

20 December 2021

Enquiries: Jenny Elphinstone
Our Ref: ROL 2017_1952/2 (Doc ID 1057344)
Your Ref: PR108240/OCK/SF/L80931

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

Byron and Vicki Kurth and Mallakai Pty Ltd
C/- RPS Australia East Pty Ltd
PO Box 1949
CAIRNS QLD 4870

Email: owen.caddick-king@rpsgroup.com.au

Attention Mr Owen Caddick-King

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/- RPS Australia East Pty Ltd
PO Box 1949
Cairns Qld 4870
Attention Owen Caddick-King
Email: iowen.caddick-king@rpsgroup.com.au

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 dated 231 August 2018 and the the Decision Notice for the Approved Minor Change dated 9 September 2021.

Decision

Date of Decision: 20 December 2021

Decision Details: Approved (subject to conditions) whereby

1. The approved drawings are further 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 C F <u>I</u> dated 27 February 2018 6 September 2021 with the <u>amended Conservation Covenant Area</u> and as amended by Condition 2 <u>and as amended by Council to detail the Secondary Covenant Area (Council Dec 1035453).</u>	To be determined pursuant to condition 2. <u>2 December 2021</u>
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 deleted 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 C ~~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 Envelope 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.~~
 - e. ~~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 4 is amended as follows:

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 existing access for Proposed Lot 1 and two accesses (one existing access and a second alternative future access) to proposed Lot 2 unless otherwise approved by the Chief Executive Officer.

All accesses are constructed at the owner's expense ~~with~~.

The second alternative vehicle access to proposed Lot 2, being vehicle access adjacent to the sugar cane tramline generally as per the existing cane headland adjacent to the railway line easement and serving the Domestic Building Envelope, must be generally in accordance with the Flanagan Consulting Group drawing 6226-SK01 dated 25 July 2018, and as amended to achieve:

- i. appropriate sight line clearances as certified by a Registered Practising Engineer Queensland (RPEQ) Engineer:
- ii. a grassed area between the driveway exit/entry point and the railway easement; and
- iii. a small grassed area east of the driveway entry/exit point.

~~and constructed prior to the lodgement of the Survey Plan for endorsement. The second vehicle access can be constructed at a future time.~~ The second access to proposed Lot 2 must be constructed under a Development Permit for Operational

AND

4. Condition 11 is amended as follows:

Electricity and Telecommunications

11. ~~The applicant must provide evidence confirming that~~ Electricity and telecommunications ~~must~~ are able to be provided to each of the proposed lots prior to the approval of the plan of survey.

AND

5. 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 I.	2 December 2021
Proposed Lot 2 Access	Flanagan Consulting Group Drawing 6226- SK01	25 July 2018

Existing and Original Approval

Refer to existing Decision Notice for a Minor Change and the corresponding 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 future Operational Work

Currency Period for the Approval

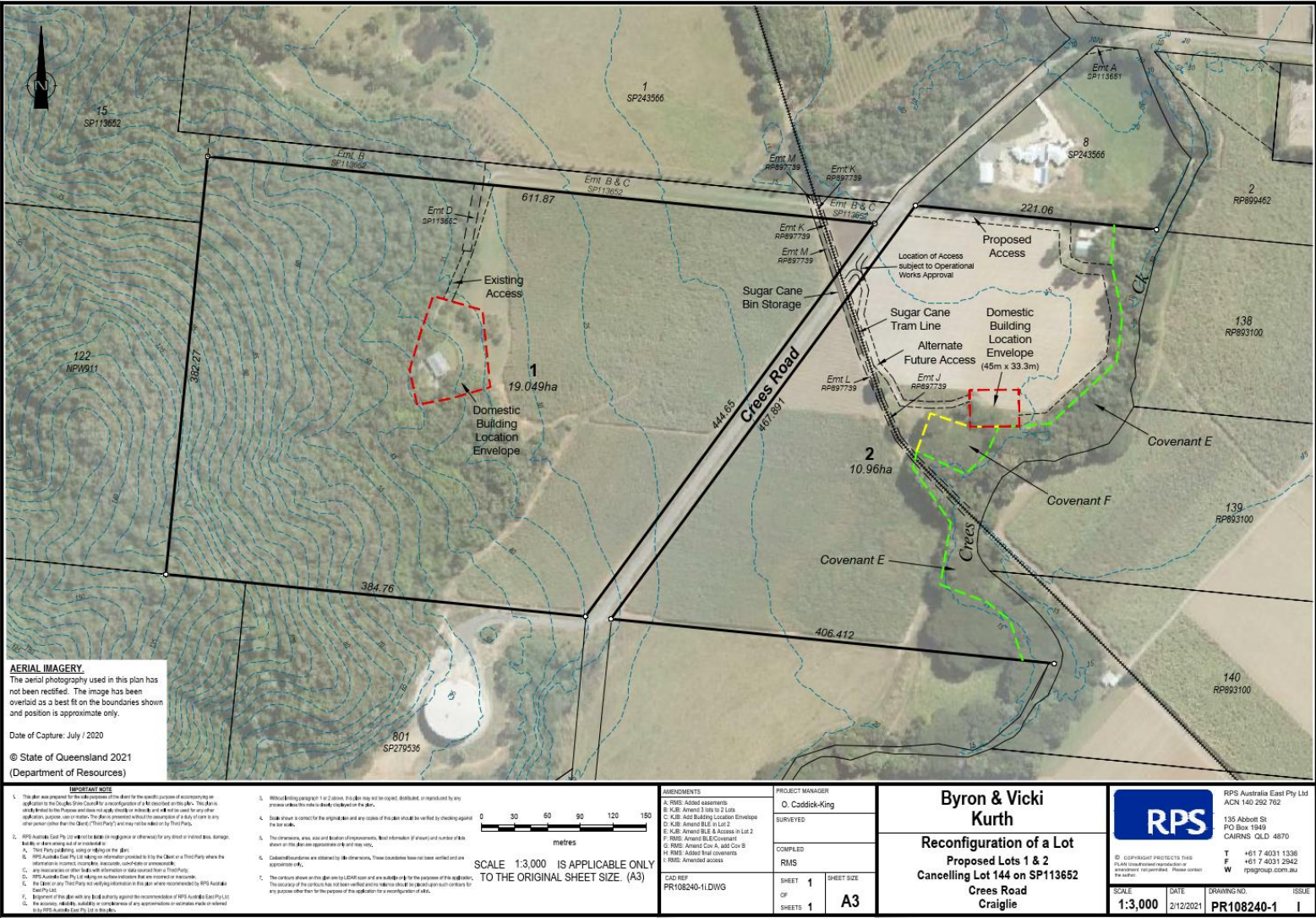
No change has been made to the currency period. Refer to the Court Order. This approval, granted under the provisions of the *Planning Act 2016*. The approval takes effect in accordance with the provisions of Section 85 of the *Planning Act 2016*.

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)



Attachment 1 – Existing Decision Notice for a Minor Change and original Court Order

Existing Decision Notice for Minor Change

9 September 2021

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

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

Mallakai Pty Ltd
C/- IAMCU-Legal Pty Ltd
5 Vallely 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 Vallely 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 F dated 27 February 2018 <u>6 September 2021</u> with the amended Conservation Covenant Area and as amended by Condition 2 and as amended by Council to detail the Secondary Covenant Area (Council Doc 1035453).	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 Envelope 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 and as amended by Condition 2 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*.

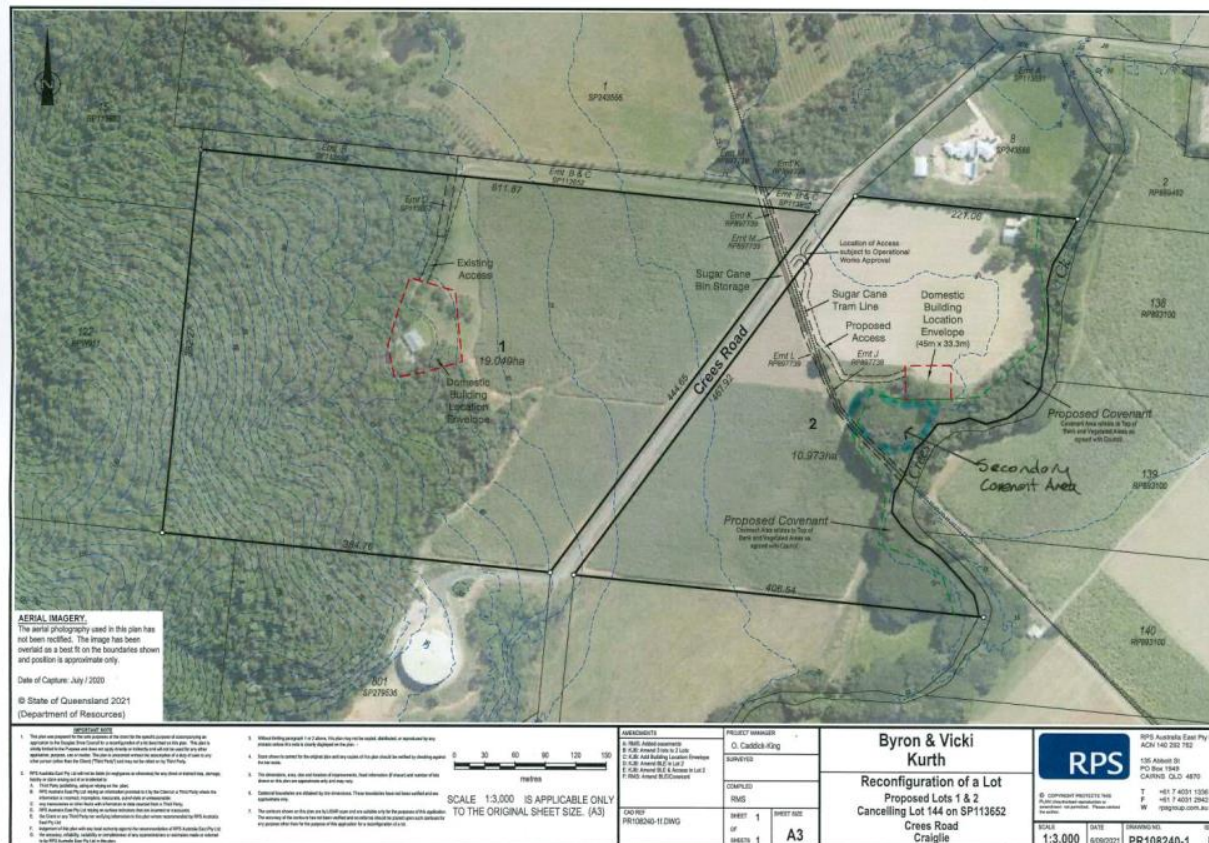
Rights of Appeal

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.



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: Vanessa.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 Envelope 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

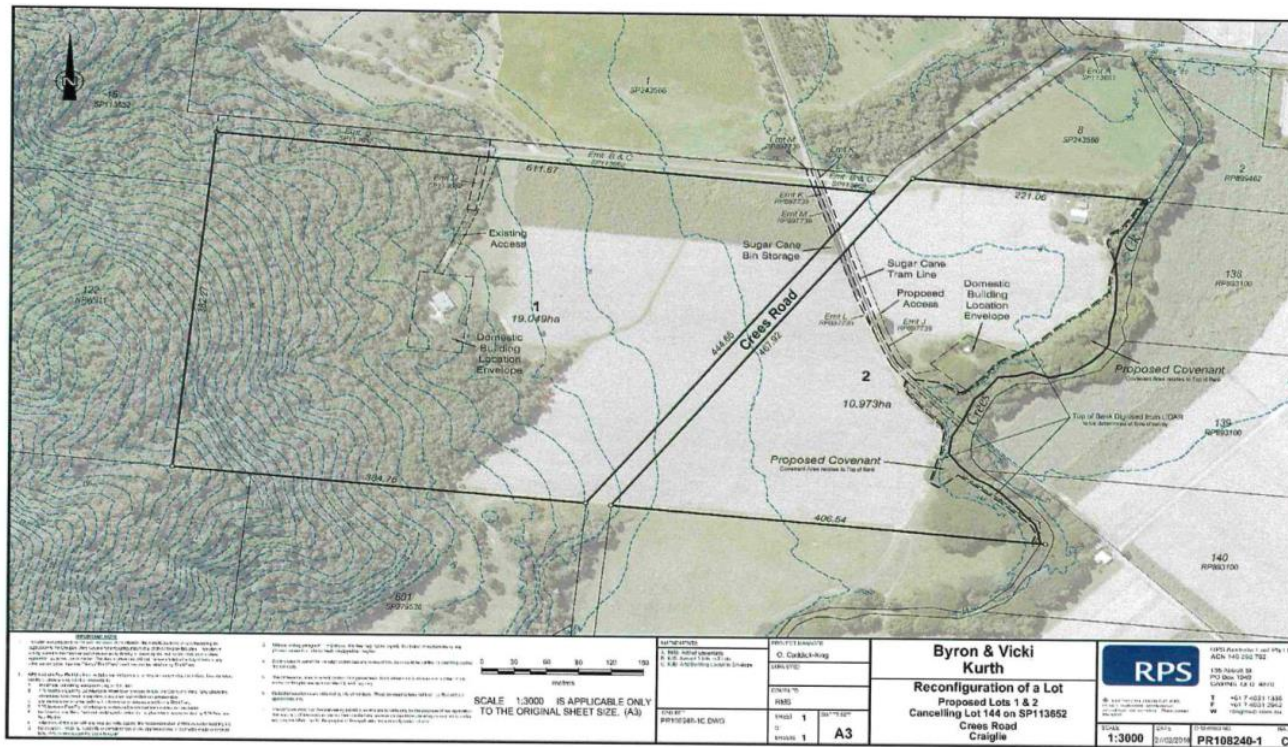
11. Electricity and telecommunications must be provided to each of the proposed lots prior to the approval of the plan of survey.

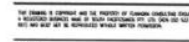
ADVICE

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).





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.

Original 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: Vanessa.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 Envelope 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).

Reasons for Decision

1. The reasons for this decision are:
 - a. Sections 78, 78A, 79, 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 on 2 December 2021 under sections 78, 78A 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
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- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
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