Dilkera Street  
Balmoral QLD 4171

**2. Location details**

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Street Address: 11 Ti-Tree Street, Port Douglas  
Real Property Description: Lot 25 on RP728667

Local Government Area: Douglas Shire Council

**3. Details of proposed development**

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Development Permit for Operational Work for Vegetation Damage (Tree Removal)

**4. Planning instrument**

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2006 Douglas Shire Planning Scheme (as amended)

**5. Decision**

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Date of decision: 31 October 2017  
Decision details: A Preliminary Approval has been approved subject to conditions and advices. The conditions and advices are included in Schedule 1.

**6. Statement of Reasons**

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The statement is included in Schedule 2 and is provided in accordance with section 83 of the *Planning Act 2016*.

## 7. Approved Drawing(s) and / or Document(s)

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

Drawing or Document	Reference	Date
Site Plan	Generally as submitted with application on 5 September 2017 Council document 826336 and as amended by Condition 3.	5 September 2017

A copy of the plan is included in Schedule 1.

## 8. Further development permits

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Development Permit for Operational work for vegetation Damage (Tree Removal)

## 9. Properly made submissions

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Not applicable.

## 10. Currency period for the approval

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This approval, granted under the provisions of the Planning Act 2009, shall lapse two (2) years from the day the approval takes effect in accordance with the provisions of section 85 of the *Planning Act 2016*.

## 11. Rights to make Representations and Rights of appeal

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The rights of applicants to make representations regarding the decision are set out in Part 8 Division 1 of the *Planning Act 2016*.

The rights of applicants 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*. For particular applications, there may also be a right to make an application for a declaration by a tribunal (see chapter 6, part 2 of the *Planning Act 2016*).

A copy of the relevant right to make representations and the appeal provisions are included in Schedule 3.

## **SCHEDULE 1 – CONDITIONS , ADVICE AND PLANS**

### **ASSESSMENT MANAGER CONDITIONS**

1. Prior to an application for a Development Permit for Operational work (Vegetation Damage) being lodged, a Development Permit for Building Work must be current for a Swimming Pool in the front yard of the land.

#### **Amendment to Design**

2. The application for a Development Permit must be accompanied by amended plans that detail:
  - a. The detail and particular location of the swimming pool and associated pool fencing;
  - b. Landscaping in lieu of the removed significant trees having regard to the requirements for swimming pool fencing and overhead power lines connecting the house. All landscaping must be on the land.
3. 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**

4. The conditions of the Preliminary Approval must be effected prior to the lodgement of an application for a Development Permit for Operational Work (Vegetation Damage), except where specified otherwise in these conditions of approval.
3. No vegetation damage is to occur until the Issue of a Development Permit is issued.

#### **Ant Plants and Other Protected Species**

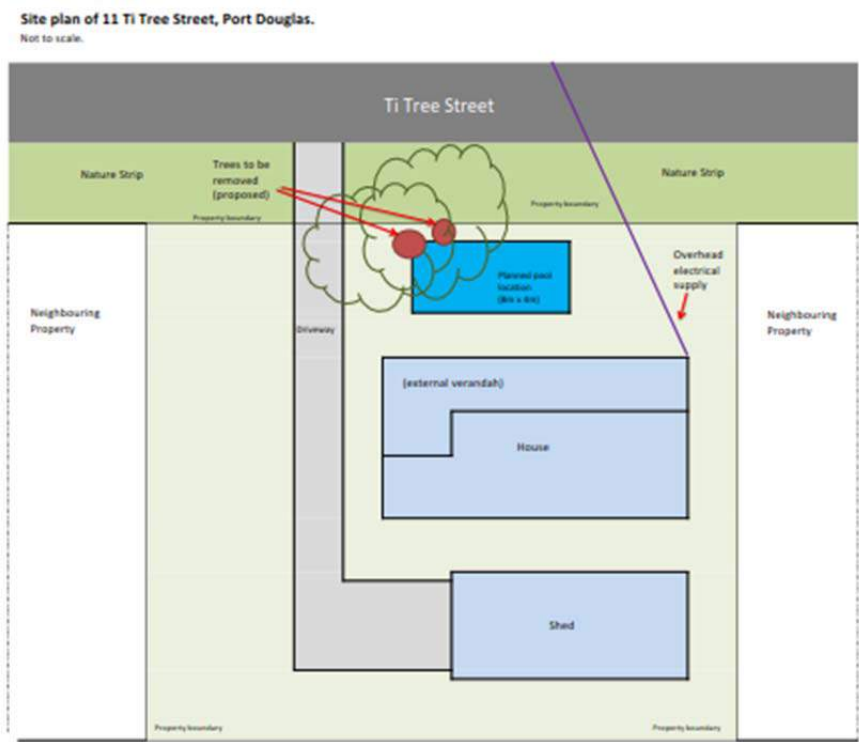
4. A clearing permit (protected plants) must be obtained from the Department of Environment and Heritage Protection prior to the clearing of vegetation and/or tree removal where plant species protected under the provisions of the Nature Conservation Act 1992 occur within the area covered by this development approval.

#### **ADVICE**

1. This Preliminary 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 the *Planning Act 2016*.

2. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.
3. For information relating to the *Planning Act 2016* log on to [www.dilgp.qld.gov.au](http://www.dilgp.qld.gov.au). To access the *FNQROC Development Manual*, Local Laws and other applicable Policies, log on to [www.douglas.qld.gov.au](http://www.douglas.qld.gov.au).
4. Council waives the application fee for the Development Permit for Operational work (Vegetation Damage).

Approved Drawing(s) and / or Document(s) (To be amended as per Condition 3)



## SCHEDULE 2 STATEMENT OF REASONS

### EXECUTIVE SUMMARY

Application has been made to remove two large, mature *mealeuca leucadendra* paperbark trees. The trees are sited along the front property boundary. The applicant intends to construct a swimming pool in the front yard.

The development of the swimming pool is exempt building work under the planning scheme.

The excavation resulting for the swimming pool will cause damage to the tree roots and irrevocably impact on the trees' health and cause instability. Concern is raised with the timing of the application as no development permit for building work for a swimming pool has been made.

The report recommends a preliminary approval be issued requiring the land owner to hold a development permit for building work for the swimming pool and to lodge amended plans to suitably landscape the frontage having regard to the need for compliant swimming pool fencing. The vegetation damage cannot occur until a Development Permit for Operational Work (Vegetation Damage) has been issued. All new landscaping must be planted on the land.

### TOWN PLANNING CONSIDERATIONS

#### Background

The house was constructed on the land in 1991. The house is setback approximately 7m from the front property boundary. Two building approvals have been issued each for the construction of a shed in the rear yard. No planning approvals were required for these constructions. The siting of the house is generally consistent with other houses in the street.

On 11 January 2013 the amendment to the Planning Scheme, the Vegetation Management Code, came into effect. Prior to this date vegetation damage was controlled by a Local Law.

There is no front fence to the property. There is a row of vegetation, including mature trees, along the front boundary. The lot has an area of 877m<sup>2</sup>.

#### Proposal

Application has been made to remove two large *mealeuca leucadendra* trees. The trees are located at the front of the property. No land survey has been provided to equivocally identify the whole of the trees are on the land and not partly over the front property boundary. The majority of the trees appear to be sited on the land.

The applicant has advised of an intention to construct a swimming pool in the front yard of 8m x 4m immediately adjacent to the two trees. To date, no development permit for building work has been applied for or approved for the swimming pool.

The arborist report accompanying the application states that the integrity of the trees will be compromised by the excavation for the swimming pool. The trees are not compliant having regard to the distance to the proposed swimming pool fence.

The two mature trees are identified by the arborist as being in good condition having heights of 25m and canopy spread of 14 and 17 metres. The arborist offered the following comment on each tree, “tree is located within feet of proposed excavations for pool and is too close to pool fencing for compliance. Much of the pool area will be within current drip line of tree. The construction is on the top side of the tree’s lean which mean the excavation will cause damage to the tree root system and its integrity.”

The applicant has provided photographs of cracking in the driveway area and alleges this is a result of the trees.

### State Planning Requirements

There are no state planning requirements affecting the development.

### Douglas Shire Planning Scheme Assessment & Compliance Issues

Assessment of the tree removal is limited to the Vegetation Management Code. The development is code assessable. As the trees are greater than 7.5m in height, the development is assessed against the Performance Criteria P1 and P3. These Criteria are listed as follows and the criteria of concern are in bold.

Performance Criteria

*P1 Vegetation must be protected to ensure that –*

- a) **The character and amenity of the local area is maintained;** and
- b) *Vegetation damage does not result in the fragmentation of habitats; and*
- c) *Vegetation damage is undertaken in a sustainable manner; and*
- d) *The regions biodiversity and ecological values are maintained and protected; and*
- e) *Vegetation of historical, cultural and /or visual significance is retained;*
- f) *Vegetation is retained for erosion prevention and slope stabilisation.*

**P3 Vegetation damage does not result in the removal of a healthy, significant tree from the streetscape.**

In respect to P1, the mature *mealeuca leucadendra* trees provide character and amenity to the local area. There are numerous specimens of these trees in the local area. The character and amenity of the local area is not as a whole lost by the removal of these two trees. Other vegetation could be established. However this would be dependant on the siting of the swimming pool and the type of pool fencing to be provided and conditions of an approval can address the performance criteria.



In respect to P3, the arborist has identified the trees as being healthy specimens. The arborist has advised that the trees are likely to become unstable and the trees' health will be irrevocably impacted on when the tree roots are damaged as a result of excavation for a swimming pool. Under the planning scheme a swimming pool is building work. The Scheme states for this planning area, building work is exempt development and no planning approval is required to construct a swimming pool. The swimming pool excavation will damage the health of the tree. Given this outcome it is difficult to sustain a refusal of the development application.

Concern remains to timing of the need to remove the trees for the proposed swimming pool development. It is recommended that a Preliminary Approval issue requiring the land owner to achieve a current building approval for the proposed swimming pool and to require replacement landscaping.

## **COUNCIL'S ROLE**

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following area outlines where Council has a clear responsibility to act:

**Regulator:** Meeting the responsibilities associated with regulating activities through legislation or local law.

Under the *Planning Act 2016*, the *Planning Regulation 2017* and the *Development Assessment Rules 2017*, Council is the assessment manager for the application.

## SCHEDULE 3 – PLANNING ACT EXTRACT ON MAKING REPRESENTATIONS AND APPEAL RIGHTS

Sustainable Planning Act 2009  
Chapter 6 Integrated development assessment system (IDAS)

[s 360]

- (a) on the day the referral agency's response for the missed referral agency is received by the assessment manager; or
- (b) if the missed referral agency does not give a referral agency's response—on the day the referral agency's assessment period of the missed referral agency ends.

### **Part 8                    Dealing with decision notices and approvals**

#### **Division 1                Changing decision notices and approvals during applicant's appeal period**

##### **360    Application of div 1**

This division applies only during the applicant's appeal period.

##### **361    Applicant may make representations about decision**

- (1) The applicant may make written representations to the assessment manager about—
  - (a) a matter stated in the decision notice, other than a refusal or a matter about which a concurrence agency told the assessment manager under section 287(1) or (5); or
  - (b) the standard conditions applying to a deemed approval.
- (2) However, the applicant can not make representations under subsection (1)(a) about a condition attached to an approval under the direction of the Minister.

### **362 Assessment manager to consider representations**

The assessment manager must consider any representations made to the assessment manager under section 361.

### **363 Decision about representations**

- (1) If the assessment manager agrees with any of the representations about a decision notice or a deemed approval, the assessment manager must give a new decision notice (the *negotiated decision notice*) to—
  - (a) the applicant; and
  - (b) each principal submitter; and
  - (c) each referral agency; and
  - (d) if the assessment manager is not the local government and the development is in a local government area—the local government.
- (2) Before the assessment manager agrees to a change under this section, the assessment manager must consider the matters the assessment manager was required to consider in assessing the application, to the extent the matters are relevant.
- (3) Only 1 negotiated decision notice may be given.
- (4) The negotiated decision notice—
  - (a) must be given within 5 business days after the day the assessment manager agrees with the representations; and
  - (b) must comply with section 335; and
  - (c) must state the nature of the changes; and
  - (d) replaces—
    - (i) the decision notice previously given; or
    - (ii) if a decision notice was not previously given and the negotiated decision notice relates to a deemed approval—the standard conditions applying to the deemed approval.

- (5) If the assessment manager does not agree with any of the representations, the assessment manager must, within 5 business days after the day the assessment manager decides not to agree with any of the representations, give written notice to the applicant stating the decision about the representations.

**364 Giving new notice about charges for infrastructure**

- (1) This section applies if the development approved by the negotiated decision notice is different from the development approved in the decision notice or deemed approval in a way that affects the amount of a levied charge.
- (2) The local government may give the applicant a new infrastructure charges notice to replace the original notice.

**366 Applicant may suspend applicant's appeal period**

- (1) If the applicant needs more time to make the representations, the applicant may, by written notice given to the assessment manager, suspend the applicant's appeal period.
- (2) The applicant may act under subsection (1) only once.
- (3) If the representations are not made within 20 business days after the day written notice was given to the assessment manager, the balance of the applicant's appeal period restarts.
- (4) If the representations are made within 20 business days after the day written notice was given to the assessment manager—
  - (a) if the applicant gives the assessment manager a notice withdrawing the notice under subsection (1)—the balance of the applicant's appeal period restarts the day after the assessment manager receives the notice of withdrawal; or
  - (b) if the assessment manager gives the applicant a notice under section 363(5)—the balance of the applicant's appeal period restarts the day after the applicant receives the notice; or

- (c) if the assessment manager gives the applicant a negotiated decision notice—the applicant’s appeal period starts again the day after the applicant receives the negotiated decision notice.

## **Division 2            Changing approvals—request for change after applicant’s appeal period ends**

### **Subdivision 1        Preliminary**

#### **367    What is a *permissible change* for a development approval**

- (1) A *permissible change*, for a development approval, is a change to the approval that would not, because of the change—
  - (a) result in a substantially different development; or
  - (b) if the application for the approval were remade including the change—
    - (i) require referral to additional concurrence agencies; or
    - (ii) for an approval for assessable development that previously did not require impact assessment—require impact assessment; or
  - (c) for an approval for assessable development that previously required impact assessment—be likely, in the responsible entity’s opinion, to cause a person to make a properly made submission objecting to the proposed change, if the circumstances allowed; or
  - (d) cause development to which the approval relates to include any prohibited development.
- (2) For deciding whether a change is a permissible change under subsection (1)(b) or (d), the planning instruments or law in force at the time the request for the change was made apply.

- (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.

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- (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—

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- (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.