

19 September 2023

Enquiries: Jenny Elphinstone
Our Ref: ROL 2022_4857/2 (Doc ID 1183553)
Your Ref: DA2022_004

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

Dept Seniors, Disability Services & Aboriginal & Torres Strait Islander Partnership
PO Box 15397
City East Qld 4002

Email: gerhard.visser@dsdsatsip.qld.gov.au

Attention Mr Gerhard Visser

Dear Sir

**Development Application for Minor Change to the Approval for Reconfiguring a Lot
at Gorge Road Mossman Gorge
On Land Described as Lot 100 on RP911412**

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

Please quote Council's application number: ROL 2022_4857/2 in all subsequent correspondence relating to this development application.

Please refer to the separate correspondence regarding the adopted infrastructure charges for the Minor Change.

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 (Minor Change)
 - Approved Drawing(s) and/or Document(s)
 - Reasons for Decision
 - Original Decision Notice
- Advice For Appeals (Decision Notice for Minor Change)
- Adopted Infrastructure Charges Notice (Minor Change)
- Advice For Making Representations and Appeals (Infrastructure Charges).



Decision Notice

Approval (with conditions)

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

Applicant Details

Name: Dept Seniors, Disability Services & Aboriginal & Torres Strait Island Partnership

Postal Address: PO Box 15397
City East QLD 4002

Email: gerhard.visser@dsdsatsip.qld.gov.au

Property Details

Street Address: L100 Gorge Road, Mossman Gorge

Real Property Description: Lot 100 on RP911412

Local Government Area: Douglas Shire Council

Details of Proposed Development

Application for a Minor Change to the Development Permit for Reconfiguring a Lot (One lot into 19 lots) to include additional lots and changes to the conditions of the approval for an amended layout.

Decision

Date of Decision: 19 September 2023. (This approval for the minor change replaces the Decision notice approved on 29 July 2022 and issued on 8 August 2022.)

Decision Details: Approved whereby:

1. The table of approved drawings and documents is amended as follows.

APPROVED DRAWING(S) AND / OR DOCUMENT(S)

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

Drawing or Document	Reference	Date
Survey Plan 316364 <u>Proposed lot layout.</u>	Prepared by RPS Australia East Pty Ltd, subsequent to the development of the subdivision following Development Permit ROL 2014_396 based on the	19 February 2020. <u>To be determined.</u>

	<p>proposed lot plan, Black and More Drawing Project 7019 Sketch 7019-1 Revision B dated 18 March 2014 and the associated and subsequent operational work.</p> <p><u>Generally in accordance with the plan by Trinity Engineering and Consulting, Job 1684, Sketch 1684-100, Revision B dated 20 July 2023 and amended by the conditions of the approval.</u></p>	
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2. Condition 4 is amended as follows:

Amended Design - Street Layout and Design

4. The street layout and design must be revised to comply with Queensland Streets and the FNQROC Development Manual, to the satisfaction of the Chief Executive Officer. In particular:

- e. ~~Remove~~ Include the pedestrian links at the end of Jankaji Close, and Manjal Close and Walkarr Close and incorporate these areas into the neighbouring residential lots Lot 53;

...

- h. Revisit the design of the close, adjacent to Lot 39 and servicing Lots 40 and 41, on the eastern extent of the development. ~~The current design is not supported.~~ The “new private road” in Lot 53 must be designed road reserve width and road formation must be upgraded in all locations to comply with the requirements of the FNQROC Development Manual or be redesigned as a shared reciprocal access driveway arrangement benefitting to Lots 39, 40, and 41 and 53;

- i. ~~Change the description of Permit “Lot 53” that is a lot adjacent to the Mossman River from to be a freehold community lot and provide a suitable covenant to constrain the land to protect the environment and to provide an access easement over the Lot for the benefit of the Mossman Gorge Community residents to land dedicated to the State as a Nature Reserve;~~ and

- j. Note on the plan that Lot 42 and Lot 53 ~~is~~ are private community land;

...

- l. (Minor Change) The replacement of community land with of two new additional lots in the area between Lots 24, 25 to 33,35; and

- m. The provision of access and service easements over the “new private road” as detailed in the plan by Trinity Engineering and Consulting, Job 1684, Sketch 1684-100, Revision B dated 20 July 2023, for the benefit of Lots 39, 40 and 41.

2. The following additional condition is included in the approval.

Internal Work

28. Undertake the following works external to the land at no cost to Council:

- a. Construct a private driveway, (generally as shown on the plan by Trinity Engineering and Consulting, Job 1684, Sketch 1684-100,

Revision B dated 20 July 2023) between the extension of Lund Street on Lot 53 for the benefit of Lots 39, 40 and 41.

All work is to be designed and constructed in accordance with the FNQROC Development Manual requirements.

The works outlined above constitute Operational Works. Three (3) copies of a plan of the works at A1 size and one (1) copy at A3 size must be endorsed by the Chief Executive Officer prior to commencement of such works. Such work must be constructed in accordance with the endorsed plan to the satisfaction of the Chief Executive Officer prior to for survey plan endorsement.

Note: the above works are not considered to be creditable or trunk related works in accordance with Section 145 of the *Planning Act 2016*.

3. All other conditions and advices of the Decision Notice issued 8 August 2022 remain unchanged.

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

Refer to Attachment 1.

Existing Approval

Refer to Attachment 2.

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

All Plumbing and Drainage Work must only be carried in compliance with the Queensland *Plumbing and Drainage Act 2018*.

Currency Period for the Approval

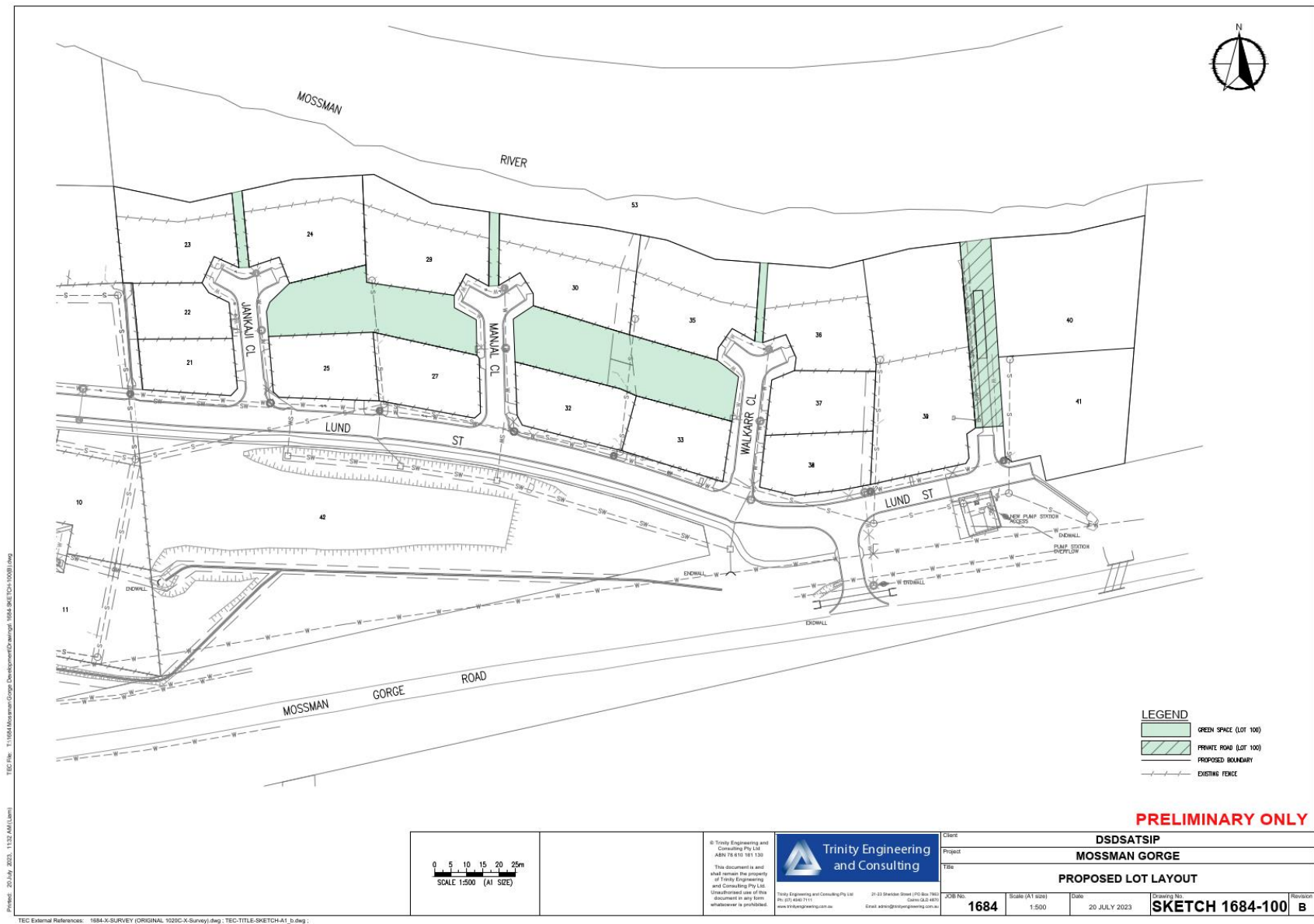
This approval, granted under the provisions of the *Planning Act 2016*, shall lapse four (4) years from the day the approval takes effect in accordance with the provisions of Section 85 of the *Planning Act 2016*.

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.

Attachment 1 - Approved Drawing (s) and / or Document(s) (To be amended by the Conditions of the approval.)





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ABN 71 241 237 800

8 August 2022

Enquiries: Jenny Elphinstone
Our Ref: ROL 2022_4857/1 (Doc ID 1099986)
Your Ref: DA2022_004

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

Dept Seniors, Disability Services & Aboriginal & Torres Strait Islander Partnership
PO Box 5461
CAIRNS QLD 4870

Email: gerhard.visser@dsdsatsip.qld.gov.au

Attention Mr Gerhard Visser

Dear Sir

**Development Application for Reconfiguring a Lot (One lot into 17 lots)
At Gorge Road Mossman Gorge
On Land Described as Lot 100 on RP911412**

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

Please quote Council's application number: ROL 2022_4857/1 in all subsequent correspondence relating to this development application.

Conditions of the approval require further studies and amended designs. Council notes that the subsequent application for a Development Permit for Operational Work included the required amended drawings. Council also notes that the application for a Development Permit for Operational Work was approved and the associated Works Acceptance Certificate has issued.

Please refer to the separate correspondence regarding the adopted infrastructure charges, that Council acknowledges have been paid.

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

Yours faithfully

A handwritten signature in black ink, appearing to read "P. Hoyer", written over a horizontal line.

**For
Paul Hoyer
Manager Environment & Planning**

encl.

- Decision Notice
 - Approved Drawing(s) and/or Document(s)
 - Reasons for Decision
- Advice For Making Representations and Appeals (Decision Notice)
- Adopted Infrastructure Charges Notice
- Advice For Making Representations and Appeals (Infrastructure Charges).

Doc ID: 1099986

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Decision Notice

Approval (with conditions)

Given under section 63 of the Planning Act 2016

Applicant Details

Name: Dept Seniors, Disability Services & Aboriginal & Torres Strait Is Partnership

Postal Address: PO Box 5461
CAIRNS QLD 4870

Email: gerhard.visser@dsdsatsip.qld.gov.au

Property Details

Street Address: L100 Gorge Road, Mossman Gorge

Real Property Description: Lot 100 on RP911412

Local Government Area: Douglas Shire Council

Details of Proposed Development

Development Permit for Reconfiguring a Lot (One lot into 19 lots).

Decision

Date of Decision: 29 July 2022

Decision Details: Approved (subject to conditions)

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

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

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

Drawing or Document	Reference	Date
Survey Plan 316364	Prepared by RPS Australia east Pty Ltd, subsequent to the development of the subdivision following Development Permit ROL 2014_396 based on the proposed lot plan, Black and More Drawing Project 7019 Sketch 7019-1 Revision B dated 18 March 2014 and the associated and subsequent operational work.	19 February 2020.

Assessment Manager Conditions & Advices

ASSESSMENT MANAGER CONDITIONS

1. Carry out the approved development generally in accordance with the approved drawing(s) and/or document(s), and in accordance with:
 - a. The specifications, facts and circumstances as set out in the application submitted to Council; and
 - b. The following conditions of approval and the requirements of Council's Planning Scheme and the *FNQROC Development Manual*.

Except where modified by these conditions of approval.

Timing of Effect

2. The conditions of the Development Permit must be effected prior to the issue of a Compliance Certificate for the Plan of Survey except where specified otherwise in these conditions of approval.

Street Hierarchy

3. For the development the following street hierarchy is applied:
 - a. Lund Street and Bamabubu Street are access streets;
 - b. Jankaji Close, Manjal Close, Walkarr Close are access places; and
 - c. the extension of Lund Street / new Close past the Bamabubu Street exit is an access place.

Amended Design - Street Layout and Design

4. The street layout and design must be revised to comply with Queensland Streets and the *FNQROC Development Manual*, to the satisfaction of the Chief Executive Officer. In particular:
 - a. The street hierarchy nominated under Condition 3 above;
 - b. Following the endorsement of the Traffic Study required under Condition 5 inclusion of upgrades required to the existing road network;
 - c. Following the endorsement of the Drainage Study required under Condition 6 inclusion of the upgrades required to the existing stormwater infrastructure;

- d. Provision of a two (2.0) metre wide footpath is to be constructed within all Access Streets in accordance with Table D1.3 of the *FNQROC Development Manual*;
- e. Remove the pedestrian links at the end of Jankaji Close, and Manjal Close and Walkarr Close and incorporate these areas into the neighbouring residential lots;
- f. Provision of a bus stop near Bamabubu Street and Mossman Gorge Road;
- g. A temporary vehicle turnaround at end of all roads where the length of road exceeds sixty (60) metres (ie maximum acceptable reversing distance for garbage truck) must be provided. The turning facility must be of sufficient size to turn around a garbage truck, either in a continuous forward movement or by a three-point turn. Alternatively, a common refuse collection area may be provided where suitably located. The location of any proposed common refuse collection area must be identified on the amended plans and approved by the Chief Executive Officer prior to the issue of a Development Permit for Operational Work;
- h. Revisit the design of the close, adjacent to Lot 39 and servicing Lots 40 and 41, on the eastern extent of the development. The current design is not supported. The road reserve width and road formation must be upgraded in all locations to comply with the requirements of the *FNQROC Development Manual* or be redesigned as a shared reciprocal access arrangement to Lots 39, 40, 41 and 53;
- i. Change the description of "Lot 53" that is a lot adjacent to the Mossman River from a freehold lot to land dedicated to the State as a Nature Reserve; and
- j. Note on the plan that Lot 42 is private community land;
- k. Compliance with the current version of Council's *FNQROC Development Manual* – Road Network

The Applicant must engage a suitably qualified and experienced Registered Professional Engineer of Queensland (RPEQ) to assess the existing roads infrastructure (including all aspects of the design as noted in condition 5) against the current engineering standards.

Where deviations from the current *FNQROC Development Manual* standards exist, the Applicant is to:

- i. Identify the non-conformance (location, extent etc).
- ii. Provide details of the works required to bring the specific non-conformances up to current engineering standards.

It should be noted that Council may consider non-standard infrastructure where it can be demonstrated that:-

- There is no increased risk to Council accepting the infrastructure (safety, environmental, financial (ie increased maintenance costs or likely replacement costs) over the levels which would be expected and accepted with donation of *FNQROC Development Manual* standard infrastructure; and
- Acceptance of non-standard infrastructure will be undertaken on a case by case basis, once the specific non-conformances have been identified in the report required as part of this condition.

It should be noted that, the acceptance of non-standard infrastructure shall remain at the discretion of the Douglas Shire Council. Where an agreement cannot be reached, the standard *FNQROC Development Manual* infrastructure requirements shall prevail.

The Applicant must provide a set of amended drawings reflecting any changes required from conditions of approvals (including revised traffic and drainage studies). The Applicant must ensure that an appropriately qualified and experienced RPEQ certifies that the design and construction of the road network infrastructure and associated utilities, signage, lighting etc proposed to be handed over to Council as part of the donated assets process at plan sealing is in accordance with the *FNQROC Development Manual*, except where an alternative standard has been explicitly agreed between the parties. The Applicant must submit a Statement of Compliance for the Operational Works Design as provided in Appendix A of Section AP 1 of the *FNQROC Development Manual* with the revised set of drawings.

The set of amended drawings must be submitted to Council and endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Operational Works.

All works must be carried out by the Applicant at no cost to Council in accordance with the approved plans, to the requirements and satisfaction of the Chief Executive Officer prior to the issue of a Compliance Certificate for the Plan of Survey.

Traffic Assessment

5. Undertake a detailed traffic assessment in accordance with Council's requirements to identify and assess:
 - a. Any impacts of the proposed development upon the Council's Road Network. The assessment must include (but not be limited to):
 - i. All Intersections – Capacity, Geometry and Treatments
The Applicant must demonstrate that the intersections within the proposed reconfiguration of a lot (RoL) and those that will be traversed to directly access the development from Mossman Gorge Road, comply with current engineering standards and the *FNQROC Development Manual*. The Applicant must provide amended plans which show and document the extent of works which are required to ensure compliance with Section D1 (specifically Section D1.12) of the *FNQROC Development Manual*. The amended plans are to identify and nominate all vegetation which requires removal for the safe and efficient movement of vehicles and pedestrians through the proposed development and intersections feeding the development from Mossman Gorge Road;
 - ii. All Road links – Capacity, Geometry and Form
The Applicant must review all road links within the bounds of the proposed development and those links which link the proposed development to Mossman Gorge Road (Junkurji Street, Lund Road (Western End) and Bamabubu Street. The Applicant must demonstrate that each road link complies with Section D1 (in particular Section D1.10) of the *FNQROC Development Manual* or identify what works are required to be undertaken to ensure that compliance with Section D1 of the *FNQROC Development Manual*. A revised plan showing the extent of works required is to be provided to Council for review and approval, prior to the issue of an Development Permit for Operational Works;
 - iii. Public Transport Network
The Applicant must demonstrate that the development complies with the requirement for a bus-route and section D1.16 of the *FNQROC Development Manual*;
 - iv. Garbage Collection / Emergency Vehicle Access;
The Applicant must demonstrate that the development complies with the requirement for a Section D1 of the *FNQROC Development Manual* (in particular sections D1.02, D1.10, D1.12 and D1.14) unless an alternative common area for garbage collection is agreed to by the Chief Executive Officer under Condition 4 above; and

v. Pedestrians and Cyclists

The Applicant must demonstrate that the development complies with the requirement for a bus-route and section D1.19 of the *FNQROC Development Manual*;

- c. Compliance of the existing network infrastructure with current engineering standards and the *FNQROC Development Manual*; and
- d. Determine any mitigation measures required to ameliorate the effects of the proposed development and identify these in revised drawings.

The Applicant must provide a set of amended drawings reflecting any changes required from the traffic study and conditions. The Applicant must ensure that an appropriately qualified and experienced RPEQ certifies that the design and construction of the proposed traffic network, proposed to be handed over to Council as part of the donated assets process, is in accordance with the *FNQROC Development Manual*. The Applicant must submit a Statement of Compliance for the Operational Works Design as provided in Appendix A of Section AP 1 of the *FNQROC Development Manual* with the revised set of drawings.

Drainage Study of Site

- 6. Undertake a local drainage study of the site to determine the drainage impacts on upstream and downstream properties and the mitigation measures required to minimise such impacts. In particular, the study must address the following:
 - a. The contributing catchment boundaries;
 - b. The extent of the 100 year ARI flood event in relation to the site both pre and post development;
 - c. Primary and secondary flow paths for the 5, 10, and 100 year ARI flood events;
 - d. Identify any requirement for drainage easements;
 - e. Identify the need and tenure for flood detention areas to ensure a no worsening impact on downstream properties for the entire development;
 - f. Information on the proposed works and any impacts proposed at the drainage outlet from the proposed development;
 - g. Lawful point of discharge;
 - h. Consideration of the following particular requirements:
 - i. Stormwater drainage improvements on the eastern end of the proposed development are required. This includes, but is not limited to resolving the poor drainage in the area at the eastern end of the sports oval (proposed Lot 42);
 - ii. The headwall adjacent to Lund Street needs to be relocated further from the road carriageway;
 - iii. The minimum size RCP to be used within the development is 375mm in accordance with the current requirements of the *FNQROC Development Manual*;
 - iv. Structures must be provided to the western boundary of the land at proposed lots 21, 22 and 23 to mitigate inundation of lots 21, 22 and 23 from overland flows;
 - v. Consideration must be given to the separation of gross pollutants from the storm water prior to it exiting the community; and
 - vi. Easements must be established for the drains passing through allotments, or for stormwater infrastructure which is not on a standard alignment;

- i. Compliance with the current version of Council's *FNQROC Development Manual – Stormwater*

The Applicant must have an suitably qualified and experienced RPEQ assess the existing infrastructure capacity, condition and performance (where possible) against the current engineering standards as defined by the *FNQROC Development Manual* and associated reference documents (including QUDM)

Where deviations from the current *FNQROC Development Manual* standards exist, the applicant is to:

- i. Identify the non-conformance (location, extent etc); and
- ii. Provide details of the works required to bring the specific of non-conformances up to current engineering standards.

It should be noted that Council may consider non-standard infrastructure where it can be demonstrated that:-

- There is no increased risk to Council accepting the infrastructure (safety, environmental, financial (ie increased maintenance costs or likely replacement costs) over the levels which would be expected and accepted with donation of *FNQROC Development Manual* standard infrastructure;
- Acceptance of non-standard infrastructure will be undertaken on a case by case basis, once the specific non-conformances have been identified in the report required as part of this condition; and
- The non-standard infrastructure shall be required to be certified as fit-for-purpose.

The Applicant must provide a set of amended drawings reflecting any changes required from the drainage study and conditions. The Applicant must ensure that an appropriately qualified and experienced RPEQ certifies that the design and construction of the stormwater system proposed to be handed over to Council as part of the donated assets process at plan sealing is in accordance with the *FNQROC Development Manual*, except where an alternative standard has been explicitly agreed between the parties – in accordance with the provisions outlined above. The Applicant must submit a Statement of Compliance for the Operational Works Design as provided in Appendix A of Section AP 1 of the *FNQROC* with the revised set of drawings.

The drainage study and amended drawings must be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Operational Works.

It should be noted that in all cases, the acceptance of non-standard infrastructure shall remain at the discretion of the Chief Executive Officer. Where agreement cannot be reached, the standard *FNQROC Development Manual* infrastructure requirements shall prevail.

Existing Creek and Drainage Systems

7. All existing creek systems and drainage areas adjacent to or leading into the Mossman River to the North of the proposed development 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.

The Applicant/owner must obtain any necessary approvals from the Department of Natural Resources and Mines for carrying out works in a watercourse.

Lawful Point of Discharge

8. 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.

Access to Hatchet or Battleaxe Lots

9. Construct a concrete driveway or other approved surface to battle-axe Lot 40 extending the full length of the access leg from the T-head intersection adjacent, with a Standard Cross-over in accordance with Council Standard Drawing S1015B. Construction of the concrete driveway must be in accordance with Council Standard Drawing S1110.

All works must be carried out to the requirements and satisfaction of the Chief Executive Officer prior to the issue of a Compliance Certificate for the Plan of Survey.

Service Conduits

10. Provide service conduits to Lot 40 adjacent to the driveway together with associated access pits if necessary, to extend from the front boundary to the end of the access driveway.

All works must be carried out to the requirements and satisfaction of the Chief Executive Officer prior to the issue of a Compliance Certificate for the Plan of Survey.

Street Lighting

11. The following arrangements for the installation of street lighting within the proposed subdivision must be provided prior to the approval and dating of the Plan of Survey:

- a. Prior to the issue of a Compliance Certificate for the Plan of Survey, a Rate 2 lighting scheme is to be prepared by Ergon Energy or its approved consultant and submitted to the Chief Executive Officer for approval. The Rate 2 lighting scheme is to be designed in accordance with the relevant Road Lighting Standard AS/NZS 1158 and the *FNQROC Development Manual*. The applicable lighting category is to be determined from the Road Hierarchy Table D1.1 and the corresponding applicable Lighting Categories Table D8.1 as identified in the *FNQROC Development Manual*.

The design must provide the applicable illumination level specified in the Road Lighting Standard AS/NZS 1158 at the following road elements:

- i. Intersections;
- ii. Pedestrian Refuges;
- iii. Cul-de-sacs; and
- iv. LATM Devices (Including Roundabouts).

LATM Devices are to be shown on the civil layout design, the electrical services and street lighting design must be submitted in accordance with Ergon Energy's latest Distribution Design Drafting Standard;

- b. Prior to the issue of a Compliance Certificate for the Plan of Survey, written confirmation that the relevant capital contribution required by Ergon Energy has been paid must be submitted, to ensure that the street lighting will be constructed;
- c. Where a new intersection is formed on an existing roadway for the purpose of accessing a new subdivision development, the intersection and existing road approaches must be provided with street lighting for a distance equivalent to at least two spans either side of the intersection to the relevant Lighting Category; and
- d. Where an existing intersection is required to be upgraded as part of a development approval, the intersection and existing road approaches must be provided with street lighting for a distance equivalent to at least two spans either side of the intersection to the relevant Lighting Category.

Water Supply and Sewerage Infrastructure Plan

12. An updated water supply and sewerage infrastructure plan and supporting information including hydraulic network analysis must be submitted demonstrating how the development can be adequately serviced by Council's existing infrastructure.

The analysis must identify any deficiencies or non-compliances of the existing water and sewer networks which are used to service the proposed development. Where non-compliances are identified, the Applicant must modify, repair, replace or design and construct any augmentations or remediation works required to bring the infrastructure up to current engineering standards at no cost to Council.

In particular the plan must:

- a. Identify the materials that the sewer and water networks are constructed from;
- b. Identify any non-conformances in terms of the performance, design and construction of the infrastructure networks against current standards (*FNQROC Development Manual*);
- c. Identify what works are required to be undertaken to enable certification that the infrastructure is compliant in all regards to the requirements of the *FNQROC Development Manual* (Sections D6 and D7);
- d. Identify any locations where easements would be required to be obtained for water and sewer on non-standard alignments;
- e. Identify any external catchments that will be connected to the internal sewer or water networks; and
- f. Identify any trunk infrastructure external to the proposed subdivision that may require upgrading to accommodate the development.
- g. Compliance with the current version of Council's *FNQROC Development Manual – Water and Sewerage*

The water supply and sewerage infrastructure plan must be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Operational Works.

The Applicant must engage a suitably qualified and experienced RPEQ to assess the infrastructure against the current engineering standards.

Where deviations from the current *FNQROC Development Manual* standards exist, the applicant is to:

- i. Identify the non-conformance (location, extent etc); and
- ii. Provide details of the works required to bring the specific non-conformances up to current engineering standards.

It should be noted that Council may consider non-standard infrastructure where it can be demonstrated that:

- . There is no increased risk to Council accepting the infrastructure (safety, environmental, financial (i.e., increased maintenance costs or likely replacement costs) over the levels which would be expected and accepted with donation of *FNQROC Development Manual* standard infrastructure;
- . Acceptance of non-standard infrastructure will be undertaken on a case by case basis, once the specific non-conformances have been identified in the report required as part of this condition; and
- . The Applicant must provide a set of amended drawings reflecting any changes required from conditions of approvals. The amended drawings must be submitted to Council and endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Operational Works.

It should be noted that in all cases, the acceptance of non-standard infrastructure shall remain at the discretion of the Douglas Shire Council. Where agreement cannot be reached, the standard *FNQROC Development Manual* infrastructure requirements shall prevail.

Prior to the acceptance of works by Council, the Applicant must ensure that an appropriately qualified and experienced RPEQ certifies that the design and construction of the water and sewer infrastructure proposed to be handed over to Council as part of the donated assets process at plan sealing is in accordance with the *FNQROC Development Manual*, except where an alternative standard has been explicitly agreed between the parties – in accordance with the provisions outlined above. The Applicant must submit a Statement of Compliance for the Operational Works Design as provided in Appendix A of Section AP 1 of the *FNQROC Development Manual* with the revised set of drawings.

Water Supply and Sewerage Works (External)

13. The Applicant must undertake the following works:

- a. Upgrade, replace or provide any works as are required from Condition 6 (Water Supply and Sewerage Infrastructure Plan)
- b. Undertake the following water supply and sewerage works external to the site to connect the site to existing water supply and sewerage infrastructure:-
 - i. Upgrade the sewer pump station on the Eastern extent of the development, located opposite to block number 39, within the Mossman Gorge Road reserve. It should be noted that any upgrade to or construction of a sewerage pump station will require full design drawings and a commissioning plan in accordance with the *FNQROC Development Manual* submitted with the plan of works and will be subject to compliance with the State Purchasing Policy for competitive Tendering;
 - ii. Provide district meters at locations nominated by Douglas Shire Council; and
 - iii. CCTV footage taken after the completion of works must be submitted to Council.

Three (3) copies of a plan of the works must be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Operational Works.

All works must be carried out in accordance with the approved plans, to the requirements and satisfaction of the Chief Executive Officer, prior to the issue of a Compliance Certificate for the Plan of Survey.

Water Supply and Sewerage Works (Internal)

14. The Applicant must undertake the following works:

- a. Upgrade, replace or provide any works as are required from Condition 12 (Water Supply and Sewerage Infrastructure Plan);
- b. Provide water and sewerage infrastructure free of defects, constructed to current engineering standards and in accordance with Council's *FNQROC Development Manual*; and
- c. Required works are, but not limited to:
 - i. All non-compliances and defects of the sewerage reticulation system as identified in Condition 12 (Water Supply and Sewerage Infrastructure Plan) must be rectified;
 - ii. Provide easements over any water or sewer infrastructure assets that are on non-standard alignments OR relocate the water and sewer assets to be on a standard alignment (as per the *FNQROC Development Manual*);

- iii. The sewerage system must be extended to provide a defect free connection to each existing dwelling. In the case when a dwelling does not exist provide a single internal sewer connection to each lot in accordance with the *FNQROC Development Manual*; and
- iv. If any existing sewer connection is required to be retained but is inadequately sized to service the development, it must be upgraded. Existing sewer connections not retained must be decommissioned.

All works must be designed and constructed in accordance with the *FNQROC Development Manual*.

All works must be carried out in accordance with the approved plans, to the requirements and satisfaction of the Chief Executive Officer prior to the issue of a Compliance Certificate for the Plan of Survey.

Inspection of Sewers

- 15. CCTV inspections of all constructed sewers must be undertaken for all sewers that will become an asset of Council. The CCTV records must be provided to Council the issue of a Compliance Certificate for the Plan of Survey. An assessment of the CCTV records will be undertaken and any identified defects are to be rectified to the satisfaction of the Chief Executive Officer at no cost to Council.

Vegetation Clearing

- 16. Existing vegetation on the subject land must be retained in all areas except those affected by the construction of access driveways, the installation of services as detailed on the approved plans. Any further clearing requires a Development Permit for Operational Works.

Vegetation to be retained is to be identified and adequately fenced off for protection purposes prior to construction work commencing on the site.

Wildlife

- 17. Prior to removal of any tree, an inspection must be carried out for any signs of protected wildlife including nests and animal habitat. Should any recent wildlife activity be identified, removal of the tree must not occur until the animal has vacated the area of immediate danger. If the animal does not move from the area of danger, the Queensland Parks and Wildlife Services must be contacted for advice. Important habitat trees should be retained wherever possible.

Parkland Protection

- 18. Any common boundaries with the adjacent Mossman Gorge River must be temporarily delineated and fenced off to restrict building access for the duration of construction activity.

Weed Management

- 19. A Weed Management Plan for invasive pest species must be submitted to and endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Operational Works.

Demolish Structures

- 20. All structures not associated with the approved development (including disused services and utilities) must be demolished and/or removed from the subject land prior the issue of a Compliance Certificate for the Plan of Survey.

Stockpiling and Transportation of Fill Material

21. Soil used for filling or spoil from the excavation is not to be stockpiled in locations that can be viewed from adjoining premises or a road frontage for any longer than one (1) month from the commencement of works.

Transportation of fill or spoil to and from the site must not occur within:

- a. peak traffic times; or
 - b. before 7:00 am or after 6:00 pm Monday to Friday; or
 - c. before 7:00 am or after 1:00 pm Saturdays; or
 - d. on Sundays or Public Holidays.
22. Dust emissions or other air pollutants must not extend beyond the boundary of the site and cause a nuisance to surrounding properties.

Storage of Machinery and Plant

23. The storage of any machinery, material and vehicles must not cause a nuisance to surrounding properties, to the satisfaction of the Chief Executive Officer.

Access Easement/s

24. Create a reciprocal Access Easement to allow vehicle access and on-site manoeuvring for lots 39, 40, 41 and 53, to the requirements and satisfaction of the Chief Executive Officer. A copy of the easement documents must be submitted to Council for the approval of Council's solicitors at no cost to Council. The approved easement documents must be submitted at the same time as seeking approval and dating of the Plan of Survey and must be lodged and registered with the Department of Natural Resources and Mines in conjunction with the Plan of Survey.

Sewer Easement/s

25. Create an easement in favour of Council over all sewers on non-standard alignments or within any private lots to be created, to the requirements and satisfaction of the Chief Executive Officer. A copy of the easement documents must be submitted to Council for the approval by Council's solicitors at no cost to Council prior to the issue of a Compliance Certificate for the Plan of Survey. The approved easement documents must be submitted at the same time as seeking approval and dating of the Plan of Survey and must be lodged and registered with the Department of Natural Resources and Mines in conjunction with the Plan of Survey.

Existing Services

26. Written confirmation of the location of existing services for the land must be provided. In any instance where existing services are contained within another lot, the following applies, either:
- a. Relocate the services to comply with this requirement; or
 - b. Arrange registration of necessary easements over services located within another lot prior to or in conjunction with submission of the application for a Compliance Certificate for the Plan of Survey.

Electricity Supply

27. Written evidence from Ergon Energy advising if distribution substation/s are required within the development must be provided. If required, details regarding the location of these facilities must be submitted to the Chief Executive Officer accompanied by written confirmation from Ergon Energy. Details regarding electricity supply must be provided prior to the issue of a Development Permit for Operational Works.

ADVICE

1. Prior negotiations with Cairns Regional Council are not considered to confer any ongoing concessions or agreements to the application made to Douglas Shire Council. Council has made an independent assessment of the current application against Council policies and guidelines and current engineering standards.
2. It is Council's expectation that all created allotments need to be adequately serviced. Urban allotments, with urban use rights are expected to be serviced with urban standards of infrastructure that comply in full with the current engineering standards and Council's *FNQROC Development Manual*.
3. Neither Lot 53 or Lot 42 are accepted as Park or considered as Park.
4. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.

Infrastructure Charges Notice

5. A charge levied for the supply of trunk infrastructure is payable to Council towards the provision of trunk infrastructure in accordance with the Infrastructure Charges Notice. The original Infrastructure Charges Notice will be provided under cover of a separate letter.

The amount in the Infrastructure Charges Notice has been calculated according to Council's Infrastructure Charges Resolution.

Please note that this Decision Notice and the Infrastructure Charges Notice are stand-alone documents. The *Planning Act 2016* confers rights to make representations and appeal in relation to a Decision Notice and an Infrastructure Charges Notice separately.

The amount in the Infrastructure Charges Notice is subject to index adjustments and may be different at the time of payment. Please contact the Development Assessment Team at council for review of the charge amount prior to payment.

The time when payment is due is contained in the Adopted Infrastructure Charges Notice.

6. For information relating to the *Planning Act 2016* log on to www.dsdmip.qld.gov.au. To access the FNQROC Development Manual, Local Laws and other applicable Policies log on to www.douglas.qld.gov.au.

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

All Plumbing and Drainage Work must only be carried in compliance with the Queensland *Plumbing and Drainage Act 2018*.

Currency Period for the Approval

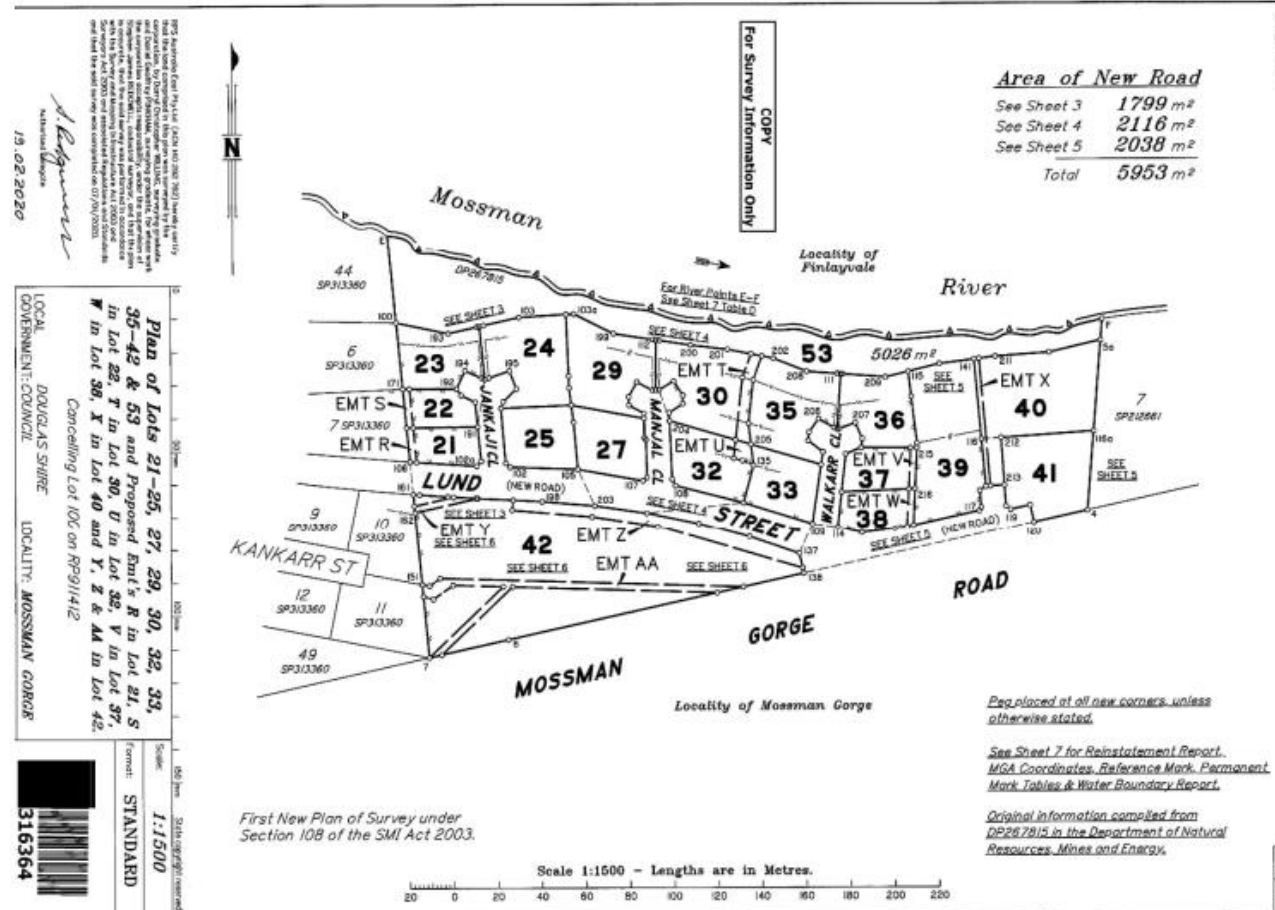
This approval, granted under the provisions of the *Planning Act 2016*, shall lapse four (4) years from the day the approval takes effect in accordance with the provisions of Section 85 of the *Planning Act 2016*.

Rights to make Representations & Rights of Appeal

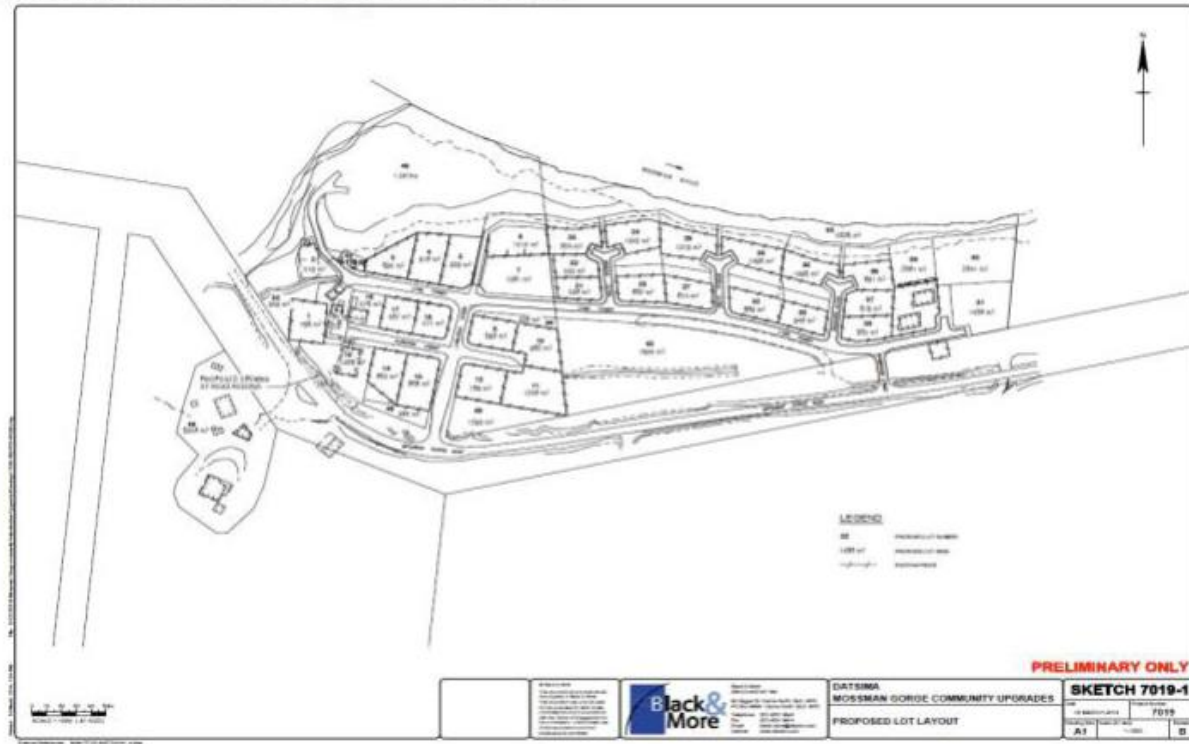
The rights of applicants to make representations and rights to appeal to a Tribunal or the Planning and Environment Court against decisions about a development application are set out in Chapter 6, Part 1 of the *Planning Act 2016*.

A copy of the relevant appeal provisions is attached.

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



ATTENTION: THIS IS A PRELIMINARY SKETCH AND NOT A FINAL DOCUMENT.



Reasons for Decision

Reasons for Decision

1. The reasons for this decision are:
 - a. Sections 60, 62 and 63 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 8 June 2022 under section 51 of the *Planning Act 2016* and Part 1 of the *Development Assessment Rules*;
 - b. the development application contained information from the applicant which Council reviewed together with Council's own assessment against the 2017 State Planning Policy and the 2018 Douglas Shire Planning Scheme Version 1.0 in making its assessment manager decision.
3. Evidence or other material on which findings were based:
 - a. the development triggered assessable development under the Assessment Table associated with the Low Density Residential Zone Code;
 - b. Council undertook an assessment in accordance with the provisions of sections 60, 62 and 63 of the *Planning Act 2016*; and
 - c. the applicant's reasons have been considered and the following findings are made:
 - i. Subject to conditions, the development satisfactorily meets the Planning Scheme benchmarks.

Reasons for Decision

1. Sections 78, 78A, 79, 81, 81A and 83 of the *Planning Act 2016*:
 - a. to ensure the development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme Version 1.0; and
 - b. to ensure compliance with the *Planning Act 2016*.
2. Findings on material questions of fact:
 - a. the development application was properly lodged to the Douglas Shire Council on 27 July 2023 under section 51 of the *Planning Act 2016* and Part 1 of the *Development Assessment Rules*;
 - b. the development application contained information from the applicant which Council reviewed together with Council's own assessment against the 2017 State Planning Policy and the 2018 Douglas Shire Planning Scheme Version 1.0 in making its assessment manager decision.
3. Evidence or other material on which findings were based:
 - a. the development triggered assessable development under the Assessment Table associated with the Low-density Residential Zone 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) for an appeal against a failure to make a decision about an application or other matter under the *Plumbing and Drainage Act 2018*—at anytime after the period within which the application or matter was required to be decided ends; or
 - (iv) 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.

19 September 2023

Enquiries: Jenny Elphinstone
Our Ref: ROL 2022_4857/2 (Doc ID 1183553)
Your Ref: DA2022_004

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

Dept Seniors, Disability Services & Aboriginal & Torres Strait Islander Partnership
PO Box 15397
City East Qld 4002

Email: gerhard.visser@dsdsatsip.qld.gov.au

Attention Mr Gerhard Visser

Dear Sir

**Adopted Infrastructure Charge Notice for Minor Change
For Development Application Reconfiguring a Lot (One lot into 19 lots)
At Gorge Road Mossman Gorge
On Land Described as Lot 100 on RP911412**

Please find attached the Adopted Infrastructure Charges Notice issued in accordance with section 119 of the *Planning Act 2016*.

The amount in the Adopted Infrastructure Charges Notice has been calculated according to Council's Adopted Infrastructure Charges Resolution.

Please also find attached extracts from the Act regarding the following:

- your right to make representations to Council about the Adopted Infrastructure Charges Notice; and
- your Appeal rights with respect to the Adopted Infrastructure Charges Notice.

Please quote Council's application number: ROL 2022_4857 in all subsequent correspondence relating to this matter. Please note the Infrastructure Charges Notice clarifies that the charges have been paid and there is no outstanding amount owing.

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.

- Adopted Infrastructure Charges Notice
- Rights to Make Representations and Appeals Regarding Infrastructure Charges

Adopted Infrastructure Charges Notice (Minor Change)



2018 Douglas Shire Planning Scheme version 1.0 Applications

ADOPTED INFRASTRUCTURE CHARGES NOTICE

DSDSATSIP		Mossman Gorge	0
DEVELOPERS NAME		ESTATE NAME	STAGE
L100 Mossman Gorge Road		L100 RP911412	9286
STREET No. & NAME		LOT & RP No.s	PARCEL No.
ROL (1 into 19 lots) Additional four lots		2022_4857/2 Minor change	6
DEVELOPMENT TYPE		COUNCIL FILE NO.	VALIDITY PERIOD (year)
1178537		Payment before commencement of use for MCU; and Prior to signing and sealing of survey form for ROL	
DSC Reference Doc . No.		VERSION No.	
1			

Infrastructure Charges as resolved by Council at the Ordinary Meeting held on 23 February 2021 (Came into effect on 1 March 2021)

		Charge per Use	\$ Rate	Floor area/No.	Amount	Amount Paid	Receipt Code & GL Code
Proposed Demand							
Residential	Dwelling_house	\$_per_3_or_more_bedroom_dwelling	25,314.98	2	\$50,629.96		
	Total Demand				\$50,629.96		
Credit							
<u>Existing land use</u>							
3 or more bedroom dwelling	1 lot	0%	0.00	1	\$0.00		
	Total Credit				\$0.00		
							Prior arrangement for online payment via invoicing - see below.
							Code 895 GL GL7500.135.825

Required Payment or Credit

TOTAL

\$50,629.96

Prepared by	J Elphinstone	23-Aug-23	Amount Paid	
Checked by	Rebecca Taranto	29-Aug-23	Date Paid	
Date Payable	ROL - Before the Local Government approves the plan of subdivision		Receipt No.	
Amendments		Date	Cashier	

Note:

The Infrastructure Charges in this Notice are payable in accordance with Sections 119 and 120 of the *Planning Act 2016* as from Council's resolution from the Ordinary Meeting held on 23 February 2021.

Charge rates under the Policy are subject to indexing.

Any Infrastructure Agreement for trunk works must be determined and agreed to prior to issue of Development Permit for Operational Work.

Charges are payable to: Douglas Shire Council. You can make payment at any of Council's Business Offices or by mail with your cheque or money order to Douglas Shire Council, PO Box 723, Mossman QLD 4873. Cheques must be made payable to Douglas Shire Council and marked 'Not Negotiable.' Acceptance of a cheque is subject to collection of the proceeds. Post dated cheques will not be accepted.

If you seek to pay online, please request an invoice to be issued via enquiries@douglas.qld.gov.au

Any enquiries regarding Infrastructure Charges can be directed to the Development & Environment, Douglas Shire Council on 07 4099 9444 or by email on enquiries@douglas.qld.gov.au

Subdivision 5 Changing charges during relevant appeal period

124 Application of this subdivision

This subdivision applies to the recipient of an infrastructure charges notice given by a local government.

125 Representations about infrastructure charges notice

- (1) During the appeal period for the infrastructure charges notice, the recipient may make representations to the local government about the infrastructure charges notice.
- (2) The local government must consider the representations.
- (3) If the local government—
 - (a) agrees with a representation; and
 - (b) decides to change the infrastructure charges notice;the local government must, within 10 business days after making the decision, give a new infrastructure charges notice (a *negotiated notice*) to the recipient.
- (4) The local government may give only 1 negotiated notice.
- (5) A negotiated notice—
 - (a) must be in the same form as the infrastructure charges notice; and
 - (b) must state the nature of the changes; and
 - (c) replaces the infrastructure charges notice.
- (6) If the local government does not agree with any of the representations, the local government must, within 10 business days after making the decision, give a decision notice about the decision to the recipient.
- (7) The appeal period for the infrastructure charges notice starts again when the local government gives the decision notice to the recipient.

126 Suspending relevant appeal period

- (1) If the recipient needs more time to make representations, the recipient may give a notice suspending the relevant appeal period to the local government.
- (2) The recipient may give only 1 notice.
- (3) If the representations are not made within 20 business days after the notice is given, the balance of the relevant appeal period restarts.
- (4) If representations are made within the 20 business days and the recipient gives the local government a notice withdrawing the notice of suspension, the balance of the relevant appeal period restarts the day after the local government receives the notice of withdrawal.

Division 3 Development approval conditions about trunk infrastructure

Subdivision 1 Conditions for necessary trunk infrastructure

127 Application and operation of subdivision

- (1) This subdivision applies if—
 - (a) trunk infrastructure—
 - (i) has not been provided; or
 - (ii) has been provided but is not adequate; and
 - (b) the trunk infrastructure is or will be located on—
 - (i) premises (the *subject premises*) that are the subject of a development application, whether or not the infrastructure is necessary to service the subject premises; or
 - (ii) other premises, but is necessary to service the subject premises.

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) for an appeal against a failure to make a decision about an application or other matter under the *Plumbing and Drainage Act 2018*—at anytime after the period within which the application or matter was required to be decided ends; or
 - (iv) 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
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 - (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.