

# ALLABOUTLAW

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Our Ref: VM: Kurth

30 August 2017

The Chief Executive Officer  
Douglas Shire Council  
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**Registered Post**

DOUGLAS SHIRE COUNCIL	
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Dear Madam

**KURTH AND MALLAKAI PTY LTD V DOUGLAS SHIRE COUNCIL  
PLANNING AND ENVIRONMENT COURT APPEAL NO. 152 OF 2017**

We confirm that we act for the Appellant in the abovementioned Appeal.

We now **enclose** by way of service, a copy of our client's Notice of Appeal filed in the Cairns registry of the Planning and Environment Court on 29 August 2017.

Take notice that you may within ten (10) business days after Notice of this Appeal is given, file an Entry of Appearance in the Registry where this Notice of Appeal was filed, should you wish to be heard in this Appeal.

Should you have any queries about anything set out above, please do not hesitate to contact the writer.

Yours faithfully



**VANESSA MARUNA  
LAWYER**

Enclosures

In the Planning and Environment Court  
Held at: Cairns

No 152/17

Between: **BYRON MAURICE KURTH,  
VICKI CHARLOTTE KURTH AND  
MALLAKAI PTY LTD (A.C.N. 082 442 297)**

Appellants

And: **DOUGLAS SHIRE COUNCIL**

Respondent

### NOTICE OF APPEAL

Filed on: 29/08/2017

Filed by: All About Law  
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**Byron Maurice Kurth, Vicki Charlotte Kurth and Mallakai Pty Ltd (A.C.N. 082 442 297)** c/- All About Law, 83 McLeod Street, Cairns in the State of Queensland appeal to the Planning and Environment Court at Cairns, against the decision of the Respondent to refuse a Development Application for a Development Permit for Reconfiguration of a Lot, 1 into 2 Lots with respect to land situated at 59R Crees Road, Craiglie and more particularly described as Lot 144 on SP 113652 ("the Land") and seek the following orders:

1. The Appeal be allowed;
2. That the Development Application be approved subject to relevant and reasonable conditions; and
3. Such further or other orders as the Court deems fit.

#### The grounds of appeal are:

1. The Land the subject of this appeal:
  - (a) is located at 59R Crees Road, Craiglie;
  - (b) is described as Lot 144 on SP 113652;
  - (c) has an area of 30.124 hectares;

NOTICE OF APPEAL  
Filed on behalf of the Appellants

Form PEC-1

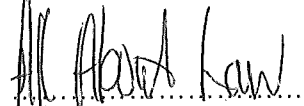
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- (d) contains a dwelling house and outbuildings;
  - (e) is physically dissected by an unconstructed Road Reserves (Crees Road) which is being constructed by the Respondent as a road;
  - (f) is included within the Regional Landscape and Rural Productive Area land use category in the Far North Queensland Regional Plan 2009-2031;
  - (g) with respect to the 2006 Douglas Shire Planning Scheme;
    - (i) is included within the Rural Planning Area;
    - (ii) is included in the low and medium fire hazard overlay.
2. On or around 8 March 2017, RPS Australia East Pty Ltd ("Appellant's Consultant") for and on behalf of the Appellant lodged the Development Application with the Respondent.
  3. The Development Application was code assessable and did not require public notification.
  4. The Development Application did not require referral to any referral agencies.
  5. On or around 1 August 2017, the Respondent refused the Development Application. Notice of the decision was given, to the Appellants by letter dated 1 August 2017 and received by the Appellant's consultant via email on 1 August 2017.
  6. The grounds for refusal notified by the Respondent were as follows:
    - "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;
    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 conditions 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. "*
7. The Development Application should be approved by the Respondent for the following reasons:
  - (a) the proposed development can be conditioned to comply with the relevant provisions of the 2006 Douglas Shire Council Planning Scheme; and
  - (b) to the extent that the proposed development, or any part of it conflicts with the 2006 Douglas Shire Planning Scheme (which is not admitted), there are sufficient grounds to justify the approval of the Development Application, notwithstanding any conflict.
8. The Appeal should be allowed and the Development Application should be approved subject to reasonable and relevant conditions.



**All About Law**

Solicitors for the Appellants  
29 August 2017

**If you are named as a respondent in this notice of appeal and wish to be heard in this appeal you must:**

- (a) within 10 business days after being served with a copy of this Notice of Appeal, file an Entry of Appearance in the Registry where this notice of appeal was filed or where the court file is kept; and
- (b) serve a copy of the Entry of Appearance on each other party.

**The Entry of Appearance should be in Form PEC – 5 for the Planning and Environment Court.**

**If you are entitled to elect to be a party to this appeal and you wish to be heard in this appeal you must:**

- (a) within 10 business days of receipt of this Notice of Appeal, file a Notice of Election in the Registry where this Notice of Appeal was filed or where the court file is kept; and
- (b) serve a copy of the Notice of Election on each other party.

**The Notice of Election should be in Form PEC – 6 for the Planning and Environment Court.**