

Date: 30 November 2021

135 Abbott Street
Cairns QLD 4870
T +61 7 4031 1336

Attn: Jenny Elphinstone
Chief Executive Officer
Douglas Shire Council
PO Box 723
Mossman Qld 4873

Via: Email jenny.elphinstone@douglas.qld.gov.au

Dear Jenny,

**Application for a Minor Change to a Development Approval (Section 78 of the Planning Act 2016)
2 Lot Reconfiguration Approval in respect of Lot 144 on SP113652, Crees Road, Craiglie
Your Ref: ROL 2017_1952/2**

Further to the Minor Change to the Approval, issued by Council in its correspondence, dated 9 September 2021 and our subsequent recent discussions, a Minor Change is sought to the Development Approval that permits;

1. The access to the Domestic Building Location Envelope on Proposed Lot 2 to be from the existing constructed access; and
2. Endorsement of the survey plan subject to the provision of evidence of electricity and telecommunication services being available for the additional lot.

On behalf of Byron and Vicki Kurth and Mallakai Pty Ltd, we lodge this application for a Minor Change to the Development Approval to you as the responsible entity.

In accordance with your Schedule of Fees, the application fee for the Minor Change Application is understood to be \$450.00. Please forward Council's invoice for the Application Fee to owen.caddick-king@rpsgroup.com.au and payment will be arranged.

Proposed change

The changes sought to the Development Approval (refer to copy of completed Change Application Form and Development Approval, dated 9 September 2021 in **Attachment A**) include:

1. To amend the access to the Domestic Building Location Envelope on Proposed Lot 2 to be from the existing constructed access located in north-western corner of Proposed Lot 2 (refer to photos of constructed access in **Attachment B**) and along the access;

- to the sheds located in the north-eastern corner of Proposed Lot 2; and
- located adjacent to the Crees Creek riparian corridor;

to the Domestic Building Location Envelope on Proposed Lot 2. An amended Proposal Plan showing the amended access will be provided next week.

The Proposed Change will require amendment to the Development Approval's;

- Approved Drawings;

- Condition 2 b and c of the amended Approval to refer to the access adjacent to the tramway as an alternate future access; and
 - Condition 4 to recognise that each lot has an existing approved access and to refer to the access adjacent to the tramway as an alternate future access.
2. To amend Condition 11 to allow endorsement of the survey plan upon evidence being provided confirming that electricity supply and telecommunications are able to be provided to each lot and in respect of this matter, please find Ergon's Certificate of Supply for reference in **Attachment C**.

We would appreciate the opportunity to review the recommended amendments to be adopted prior to a formal decision.

Minor Change Status

The development as changed is consistent with the definition of a Minor Change under the Act.

- (i) The change would not result in substantially different development considering the individual circumstances of the development in the context of the change proposed, and having regard to the matters indicated at Section 4 of Schedule 1 to the Development Assessment Rules, we advise as follows:

- (a) *involves a new use*

The Minor Change Application does not seek approval of any additional uses to be included in the development.

- (b) *results in the application applying to a new parcel of land*

No additional land is included in the land subject of the Minor Change Application.

- (c) *dramatically changes the built form in terms of scale, bulk and appearance*

No, the proposed changes will not dramatically change the built form in terms of scale, bulk and appearance as compared to that already approved.

- (d) *changes the ability of the proposed development to operate as intended*

No, the development will function as originally intended.

- (e) *removes a component that is integral to the operation of the development*

No, the change does not remove a component that is integral to the operation of the development.

- (f) *significantly impacts on traffic flow and the transport network, such as increasing traffic to the site*

No, the changes will not significantly impact traffic flow.

- (g) *introduces new impacts or increase the severity of known impacts*

No, the development does not introduce new impacts or increase the severity of known impacts

- (h) *removes an incentive or offset component that would have balanced a negative impact of the development*

No, the current Approval does not include any incentive or offset provisions.

- (i) *impacts on infrastructure provisions.*
- No, the change will not impact on infrastructure provisions.
- (ii) Additionally, the requested change to the development, if a new application were lodged for the development including the change, would not result in the inclusion of prohibited development in the application, would not require any referrals and would not require public notification.

Change assessment process

The matters for consideration by the responsible entity are set out at Section 81 of the Act. To that end, in respect of the changed development we note the following:

- With regard to properly made submissions in respect of the proposed development, it is noted that the development is code assessable which does not provide for the receipt of properly made submissions.
- The requested changes are able to be implemented without conflict with other aspects of the amended Development Approval recently issued by Council and provided for reference in **Attachment A**.
- No formal pre-request response notice has been sought in respect of the proposal. However, in respect of the proposed amended point of access, the Minor Change Application has been prompted in response to a suggestion made by Council's Planner.
- Under Section 81(2)(da) and (3), the responsible entity is to assess against or have regard to both the matters which applied when the original development application was made and to the matters that apply at the time the change application is made.

In respect of these considerations, it is not considered that the changes warrant a detailed assessment against the former or current Planning Scheme.

It is anticipated that adequate detail has been provided to facilitate Council's consideration of the Minor Change Application. However, should you seek to discuss the matter and/or seek further information, do not hesitate to contact the undersigned in the Cairns office.

Yours sincerely,
for RPS Australia East Pty Ltd



Owen Caddick-King
Principal - Planning
owen.caddick-king@rpsgroup.com.au
+61 7 42761027

enc: **Attachment A:** Copy of completed Change Application Form and Development Approval, dated 9 September 2021
Attachment B: Photos of Constructed Access
Attachment C: Ergon's Certificate of Supply

Our ref: PR108240/OCK/SF/L80931



Attachment A

Completed Change Application Form and Development Approval, dated 9 September 2021

Change application form

Planning Act Form 5 (version 1.2 effective 7 February 2020) made under Section 282 of the Planning Act 2016.

This form is to be used for a change application made under section 78 of the *Planning Act 2016*. It is important when making a change application to be aware of whether the application is for a minor change that will be assessed under section 81 of the *Planning Act 2016* or for an other change that will be assessed under section 82 of the *Planning Act 2016*.

An applicant must complete all parts of this form, and provide any supporting information that the form identifies as being required to accompany the change application, unless stated otherwise. Additional pages may be attached if there is insufficient space on the form to complete any part.

Note: All terms used in this form have the meaning given under the *Planning Act 2016*, the *Planning Regulation 2017*, or the *Development Assessment Rules (DA Rules)*.

PART 1 – APPLICANT DETAILS

1) Applicant details	
Applicant name(s) (individual or company full name)	Byron and Vicki Kurth and Mallakai Pty Ltd C/- RPS Australia East Pty Ltd
Contact name (only applicable for companies)	Owen Caddick-King, RPS Australia East Pty Ltd
Postal address (P.O. Box or street address)	C/- RPS Australia East Pty Ltd, PO Box 1949
Suburb	Cairns
State	Qld
Postcode	4870
Country	Aust..
Email address (non-mandatory)	owen.caddick-king@rpsgroup.com.au
Mobile number (non-mandatory)	
Applicant's reference number(s) (if applicable)	PR108240

2) Owner's consent - Is written consent of the owner required for this change application?	
Note: Section 79(1A) of the <i>Planning Act 2016</i> states the requirements in relation to owner's consent.	
<input type="checkbox"/> Yes – the written consent of the owner(s) is attached to this change application	
<input checked="" type="checkbox"/> No	

PART 2 – LOCATION DETAILS

3) Location of the premises (complete 3.1) or 3.2), and 3.3) as applicable)				
3.1) Street address and lot on plan				
<input checked="" type="checkbox"/> Street address AND lot on plan (all lots must be listed), or				
<input type="checkbox"/> Street address AND lot on plan for an adjoining or adjacent property of the premises (appropriate for development in water but adjoining or adjacent to land e.g. jetty, pontoon. All lots must be listed).				
a)	Unit No.	Street No.	Street Name and Type	Suburb
			Crees Road	Craiglie
	Postcode	Lot No.	Plan Type and Number (e.g. RP, SP)	Local Government Area(s)
	4877	144	SP113652	Douglas Shire Council
b)	Unit No.	Street No.	Street Name and Type	Suburb
	Postcode	Lot No.	Plan Type and Number (e.g. RP, SP)	Local Government Area(s)



**Queensland
Government**

3.2) Coordinates of premises (appropriate for development in remote areas, over part of a lot or in water not adjoining or adjacent to land e.g. channel dredging in Moreton Bay)

Note: Place each set of coordinates in a separate row.

Coordinates of premises by longitude and latitude

Longitude(s)	Latitude(s)	Datum	Local Government Area(s) (if applicable)
		<input type="checkbox"/> WGS84 <input type="checkbox"/> GDA94 <input type="checkbox"/> Other: <input type="text"/>	

Coordinates of premises by easting and northing

Easting(s)	Northing(s)	Zone Ref.	Datum	Local Government Area(s) (if applicable)
		<input type="checkbox"/> 54 <input type="checkbox"/> 55 <input type="checkbox"/> 56	<input type="checkbox"/> WGS84 <input type="checkbox"/> GDA94 <input type="checkbox"/> Other: <input type="text"/>	

3.3) Additional premises

- Additional premises are relevant to the original development approval and the details of these premises have been attached in a schedule to this application
- Not required

PART 3 – RESPONSIBLE ENTITY DETAILS

4) Identify the responsible entity that will be assessing this change application

Note: see section 78(3) of the Planning Act 2016

Douglas Shire Council

PART 4 – CHANGE DETAILS

5) Provide details of the existing development approval subject to this change application

Approval type	Reference number	Date issued	Assessment manager/approval entity
<input checked="" type="checkbox"/> Development permit <input type="checkbox"/> Preliminary approval	ROL 2017_1952/2	9 September 2021	Douglas Shire Council
<input type="checkbox"/> Development permit <input type="checkbox"/> Preliminary approval			

6) Type of change proposed

6.1) Provide a brief description of the changes proposed to the development approval (e.g. changing a development approval for a five unit apartment building to provide for a six unit apartment building):

Refer to RPS submission, dated 30 November 2021

6.2) What type of change does this application propose?

- Minor change application – proceed to Part 5
- Other change application – proceed to Part 6

PART 5 – MINOR CHANGE APPLICATION REQUIREMENTS

7) Are there any affected entities for this change application		
<input checked="" type="checkbox"/> No – proceed to Part 7 <input type="checkbox"/> Yes – list all affected entities below and proceed to Part 7 <i>Note: section 80(1) of the Planning Act 2016 states that the person making the change application must give notice of the proposal and the details of the change to each affected entity as identified in section 80(2) of the Planning Act 2016.</i>		
Affected entity	Pre-request response provided? (where a pre-request response notice for the application has been given, a copy of the notice must accompany this change application)	Date notice given (where no pre-request response provided)
	<input type="checkbox"/> No <input type="checkbox"/> Yes – pre-request response is attached to this change application	
	<input type="checkbox"/> No <input type="checkbox"/> Yes – pre-request response is attached to this change application	
	<input type="checkbox"/> No <input type="checkbox"/> Yes – pre-request response is attached to this change application	

PART 6 – OTHER CHANGE APPLICATION REQUIREMENTS

Note: To complete this part it will be necessary for you to complete parts of DA Form 1 – Development application details and in some instances parts of DA Form 2 – Building work details, as mentioned below. These forms are available at <https://planning.dsdmip.qld.gov.au>.

8) Location details - Are there any additional premises included in this change application that were not part of the original development approval?
<input type="checkbox"/> No <input type="checkbox"/> Yes

9) Development details
9.1) Is there any change to the type of development, approval type, or level of assessment in this change application? <input type="checkbox"/> No <input type="checkbox"/> Yes – the completed Sections 1 and 2 of Part 3 (Development details) of DA Form 1 – Development application details as these sections relate to the new or changed aspects of development are provided with this application.
9.2) Does the change application involve building work? <input type="checkbox"/> No <input type="checkbox"/> Yes – the completed Part 5 (Building work details) of DA Form 2 – Building work details as it relates to the change application is provided with this application.

10) Referral details – Does the change application require referral for any referral requirements?
<i>Note: The application must be referred to each referral agency triggered by the change application as if the change application was the original development application including the proposed change.</i> <input type="checkbox"/> No <input type="checkbox"/> Yes – the completed Part 5 (Referral details) of DA Form 1 – Development application details as it relates to the change application is provided with this application. Where referral is required for matters relating to building work the Referral checklist for building work is also completed.

11) Information request under Part 3 of the DA Rules
<input type="checkbox"/> I agree to receive an information request if determined necessary for this change application <input type="checkbox"/> I do not agree to accept an information request for this change application <i>Note: By not agreeing to accept an information request I, the applicant, acknowledge:</i>

- that this change application will be assessed and decided based on the information provided when making this change application and the assessment manager and any referral agencies relevant to the change application are not obligated under the DA Rules to accept any additional information provided by the applicant for the change application unless agreed to by the relevant parties
 - Part 3 of the DA Rules will still apply if the application is an application listed under section 11.3 of the DA Rules.
- Further advice about information requests is contained in the [DA Forms Guide: Forms 1 and 2](#).

12) Further details

- Part 7 of *DA Form 1 – Development application details* is completed as if the change application was a development application and is provided with this application.

PART 7 – CHECKLIST AND APPLICANT DECLARATION

13) Change application checklist

I have identified the:

- responsible entity in 4); and
- for a minor change, any affected entities; and Yes
- for an other change all relevant referral requirement(s) in 10)

Note: See the *Planning Regulation 2017* for referral requirements

- For an other change application, the relevant sections of [DA Form 1 – Development application details](#) have been completed and is attached to this application Yes Not applicable

- For an other change application, where building work is associated with the change application, the relevant sections of [DA Form 2 – Building work details](#) have been completed and is attached to this application Yes Not applicable

Supporting information addressing any applicable assessment benchmarks is attached to this application

- Note:** This includes any templates provided under 23.6 and 23.7 of *DA Form 1 – Development application details* that are relevant as a result of the change application, a planning report and any technical reports required by the relevant categorising instrument(s) (e.g. the local government planning scheme, State Planning Policy, State Development Assessment Provisions). For further information, see [DA Forms Guide: Planning report template](#). Yes

- Relevant plans of the development are attached to this development application Yes
- Note:** Relevant plans are required to be submitted for all relevant aspects of this change application. For further information, see [DA Forms Guide: Relevant plans](#).

14) Applicant declaration

- By making this change application, I declare that all information in this change application is true and correct.
- Where an email address is provided in Part 1 of this form, I consent to receive future electronic communications from the responsible entity and any relevant affected entity or referral agency for the change application where written information is required or permitted pursuant to sections 11 and 12 of the *Electronic Transactions Act 2001*.

Note: It is unlawful to intentionally provide false or misleading information.

Privacy – Personal information collected in this form will be used by the responsible entity and/or chosen assessment manager, any relevant affected entity or referral agency and/or building certifier (including any professional advisers which may be engaged by those entities) while processing, assessing and deciding the change application.

All information relating to this change application may be available for inspection and purchase, and/or published on the assessment manager's and/or referral agency's website.

Personal information will not be disclosed for a purpose unrelated to the *Planning Act 2016*, *Planning Regulation 2017* and the DA Rules except where:

- such disclosure is in accordance with the provisions about public access to documents contained in the *Planning Act 2016* and the *Planning Regulation 2017*, and the access rules made under the *Planning Act 2016* and *Planning Regulation 2017*; or
- required by other legislation (including the *Right to Information Act 2009*); or
- otherwise required by law.

This information may be stored in relevant databases. The information collected will be retained as required by the *Public Records Act 2002*.

PART 8 – FOR COMPLETION OF THE ASSESSMENT MANAGER – FOR OFFICE USE ONLY

Date received: Reference number(s):

QLeave notification and payment			
<i>Note: For completion by assessment manager if applicable</i>			
Description of the work			
QLeave project number			
Amount paid (\$)		Date paid (dd/mm/yy)	
Date receipted form sighted by assessment manager			
Name of officer who sighted the form			

9 September 2021

Enquiries: Jenny Elphinstone
Our Ref: ROL 2017_1952/2 (Doc ID 1035452)
Your Ref: Mallakai Pty Ltd Crees Rd Subdivision

Mallakai Pty Ltd
C/- IAMCU-Legal Pty Ltd
5 Valley Street
CAIRNS QLD 4870

Email iamculegal@gmail.com

Attention Mr Peter Boulot

Dear Sir

**Development Application for Minor Change (Reconfiguring a Lot)
At 59 Crees Road Craiglie
On Land Described as Lot 144 on SP113652**

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

Please quote Council's application number: ROL 2017_1952/2 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

encl.

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

Decision Notice

Approval (with conditions)

Given under section 81, 81A & 83 of the Planning Act 2016

Applicant Details

Name: Mallakai Pty Ltd (Tte)
Postal Address: C/- IAMCU-Legal Pty Ltd-
5 Valley St
CAIRNS QLD 4870
Attention Peter Boulot
Email: iamculegal@gmail.com

Property Details

Street Address: 59 Crees Road Craiglie
Real Property Description: Lot 144 on SP113652
Local Government Area: Douglas Shire Council

Details of Proposed Development

Application for a minor change to the Development Permit for Reconfiguring a Lot, being Court Order for the Planning and Environment Court (Cairns) 152 of 2017.

Decision

Date of Decision: 9 September 2021

Decision Details: Approved (subject to conditions) whereby

1. The approved drawings are amended as follows:

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

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

Drawing or Document	Reference	Date
Reconfiguration of a Lot, Proposed Lots 1 & 2	RPS Drawing PR108240-1 Issue G <u>F</u> dated 27 February 2018 <u>6 September 2021</u> with the <u>amended Conservation Covenant Area</u> and as amended by Condition 2 and as amended by <u>Council to detail the Secondary Covenant Area (Council Doc 1035453)</u> .	To be determined pursuant to condition 2.
Proposed Lot 2 Access	Flanagan Consulting Group Drawing 6226-SK01	25 July 2018

Note – The plans referenced above will require amending in order to comply with conditions of this Decision Notice and the Court Order.

AND

2. Condition 2 is amended as follows:

Lot Layout

2. The lot layout plan must be revised and provided to the satisfaction of the Chief Executive Officer prior to the lodgement of the Survey Plan for endorsement, generally in accordance with the RPS Drawing PR108240-1, Issue ~~G~~ F, dated ~~27 February 2018~~ 6 September 2021, and amended to detail:
 - a. The Domestic Building Envelope on proposed lot 2 is to be sited with a maximum area of 1500m² and is to be sited adjacent to the end of the proposed driveway. The Domestic Building Envelop must not impose on the existing productive cane land on this proposed lot other than that area detailed on RPS Drawing PR108240-1, Issue F, dated 6 September 2021;
 - b. A vehicle access adjacent to the sugar cane tramline generally as per the existing cane headland adjacent to the railway line easement and for the intersection with Crees Road to be in accordance with the Engineering designed access on Flanagan Consulting Group drawing 6226-SK01 dated 25 July 2018 and as amended to achieve good sight lines:
 - i. a grassed area between the driveway exit/entry point and the railway easement; and
 - ii. a small grassed area east of the driveway entry/exit point.

- c. The point where the “proposed access” to proposed Lot 2, shown on RPS Drawing PR108240-1 Issue C, is to deviate from its alignment adjacent to the railway line easement (to connect with the exit / entry point onto Crees Road as shown on the Flanagan Consulting Group Drawing 6226 – SK01) is to be approximately 20m from the Crees Road boundary; and
- d. The inclusion of the Secondary Covenant Area marked in blue on the drawing PR108240-1 Issue F and as amended by Council (Council doc 1035453).

AND

- 3. Condition 5a is an additional condition to be include on the approval and is as follows:

5a. The applicant is required to enter into an environmental covenant with Douglas Shire Council “the Council”, over the Secondary Covenant Area being generally in accordance with the RPS Drawing PR108240-1 Issue F dated 6 September 2021 and as amended by Council (Council Doc 1035453) to detail the Secondary Covenant Area being the area under the old raintree canopy. The following requirements will be included in this covenant:

- a. The applicant is required to enter into a secondary environmental covenant with Douglas Shire Council over the area of the amended survey plan RPS PR108240-1 Issue F and as amended by Council which is.
 - i. No buildings, permanent structures and no onsite wastewater disposal is to occur in this area;
 - ii. Landscaping is permitted in this area provided landscaping is not detrimental to the health of the old raintree and landscaping does not include clearing of the old raintree canopy;
 - iii. Existing fences for feral pig control are permitted to remain; and
 - iv. This covenant is to be binding on successive owners of the land.

AND

- 4. All other conditions of the approval remain unchanged.

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 expression means:

Drawing or Document	Reference	Date
Reconfiguration of a Lot, Proposed Lots 1 & 2	RPS Drawing PR108240-1 Issue G_F dated 27 February 2018 <u>6 September 2021 with the amended Conservation Covenant Area</u> and as amended by Condition 2 <u>and as amended by Council to detail the Secondary Covenant Area (Council Doc).</u>	To be determined pursuant to condition 2.
Proposed Lot 2 Access	Flanagan Consulting Group Drawing 6226-SK01	25 July 2018

Note – The plans referenced above will require amending in order to comply with conditions of this Decision Notice and the Court Order.

Original Approval

Refer to Court Order included in Attachment 1.

Further Development Permits

Please be advised that the following development permits are required to be obtained before the development can be carried out:

- All Operational Work

Currency Period for the Approval

No change has been made to the currency period. Refer to the Court Order. This approval, granted under the provisions of the *Planning Act 2016*. The approval takes effect in accordance with the provisions of Section 85 of the *Planning Act 2016*.

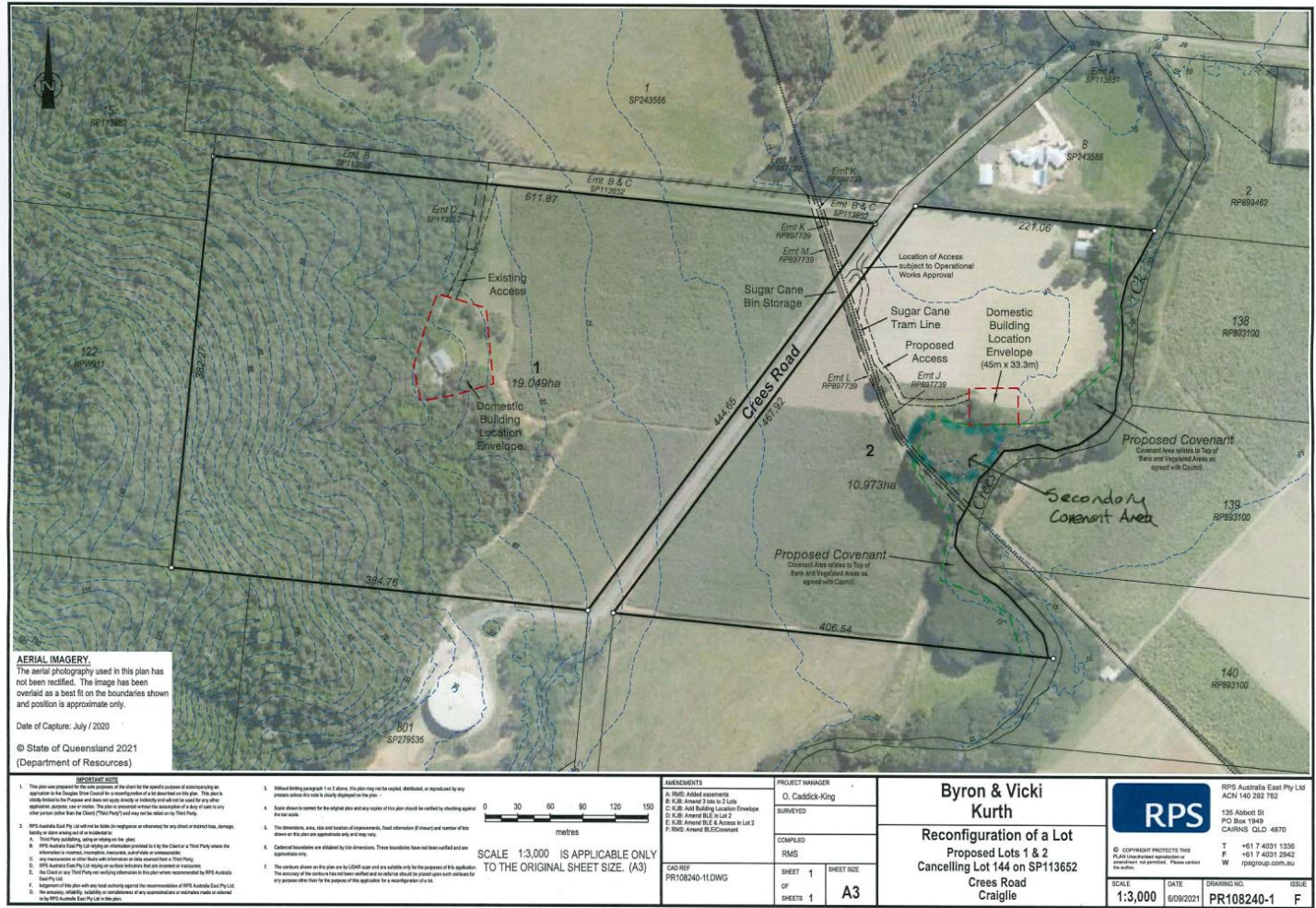
Rights of Appeal

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*.

A copy of the relevant appeal provisions is attached.

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

Note – The plans will require amending in order to comply with conditions of this Decision Notice and the Court Order.



AERIAL IMAGERY
The aerial photography used in this plan has not been modified. The image has been georeferenced as a best fit on the boundaries shown and position is approximate only.
Date of Capture: July / 2020
© State of Queensland 2021
(Department of Resources)

- IMPORTANT NOTE**
- This plan was prepared for the sole purpose of the specific purpose of authorising an application to the Council. It is not intended to be used for any other purpose. The plan is provided as a guide only and should not be used for any other purpose. The plan is provided as a guide only and should not be used for any other purpose.
 - RMS Australia East Pty Ltd will not be liable (in negligence or otherwise) for any direct or indirect loss, damage, liability or other arising out of or in connection with the plan.
 - The plan is provided as a guide only and should not be used for any other purpose. The plan is provided as a guide only and should not be used for any other purpose.
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0 30 60 90 120 150
metres
SCALE 1:3,000 IS APPLICABLE ONLY TO THE ORIGINAL SHEET SIZE. (A3)

AMENDMENTS	PROJECT MANAGER
A. RMS Added easements	O. Cadick-King
B. K.C. Amend 3 lots to 2 lots	SURMETER
C. K.C. Add Building Location Envelope	
D. K.C. Amend B.E. to Lot 2	
E. K.C. Amend B.E. & Access to Lot 2	
F. RMS Amend B.E. to Covenant	
CAD REF	COMPLETED
PR108240-11.DWG	RMS
	SHEET 1 OF SHEETS 1
	SHEET SIZE A3

Byron & Vicki Kurth
Reconfiguration of a Lot
Proposed Lots 1 & 2
Cancelling Lot 144 on SP113652
Cress Road
Craiglie

RPS	RPS Australia East Pty Ltd ACN 140 262 762		
	135 Abbott St PO Box 1949 CARINS QLD 4870		
© COPYRIGHT PROTECTS THIS PLAN. Unauthorised reproduction or distribution is prohibited. Please contact the office.	T +61 7 4031 1336	F +61 7 4031 2842	W rps@rps.com.au
SCALE 1:3,000	DATE 6/08/2021	DRAWING NO. PR108240-1	ISSUE F

Attachment 1 – Court order

In the Planning and Environment Court
Held at: Cairns

No 152 of 2017

Between: **BYRON MAURICE KURTH,
VICKI CHARLOTTE KURTH AND
MALLAKAI PTY LTD (ACN 082 442 297)** Appellants

And: **DOUGLAS SHIRE COUNCIL** Respondent

JUDGMENT

Before: His Honour Judge Morzone QC
Date of Hearing: 31 August 2018
Date of Judgment: 31 August 2018

THIS MATTER HAVING on 31 August 2018 come on for hearing by way of an appeal against the decision of the Respondent on 1 August 2017 to refuse a development application for a development permit for reconfiguring a lot (1 lot into 2 lots) (the "**development application**"), in respect of land situated at 59 R Crees Road, Craiglie and described as Lot 144 on SP113652 (the "**subject land**").

IT IS ADJUDGED BY CONSENT THAT:

1. the appeal is allowed; and
2. the development application is approved subject to the conditions package **attached** to this Judgment.

Filed on: 31 August 2018

Filed by: Holding Redlich
Service address: Level 15, 15 Lake Street, Cairns, Qld 4870
Phone: (07) 4230 0402
Fax: (07) 4230 0499
Email: Vanessa.Maruna@holdingredlich.com.au



ORDER
Filed on behalf of the Appellants
Form PEC-7

Holding Redlich
Level 15
15 Lake Street, Cairns, Qld 4870
P: (07) 4230 0402
F: (07) 4230 0499
E:Vanesa.Maruna@holdingredlich.com.au



Assessment Manager Conditions

Reconfiguring a Lot over land described as Lot 144 on SP113652 located at 59R Crees Road, Craiglie, into two lots and subject to the following:

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

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

Drawing or Document	Reference	Date
Reconfiguration of a Lot, Proposed Lots 1 & 2	RPS Drawing PR108240-1 Issue C, dated 27 February 2018 and as amended by Condition 2.	To be determined pursuant to condition 2
Proposed Lot 2 Access	Flanagan Consulting Group Drawing 6226-SK01	25 July 2018

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.

Lot Layout

2. The lot layout plan must be revised and provided to the satisfaction of the Chief Executive Officer prior to the lodgement of the Survey Plan for endorsement, generally in accordance with the RPS Drawing PR108240-1, Issue C, dated 27 February 2018, and amended to detail:
 - a. The Domestic Building Envelope on proposed lot 2 is to be sited with a maximum area of 1500m² and is to be sited adjacent to the end of the proposed driveway. The Domestic Building Envelop must not impose on the existing productive cane land on this proposed lot;
 - b. A vehicle access adjacent to the sugar cane tramline generally as per the existing cane headland adjacent to the railway line easement and for the intersection with Crees Road to be in accordance with the Engineering designed access on Flanagan Consulting Group drawing 6226-SK01 dated 25 July 2018 and as amended to achieve good sight lines:
 - i. a grassed area between the driveway exit/entry point and the railway easement; and
 - ii. a small grassed area east of the driveway entry/exit point.

- c. The point where the "proposed access" to proposed Lot 2, shown on RPS Drawing PR108240-1 Issue C, is to deviate from its alignment adjacent to the railway line easement (to connect with the exit / entry point onto Crees Road as shown on the Flanagan Consulting Group Drawing 6226 – SK01) is to be approximately 20m from the Crees Road boundary.

Timing of Effect

3. The conditions of the Development Permit must be effected prior to the approval of the Plan of Survey, except where specified otherwise in these conditions of approval.

Access Off Crees Road

4. All future access off Crees Road must be constructed in accordance with the FNQROC Development Plan Drawing S1105, Rural Allotment Accesses. Access from Crees Road is limited to one access for Proposed Lot 1 and two accesses to proposed Lot 2 unless otherwise approved by the Chief Executive Officer. All accesses are constructed at the owner's expense with appropriate sight line clearances as certified by a Registered Practising Engineer Queensland (RPEQ) Engineer.

The second vehicle access to proposed Lot 2, serving the Domestic Building Envelope, must be generally in accordance with the Flanagan Consulting Group drawing 6226-SK01 dated 25 July 2018, and constructed prior to the lodgement of the Survey Plan for endorsement. The second access to proposed Lot 2 must be constructed under a Development Permit for Operational Work.

Covenant Area

5. The applicant is required to enter into an environmental covenant with Douglas Shire Council "the Council", over the area being generally in accordance with the RPS Drawing PR108240-1 Revision C dated 27 February 2018. The following requirements will be included in this covenant:
 - a. No clearing of vegetation will be permitted without the express permission of "the Council";
 - b. No landscaping is to be undertaken in this area;
 - c. No development is to occur in the covenanted area, including no building, no structure and no onsite waste water disposal area; and
 - d. No fences will be permitted in this area.

This covenant is to be drafted and approved by Council prior to endorsement of the Plan of Survey. This Covenant is to be binding on successive owners of the land and a copy of this Covenant is to be included in the contract documentation for the sale of the affected allotment.

All costs associated with the covenant will be borne by the applicant.

Building Envelopes

6. The domestic building envelope plan for each of the proposed lots must be generally in accordance with the RPS Drawing PR108240-1 Revision C, dated 27 February 2018 and as amended by Condition 2 above. The building envelope plan must comply with

the following requirements:

- a. The development of a House and /or ancillary domestic infrastructure must not impact on the land currently under cane production; and
- b. All building associated with the domestic use is limited to the Domestic Building Location Envelopes (DBLE) areas.

The applicant / owner must also ensure that the endorsed building envelope plans are made known to all prospective purchasers of the lots.

The boundary of building envelopes must be delineated with marker pegs

Water Supply & Onsite Waste Water Facility

7. The land owner for each lot is responsible for the provision of water supply from a future water bore, where available, and an onsite waste water facility at the time of future development of the land. Any future use of Council's reticulated infrastructure will be to the satisfaction of the Council's Chief Executive Officer.

Vegetation Clearing

8. Existing vegetation on the subject land must be retained in all areas. Any further clearing requires an Operational Works Approval.

Existing Creek and Drainage Systems

9. All existing creek systems and drainage areas must be left in their current state, including no channel alterations and no removal of vegetation unless consented to in writing by the Chief Executive Officer.

Lawful Point of Discharge

10. All stormwater from the property must be directed to a lawful point of discharge such that it does not adversely affect surrounding properties or properties downstream from the development to the requirements and satisfaction of the Chief Executive Officer.

Electricity and Telecommunications

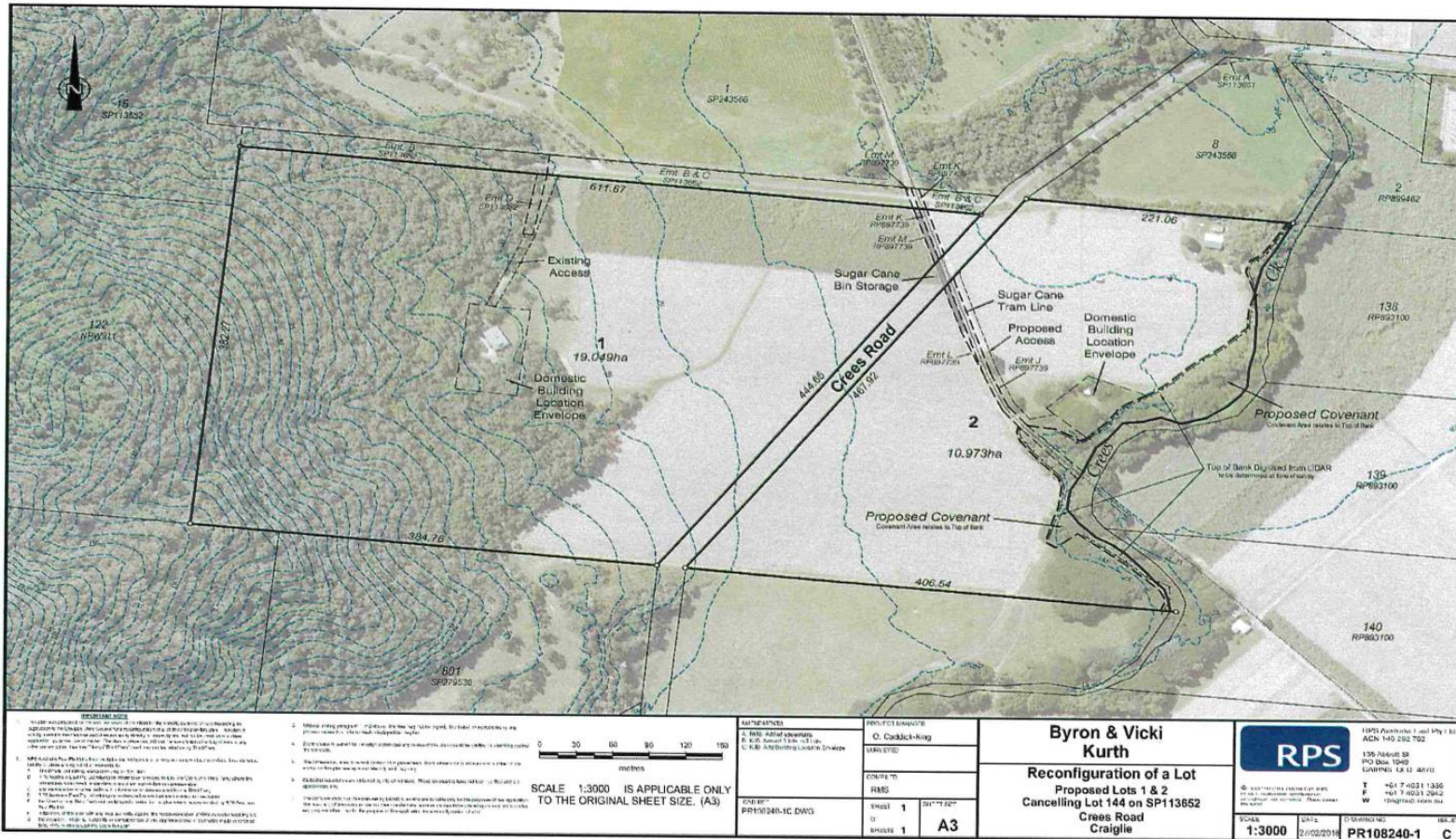
11. Electricity and telecommunications must be provided to each of the proposed lots prior to the approval of the plan of survey.

ADVICE

1. This approval, granted under the provisions of the *Planning Act 2016*, shall lapse four (4) years from the day the approval takes effect in accordance with sections 85(1)(b) and 71 of the *Planning Act 2016*.
2. This approval does not negate the requirement for compliance with all relevant Local Laws and statutory requirements.
3. For information relating to the *Sustainable Planning Act 2009* and the *Planning Act 2016*, log on to www.dsd.qld.gov.au. To access the FNQROC Development Manual, Local Laws and other applicable Policies log on to www.douglas.qld.gov.au.

- 4 *The Commonwealth Environment Protection and Biodiversity Conservation Act 1999* applies to action that has, will have or is likely to have a significant impact on matters of national environmental significance.

Further information on the EPBC Act can be obtained from the Department of the Environment, Water, Heritage and the Arts website www.environment.gov.au/epbc EPBC Act Policy Statement 1.1 Significant Impact Guidelines Matters of National Environmental Significance (Oct. 2009).



- GENERAL NOTES**
1. All dimensions are in meters unless otherwise stated.
 2. All dimensions are to the center of the road unless otherwise stated.
 3. All dimensions are to the top of the bank unless otherwise stated.
 4. All dimensions are to the top of the bank unless otherwise stated.
 5. All dimensions are to the top of the bank unless otherwise stated.
 6. All dimensions are to the top of the bank unless otherwise stated.
 7. All dimensions are to the top of the bank unless otherwise stated.
 8. All dimensions are to the top of the bank unless otherwise stated.
 9. All dimensions are to the top of the bank unless otherwise stated.
 10. All dimensions are to the top of the bank unless otherwise stated.

SCALE 1:3000 IS APPLICABLE ONLY TO THE ORIGINAL SHEET SIZE. (A3)

DATE: 20/02/2019	PROJECT: RECONFIGURE
DRAWN BY: O. Carkici-Ring	SCALE: 1:3000
CHECKED BY: RMB	DATE: 20/02/2019
NO. OF SHEETS: 1	SHEET NO.: A3
TITLE: PR150240-1C.DWG	

Byron & Vicki Kurth
 Reconfiguration of a Lot
 Proposed Lots 1 & 2
 Cancelling Lot 144 on SP113652
 Cress Road
 Craiglie

RPS

19/2019 Australian Land Pty Ltd
 ACN 140 292 702

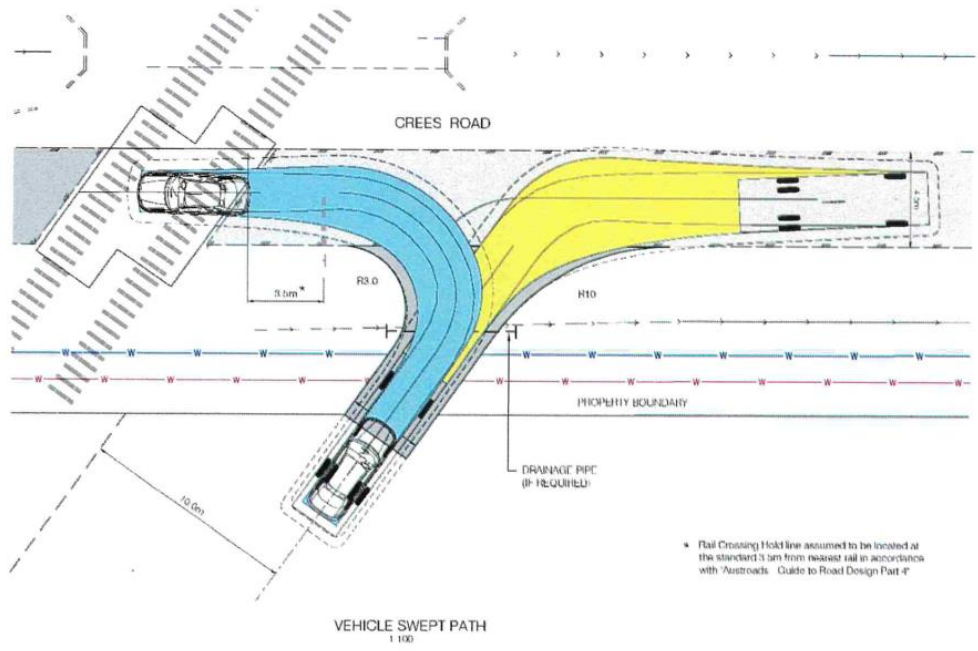
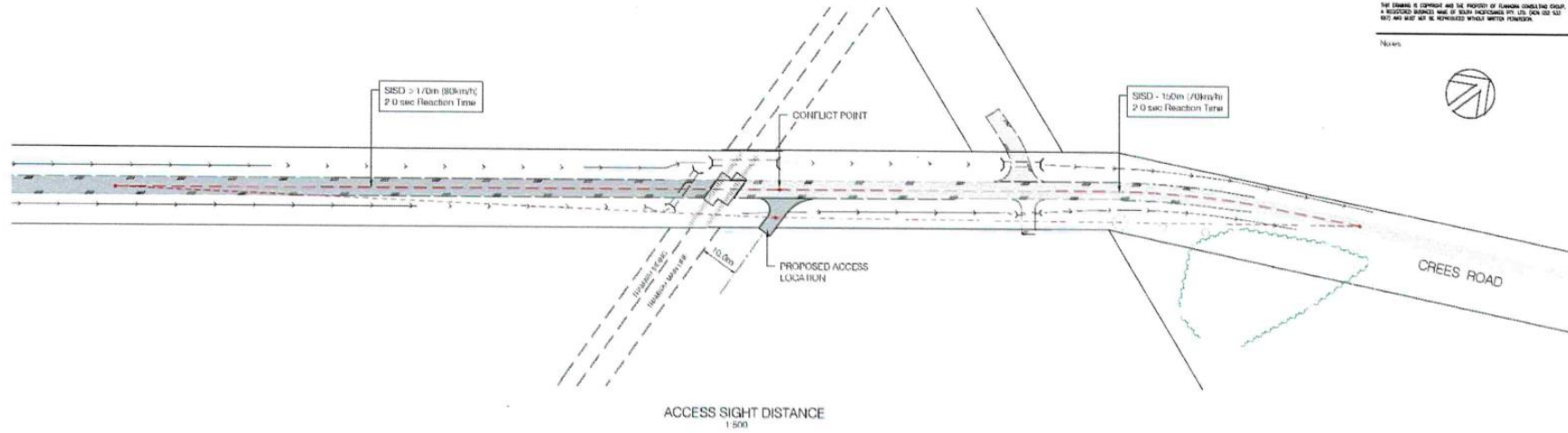
135 Nankivell St
 PO Box 1948
 GARRIBONG NSW 2584

T +61 7 4051 1336
 F +61 7 4051 2942
 W rps.com.au

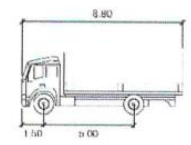
SCALE: 1:3000 DATE: 20/02/2019 PROJECT: PR108240-1 SHEET: C

THIS DRAWING IS PREPARED AND THE PROPERTY OF FLANAGAN CONSULTING GROUP
 A REGISTERED BUSINESS NAME OF BURNS ENGINEERING PTY LTD. (ACN 059 532)
 THIS DRAWING MAY BE REPRODUCED WITHOUT WRITTEN PERMISSION.

Notes

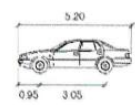


* Rail Crossing Hock line assumed to be located at the standard 3.1m from nearest rail in accordance with 'Austroads - Guide to Road Design Part 4'



MRV

	metres
Width	2.50
Track	2.50
Lock to Lock Time	6.0
Steering Angle	34.0



PASSENGER-CAR

	metres
Width	1.94
Track	1.84
Lock to Lock Time	6.0
Steering Angle	33.6

DESIGN VEHICLES

FLANAGAN CONSULTING GROUP
 DEVELOPMENT CONSULTING • CIVIL & PROCESS ENGINEERING • LANDSCAPE ARCHITECTURE
 GARRNS DARRWIN MACKAY TOWNESVILLE
 901 9421 1200 141/142/143/144 145/146/147/148/149/150/151/152/153/154/155/156/157/158/159/160/161/162/163/164/165/166/167/168/169/170/171/172/173/174/175/176/177/178/179/180/181/182/183/184/185/186/187/188/189/190/191/192/193/194/195/196/197/198/199/200/201/202/203/204/205/206/207/208/209/210/211/212/213/214/215/216/217/218/219/220/221/222/223/224/225/226/227/228/229/230/231/232/233/234/235/236/237/238/239/240/241/242/243/244/245/246/247/248/249/250/251/252/253/254/255/256/257/258/259/260/261/262/263/264/265/266/267/268/269/270/271/272/273/274/275/276/277/278/279/280/281/282/283/284/285/286/287/288/289/290/291/292/293/294/295/296/297/298/299/300/301/302/303/304/305/306/307/308/309/310/311/312/313/314/315/316/317/318/319/320/321/322/323/324/325/326/327/328/329/330/331/332/333/334/335/336/337/338/339/340/341/342/343/344/345/346/347/348/349/350/351/352/353/354/355/356/357/358/359/360/361/362/363/364/365/366/367/368/369/370/371/372/373/374/375/376/377/378/379/380/381/382/383/384/385/386/387/388/389/390/391/392/393/394/395/396/397/398/399/400/401/402/403/404/405/406/407/408/409/410/411/412/413/414/415/416/417/418/419/420/421/422/423/424/425/426/427/428/429/430/431/432/433/434/435/436/437/438/439/440/441/442/443/444/445/446/447/448/449/450/451/452/453/454/455/456/457/458/459/460/461/462/463/464/465/466/467/468/469/470/471/472/473/474/475/476/477/478/479/480/481/482/483/484/485/486/487/488/489/490/491/492/493/494/495/496/497/498/499/500/501/502/503/504/505/506/507/508/509/510/511/512/513/514/515/516/517/518/519/520/521/522/523/524/525/526/527/528/529/530/531/532/533/534/535/536/537/538/539/540/541/542/543/544/545/546/547/548/549/550/551/552/553/554/555/556/557/558/559/560/561/562/563/564/565/566/567/568/569/570/571/572/573/574/575/576/577/578/579/580/581/582/583/584/585/586/587/588/589/590/591/592/593/594/595/596/597/598/599/600/601/602/603/604/605/606/607/608/609/610/611/612/613/614/615/616/617/618/619/620/621/622/623/624/625/626/627/628/629/630/631/632/633/634/635/636/637/638/639/640/641/642/643/644/645/646/647/648/649/650/651/652/653/654/655/656/657/658/659/660/661/662/663/664/665/666/667/668/669/670/671/672/673/674/675/676/677/678/679/680/681/682/683/684/685/686/687/688/689/690/691/692/693/694/695/696/697/698/699/700/701/702/703/704/705/706/707/708/709/710/711/712/713/714/715/716/717/718/719/720/721/722/723/724/725/726/727/728/729/730/731/732/733/734/735/736/737/738/739/740/741/742/743/744/745/746/747/748/749/750/751/752/753/754/755/756/757/758/759/760/761/762/763/764/765/766/767/768/769/770/771/772/773/774/775/776/777/778/779/780/781/782/783/784/785/786/787/788/789/790/791/792/793/794/795/796/797/798/799/800/801/802/803/804/805/806/807/808/809/810/811/812/813/814/815/816/817/818/819/820/821/822/823/824/825/826/827/828/829/830/831/832/833/834/835/836/837/838/839/840/841/842/843/844/845/846/847/848/849/850/851/852/853/854/855/856/857/858/859/860/861/862/863/864/865/866/867/868/869/870/871/872/873/874/875/876/877/878/879/880/881/882/883/884/885/886/887/888/889/890/891/892/893/894/895/896/897/898/899/900/901/902/903/904/905/906/907/908/909/910/911/912/913/914/915/916/917/918/919/920/921/922/923/924/925/926/927/928/929/930/931/932/933/934/935/936/937/938/939/940/941/942/943/944/945/946/947/948/949/950/951/952/953/954/955/956/957/958/959/960/961/962/963/964/965/966/967/968/969/970/971/972/973/974/975/976/977/978/979/980/981/982/983/984/985/986/987/988/989/990/991/992/993/994/995/996/997/998/999/1000

Kurth & Mallick Pty Ltd
 Proposed Reconfiguration of Lot 144
 on SP113652

PROPOSED LOT 2 ACCESS
 FOR DOMESTIC BUILDING ENVELOPE

6226-SK01A AS SHOWN
 A11 of 3-2a

Reasons for Decision

1. The reasons for this decision are:
 - a. Sections 81, 81A and 83 of the *Planning Act 2016*;
 - b. to ensure the development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme Version 1.0; and
 - c. 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 10 August 2021 under sections 78 and 79 of the *Planning Act 2016*;
 - b. the development application contained information from the applicant which Council reviewed together with Council's own assessment against the 2017 State Planning Policy, the 2006 Douglas Shire Planning Scheme (As Amended) 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 Planning Area Code;
 - b. Council undertook an assessment in accordance with the provisions of sections 81, 81A and 83 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.

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 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.

Our ref: PR108240/OCK/SF/L80931



Attachment B

Photos of Constructed Access





CANE
RAILWAY

FOR SALE



McGRATH **FOR SALE**
McGRATH
0418 772 277

Our ref: PR108240/OCK/SF/L80931



Attachment C

Ergon's Certificate of Supply



109 Lake Street, Cairns QLD 4870
PO Box 358, Cairns QLD 4870

ergon.com.au

Ergon Energy Work Request: **1679130**

28 May 2021

Douglas Shire Council
PO Box 723
MOSSMAN QLD 4873

Attn: Planning & Development Team

CERTIFICATE OF ELECTRICITY SUPPLY

**Malakai Pty Ltd – Lot 144 SP113652 – 59R Crees Road, Craiglie
Subdivision – One Lot into Two Lots (Development)**

We refer to the above Development.

Ergon Energy Corporation Limited certifies that **Malakai Pty Ltd** has complied with Ergon Energy's requirements in relation to overhead electricity to be supplied to the Development.

Should you require any further assistance, please do not hesitate to contact Ergon Energy's Customer Connection Officer for this Development, Victoria Kezilas on 40 804 549 quoting the Ergon Energy Work Request at the top of this letter.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Victoria Kezilas'.

Victoria Kezilas
Customer Project Sponsor

cc Malakai Pty Ltd
C/- SPA Consulting Engineers
PO Box 664, North Cairns Qld 4870