

16 April 2019

Enquiries: Jenny Elphinstone Tel 07 4099 9482
Our Ref: ROL 2972/2019 (Doc ID 897385)
Your Ref:

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

Stephen John Pisot
PO Box 149
PORT DOUGLAS QLD 4877

Dear Sir

**DEVELOPMENT APPLICATION TO RECONFIGURE A LOT
CODE ASSESSMENT
AT 21 SPRING CREEK ROAD MOWBRAY
ON LAND DESCRIBED AS LOT 11 ON SP211654**

Council refers to the above development application lodged with Council and as properly made on the 11 January 2019.

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

Please quote Council's application number: ROL 2972/2019 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 or at enquiries@douglas.qld.gov.au.

Yours faithfully


PAUL HOYE
Manager Environment and Planning

encl.

- Decision Notice
- Proposed Plan
- Applicant's Rights to make representations and applicant's appeal rights.

DOUGLAS SHIRE COUNCIL

**DECISION NOTICE — REFUSAL
(GIVEN UNDER SECTION 63 OF *THE PLANNING ACT 2016*)**

Council refers to your development application detailed below which was properly made on the 11 January 2019. Please be aware that Douglas Shire Council has assessed your application and decided it as follows.

1. Applicant's details

Name: Stephen John Pisot
Postal Address: PO Box 149
Port Douglas Qld 4877

2. Location details

Street address: 21 Spring Creek Road, Mowbray
Real property description: Lot 11 on SP211654
Assessment Manager: Douglas Shire Council

3. Details of the proposed development

Reconfigure one lot into two by virtue of the existence of a utility - road.

4. Applicable benchmarks

State Development Requirements and the 2018 Douglas Shire Council Planning.

5. Decision

Decision details: Refused.
Decision Date: 16 April 2019

6. Proposed plan

Copies of the following plan(s) are enclosed.

Drawing/report title	Prepared by	Date	Reference no.	Version/issue
Proposal Plan	Applicant	As submitted to Council on 12 March 2019.	Council Document ID: 887182	N/A

7. Properly made submissions

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

8. Referral agencies for the application

Not applicable.

9. Reasons for decision

The reasons for this decision are:

A. Sections 60 and 63 of the *Planning Act 2016*:

The Douglas Shire Council, as the assessment manager, was not directed to refuse the application by a referral agency (refer to s.63 (2)(f)(i) *Planning Act 2016*).

Reasons for refusing the application (s.63 (2)(f)(ii) *Planning Act 2016*).):

1. 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 Agricultural Land Classification. The development is incapable of being conditioned to achieve compliance with the required codes;
2. The development is inconsistent with the 2018 Douglas Shire Planning Scheme in regards to: the Rural Zone 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 2017 and the Planning Scheme. There is no identified need for the smaller lots in the rural area in order to achieve the outcomes of: the State Planning Policy 2017, the Far North Queensland Regional Plan 2009-2031 and the Planning Scheme;
4. There are insufficient grounds to justify approval despite the conflicts with the State Planning Policy 2017, the Far North Queensland Regional Plan 2009-2031 and the Planning Scheme.

B. Findings on material questions of fact:

1. The application was properly lodged to the Douglas Shire Council on the 11 January 2019 under section 51 of the *Planning Act 2016* and included a planning report; and
2. The Applicant's response to an information request was received on the 12 March 2019.

C. Evidence or other material on which findings were based:

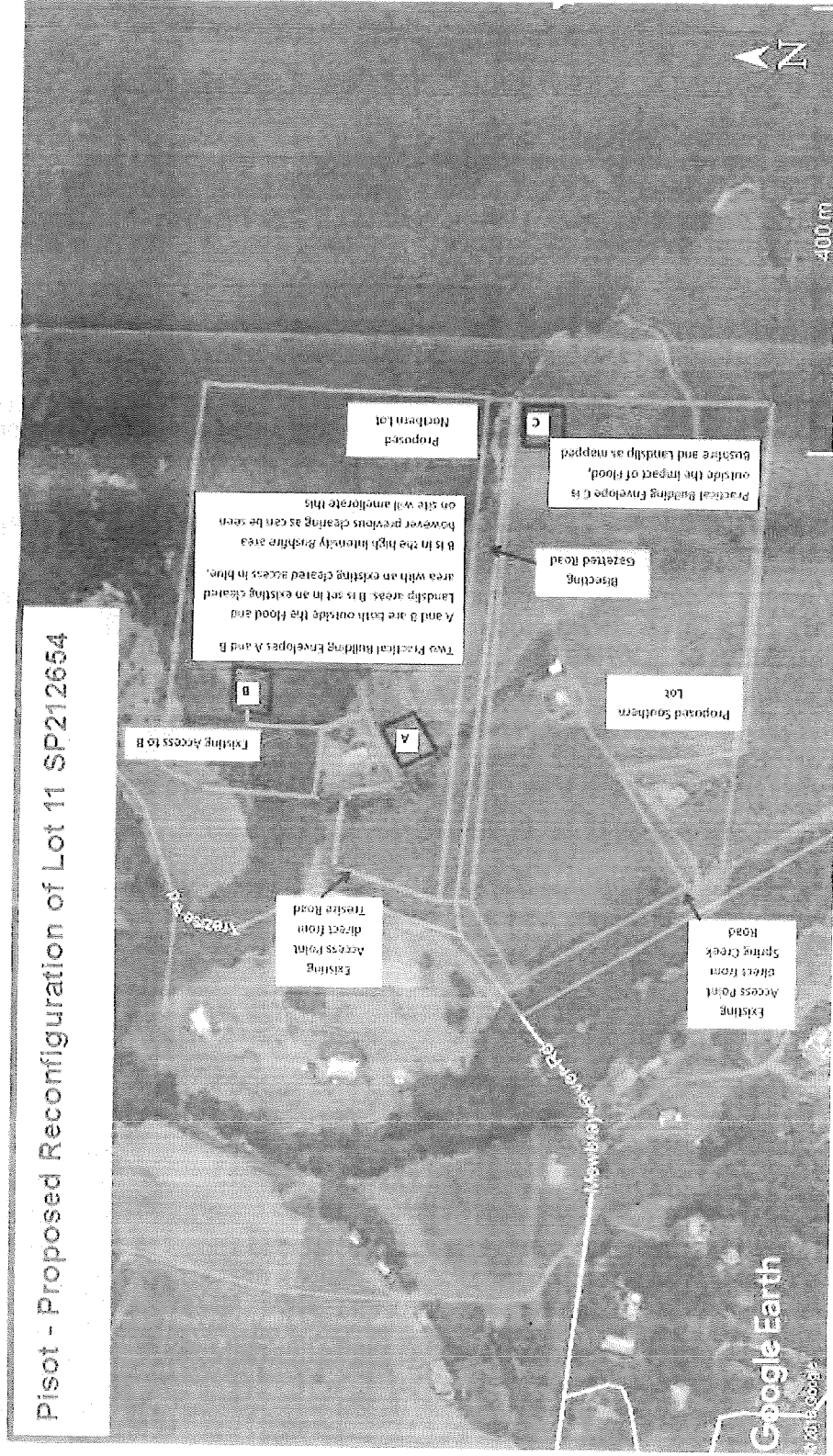
1. Council undertook an investigation of assessment of the development, against the State Development Requirements and the 2018 Douglas Shire Council Planning Scheme in making its assessment manager decision; and
2. Council undertook an assessment in accordance with the provisions of section 60 of the *Planning Act 2016*.

11. Rights of appeal

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.

Proposed plan



Pisot - Proposed Reconfiguration of Lot 11 SP212654

SCHEDULE 2 – PLANNING ACT 2016 - EXTRACTS ON APPEAL RIGHTS

Planning Act 2016 Extract on 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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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 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.

