

8 October 2020

**Enquiries:** Jenny Elphinstone  
**Our Ref:** OP 2020\_3694/1 (Doc ID: 972043)  
**Your Ref:** 20202855

Shane and Priscilla Quaid  
C/- Patrick Clifton, GMA Certification  
PO Box 831  
PORT DOUGLAS QLD 4877,

**Email:** [Patrick.c@gmacert.com.au](mailto:Patrick.c@gmacert.com.au)

Attention Mr Patrick Clifton

Dear Sir

**Development Application for Operational Work for sand extraction  
At 164 Tati Road and Lot 1 Syndicate Road Miallo  
On land described as Lot 101 on SP276043, Lot 1 on SP174874 and the adjacent creek  
area in which the extraction is to occur and over which  
the applicant holds a relevant extraction license**

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

Please quote Council's application number: OP 2020\_3694/1 in all subsequent correspondence relating to this development application.

Should you require any clarification regarding this, please contact Jenny Elphinstone on telephone 07 4099 9444.

Yours faithfully



*For*

**Paul Hoyer**

**Manager Environment & Planning**

cc. State Assessment and Referral Agency (SARA) E: [CairnsSARA@dilgp.qld.gov.au](mailto:CairnsSARA@dilgp.qld.gov.au)

encl.

- Decision Notice
  - Approved Drawing(s) and/or Document(s)
  - Concurrence Agency Response
  - Reasons for Decision
- Advice For Making Representations and Appeals (Decision Notice)



## Decision Notice

### Approval (with conditions)

*Given under section 63 of the Planning Act 2016*

#### Applicant Details

Name: Shane and Priscilla Quaid  
Postal Address: C/- Patrick Clifton, GMA Certification  
PO Box 831  
Email: [Patrick.c@gmacert.com.au](mailto:Patrick.c@gmacert.com.au)

#### Property Details

Street Address: 164 Tati Road and Lot 1 Syndicate Road, Miallo  
Real Property Description: Lot 101 on SP276043 & Lot 1 on SP174874 and the adjacent creek area in which the extraction is to occur and over which the applicant holds a relevant extraction license.  
Local Government Area: Douglas Shire Council

#### Details of Proposed Development

Development Permit for Operational Work for Sand Extraction.

#### Decision

Date of Decision: 8 October 2020  
Decision Details: Approved (subject to conditions)

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

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

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

Drawing or Document	Reference	Date
Site plans and photographs of extraction area.	Supporting planning statement prepared by GMA Certification Group, File Ref: 20202855, Revision B, (Council document ID 966170)	As received by Council on 11 August 2020.

## Assessment Manager Conditions & Advices

---

### Assessment Manager Conditions

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 commencement of work, except where specified otherwise in these conditions of approval.

### Extraction

3.
  - a. This Operational Work Approval applies to the extraction of sand only.
  - b. The extraction of sand is to occur only from the location shown on the attached plan.
  - c. The amount of extracted sand is a maximum of 300 cubic metres per year with a total amount of extraction of 1,500 cubic metres, or as otherwise approved by the Chief Executive Officer.
  - d. All reasonable and practicable measures must be taken to prevent pollution to downstream waterways as a result of silt run-off, oil and grease spills from any machinery. Wastewater for cleaning equipment must not be discharged or in-directly to any watercourses or stormwater systems.
  - e. The extracted sand must only be used ancillary to the agricultural operation of the adjacent farms.
  - f. There is to be no stockpiling of extracted material.
  - g. The work authorized by this approval must be carried out in an environmentally sensitive manner in accordance with the conditions of this approval. If in doubt the precautionary principle should be applied. Stop work and contact Council for advice.

### Vegetation Clearing

4. No clearing of vegetation is approved for the sand extraction.

### Advices

1. 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 the *Planning Act 2016*, unless the approved activity is substantially commenced within this two year period.
2. The applicant must continue to hold the required and relevant licenses to extract material from the adjacent waterway.

### Cultural Heritage

3. The *Aboriginal Cultural Heritage Act 2003* (the Act) seeks to protect artefacts and cultural sites that are of significance to Aboriginal people. The Act requires anyone carrying out an activity to exercise a Duty of Care. Guidelines have been produced to enable assessment of sites under the Act. These are available from the Department of Environment Heritage Protection and can be downloaded from their website at [www.ehp.qld.gov.au](http://www.ehp.qld.gov.au) . The work identified in the project documentation is likely to require assessment of the site under the Act.

4. This approval does not negate the requirement for compliance with relevant Local Laws and statutory requirements.
5. For information relating to the *Planning Act 2016* log on to [www.dsdmip.qld.gov.au](http://www.dsdmip.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).

---

**Further Development Permits**

---

Not applicable

---

**Concurrence Agency Response**

---

Concurrence Agency	Concurrence Agency Reference	Date	Doc ID
Queensland State Assessment and Referral Agency	2008-18434 SRA	14 September 2020	972347

**Note** – Concurrence Agency Response is attached. This Concurrence Agency Response maybe amended by agreement with the respective agency.

---

**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 the *Planning Act 2016*.

---

**Rights to make Representations & 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*.

A copy of the relevant appeal provisions are attached.

Approved Drawing(s) and/or Document(s)



Image 1 & 2: Aerial Photograph Identifying area for sand extraction and access





Photo 1 & 2 – Area for sand extraction

## Concurrence Agency Conditions

RA9-N



Queensland Treasury

SARA reference: 2008-18434 SRA  
Council reference: OP2020\_3694/1  
Applicant reference: 20202855

14 September 2020

Chief Executive Officer  
Douglas Shire Council  
PO Box 723  
Mossman Qld 4873  
enquiries@douglas.qld.gov.au

Attention: Jenny Elphinstone

Dear Sir/Madam

### SARA response—164 Tati Road, Miallo

(Referral agency response given under section 56 of the *Planning Act 2016*)

The development application described below was confirmed as properly referred by the State Assessment and Referral Agency on 27 August 2020.

#### Response

Outcome:	Referral agency response - No requirements  Under section 56(1)(a) of the <i>Planning Act 2016</i> , the department advises it has no requirements relating to the application.
Date of response:	14 September 2020
Reasons:	The reasons for the referral agency response are in <b>Attachment 1</b> .

#### Development details

Description:	Development permit	Operational work for removal of quarry material from a watercourse (Saltwater Creek)
SARA role:	Referral Agency.	
SARA trigger:	Schedule 10, Part 19, Division 2, Subdivision 3, Table 1, Item 1 (Planning Regulation 2017)	
SARA reference:	2008-18434 SRA	
Assessment Manager:	Douglas Shire Council	
Street address:	164 Tati Road, Miallo	

Page 1 of 4

Far North Queensland regional office  
Ground Floor, Cnr Grafton and Hartley  
Street, Cairns  
PO Box 2358, Cairns QLD 4870

Real property description: Lot 101 on SP276043 and Lot 1 on SP174874  
Applicant name: Shane & Priscilla Quaid  
C/- GMA Certification  
Applicant contact details: PO Box 831  
Port Douglas QLD 4877  
patrick.C@gmacert.com.au

## Representations

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 (s. 30 Development Assessment Rules)

Copies of the relevant provisions are in **Attachment 2**.

A copy of this response has been sent to the applicant for their information.

For further information please contact Jarrod Clarke, Planning Officer, on 40373208 or via email CairnsSARA@dsdmip.qld.gov.au who will be pleased to assist.

Yours sincerely



Brett Nancarrow  
Manager (Planning)

cc Shane & Priscilla Quaid C/- GMA Certification, patrick.C@gmacert.com.au  
enc Attachment 1 - Reasons for referral agency response  
Attachment 2 - Representations provisions



## **Attachment 1—Reasons for referral agency response**

(Given under section 56(7) of the *Planning Act 2016*)

---

### **The reasons for the SARA's decision are:**

- The proposed development does not require further conditions to those given in the Quarry Material Allocation Notice (QMAN), and complies with the relevant provisions of the SDAP, State Code 15: Removal of quarry material from a watercourse or lake in that:
  - o The quarry material (riverbed sand) will be used in the on-site horse sheds, for improving boggy soils and for maintaining farm tracks.
  - o The proposed works are unlikely to adversely impact on the physical integrity and environmental values of Saltwater Creek, or the ability of others to access quarry material and water resources.
  - o No vegetation clearing is required to carry out the works.

### **Material used in the assessment of the application:**

- The development application material and submitted plans
- *Planning Act 2016*
- Planning Regulation 2017
- The *State Development Assessment Provisions* (version [2.6]), as published by the department
- The Development Assessment Rules
- SARA DA Mapping system
- State Planning Policy mapping system

## **Attachment 2—Change representation provisions**

---

(page left intentionally blank – attached separately)

## Reasons for Decision

The reasons for this decision are:

1. Sections 60, 62 and 63 of the *Planning Act 2016*:
  - a. to ensure the development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme Version 1.0; and
  - b. 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 11/08/2020 under section 51 of the *Planning Act 2016* and Part 1 of the *Development Assessment Rules*;
  - b. the development application contained information from the applicant which Council reviewed together with Council's own assessment against the 2017 State Planning Policy and the 2018 Douglas Shire Planning Scheme Version 1.0 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 benchmarks.

## Non-Compliance with Assessment Benchmarks

Development complies with the planning scheme and no concerns are raised.

## Extracts from the Planning Act 2016 - Making Representations During Applicant's Appeal Period

Planning Act 2016  
Chapter 3 Development assessment

[s 74]

---

### Division 2 Changing development approvals

#### Subdivision 1 Changes during appeal period

##### 74 What this subdivision is about

- (1) This subdivision is about changing a development approval before the applicant's appeal period for the approval ends.
- (2) This subdivision also applies to an approval of a change application, other than a change application for a minor change to a development approval.
- (3) For subsection (2), sections 75 and 76 apply—
  - (a) as if a reference in section 75 to a development approval were a reference to an approval of a change application; and
  - (b) as if a reference in the sections to the assessment manager were a reference to the responsible entity; and
  - (c) as if a reference in section 76 to a development application were a reference to a change application; and
  - (d) as if the reference in section 76(3)(b) to section 63(2) and (3) were a reference to section 83(4); and
  - (e) with any other necessary changes.

##### 75 Making change representations

- (1) The applicant may make representations (*change representations*) to the assessment manager, during the applicant's appeal period for the development approval, about changing—
  - (a) a matter in the development approval, other than—
    - (i) a matter stated because of a referral agency's response; or

- (ii) a development condition imposed under a direction made by the Minister under chapter 3, part 6, division 2; or
- (b) if the development approval is a deemed approval—the standard conditions taken to be included in the deemed approval under section 64(8)(c).
- (2) If the applicant needs more time to make the change representations, the applicant may, during the applicant's appeal period for the approval, suspend the appeal period by a notice given to the assessment manager.
- (3) Only 1 notice may be given.
- (4) If a notice is given, the appeal period is suspended—
  - (a) if the change representations are not made within a period of 20 business days after the notice is given to the assessment manager—until the end of that period; or
  - (b) if the change representations are made within 20 business days after the notice is given to the assessment manager, until—
    - (i) the applicant withdraws the notice, by giving another notice to the assessment manager; or
    - (ii) the applicant receives notice that the assessment manager does not agree with the change representations; or
    - (iii) the end of 20 business days after the change representations are made, or a longer period agreed in writing between the applicant and the assessment manager.
- (5) However, if the assessment manager gives the applicant a negotiated decision notice, the appeal period starts again on the day after the negotiated decision notice is given.

## **76 Deciding change representations**

- (1) The assessment manager must assess the change representations against and having regard to the matters that



must be considered when assessing a development application, to the extent those matters are relevant.

- (2) The assessment manager must, within 5 business days after deciding the change representations, give a decision notice to—
  - (a) the applicant; and
  - (b) if the assessment manager agrees with any of the change representations—
    - (i) each principal submitter; and
    - (ii) each referral agency; and
    - (iii) if the assessment manager is not a local government and the development is in a local government area—the relevant local government; and
    - (iv) if the assessment manager is a chosen assessment manager—the prescribed assessment manager; and
    - (v) another person prescribed by regulation.
- (3) A decision notice (a *negotiated decision notice*) that states the assessment manager agrees with a change representation must—
  - (a) state the nature of the change agreed to; and
  - (b) comply with section 63(2) and (3).
- (4) A negotiated decision notice replaces the decision notice for the development application.
- (5) Only 1 negotiated decision notice may be given.
- (6) If a negotiated decision notice is given to an applicant, a local government may give a replacement infrastructure charges notice to the applicant.

## Extracts from the Planning Act 2016 – 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

---

Page 212

Current as at 20 August 2020

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 an appeal relating to the *Plumbing and Drainage Act 2018*—
    - (i) for an appeal against an enforcement notice given because of a belief mentioned in the *Plumbing and Drainage Act 2018*, section 143(2)(a)(i), (b) or (c)—5 business days after the day the notice is given; or
    - (ii) for an appeal against a decision of a local government or an inspector to give an action notice under the *Plumbing and Drainage Act 2018*—5 business days after the notice is given; or

- (iii) otherwise—20 business days after the day the notice is given; or
- (g) 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, section 1, table 1, item 1—each principal submitter for the application whose submission has not been withdrawn; and
  - (d) for an appeal about a change application under schedule 1, section 1, table 1, item 2—each principal submitter for the application whose submission has not been withdrawn; and
  - (e) each person who may elect to be a co-respondent for the appeal other than an eligible submitter for a development application or change application the subject of the appeal; 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 to an appeal by filing a notice of election in the approved form—
- (a) if a copy of the notice of appeal is given to the person—within 10 business days after the copy is given to the person; or
  - (b) otherwise—within 15 business days after the notice of appeal is lodged with the registrar of the tribunal or the P&E Court.



- (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 Non-appealable decisions and matters**

- (1) Subject to this chapter, section 316(2), 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.

# **Part 2 Development tribunal**

## **Division 1 General**

### **233 Appointment of referees**

- (1) The Minister, or chief executive, (the *appointer*) may appoint a person to be a referee, by an appointment notice, if the appointer considers the person—
  - (a) has the qualifications or experience prescribed by regulation; and
  - (b) has demonstrated an ability—
    - (i) to negotiate and mediate outcomes between parties to a proceeding; and
    - (ii) to apply the principles of natural justice; and
    - (iii) to analyse complex technical issues; and
    - (iv) to communicate effectively, including, for example, to write informed succinct and well-organised decisions, reports, submissions or other documents.