



Mareeba

SHIRE COUNCIL

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26 September 2017

B Hooper & R McPhee
C/- Brazier Motti
PO Box 1185
CAIRNS QLD 4870

Officer: Carl Ewin
Direct Telephone: 07 4086 4656
Our Reference: RAL/17/0002
Your Reference: 34347-001-01

Dear Applicants,

Decision Notice

Planning Act 2016

I refer to your application and advise that on 26 September 2017, Council under delegated authority decided to approve the application in full subject to conditions.

Details of the decision are as follows:

APPLICATION DETAILS

Application No:	RAL/17/0002
Street Address:	McCorry Road, Koah
Real Property Description:	Lot 3 on RP745187
Planning Scheme:	Mareeba Shire Planning Scheme 2004 (Amendment No. 01/11)

DECISION DETAILS

Type of Decision:	Approval
Type of Approval:	Development Permit for Reconfiguring a Lot - Subdivision (1 into 2 Lots)
Date of Decision:	26 September 2017

CURRENCY PERIOD OF APPROVAL

The currency period for this development approval is four (4) years starting the day that this development approval takes effect. (Refer to Section 85 "Lapsing of approval at end of currency period" of the *Planning Act 2016*.)

INFRASTRUCTURE

Not Applicable

ASSESSMENT MANAGER CONDITIONS**(A) ASSESSMENT MANAGER'S CONDITIONS (COUNCIL)****(a) Development assessable against the Planning Scheme**

1. Development must be carried out substantially in accordance with the approved plans and the facts and circumstances of the use as submitted with the application, subject to any alterations:
 - found necessary by Council's delegated officer at the time of examination of the engineering plans or during construction of the development because of particular engineering requirements; and
 - to ensure compliance with the following conditions of approval.
2. Timing of Effect
 - 2.1 The conditions of the development permit must be complied with to the satisfaction of Council's delegated officer prior to the endorsement of the plan of survey, except where specified otherwise in these conditions of approval.
3. General
 - 3.1 The development approval would not have been issued if not for the conditions requiring the construction of infrastructure or the payment of infrastructure charges/contributions contained within the conditions of approval.
 - 3.2 The applicant/developer is responsible for the cost of necessary alterations to existing public utility mains, services or installations required by works in relation to the proposed development or any works required by condition(s) of this approval.
 - 3.3 All payments required to be made to the Council (including contributions, charges and bonds) pursuant to any condition of this approval must be made prior the endorsement of the plan of survey and at the rate applicable at the time of payment.
 - 3.4 The developer must relocate (in accordance with FNQROC standards) any services such as water, sewer, drainage, telecommunications and electricity that are not wholly located within the lots that are being created/serviced where required by the relevant authority, unless approved otherwise by Council's delegated officer.

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- 3.5 Where utilities (such as sewers on non-standard alignments) traverse lots to service another lot, easements must be created in favour of Council for access and maintenance purposes. The developer is to pay all costs (including Council's legal expenses) to prepare and register the easement documents.
- 3.6 Where approved existing buildings and structures are to be retained, setbacks to any new property boundaries are to be in accordance with Planning Scheme requirements for the relevant structure and/or Queensland Development Code. Where existing building/s are in proximity to new property boundaries, a plan demonstrating compliance with the required setback must be submitted prior to endorsement of the plan of survey.
- 3.7 All works must be designed, constructed and carried out in accordance with FNQROC Development Manual requirements and to the satisfaction of Council's delegated officer.
- 3.8 Flood Immunity
- All new buildings must be located such that the freeboard of the floor levels of all habitable rooms are a minimum of 300mm above the 100 ARI year level.
- 3.9 No filling is to occur below the 100 ARI flood level unless approved as part of a subsequent development permit for operational works.
- 3.10 Bushfire Management
- 3.10.1 Any new dwelling erected on the lots shall:
- (i) Achieve a setback from hazardous vegetation of 1.5 times the predominant mature canopy tree height or 10 metres, whichever is greater.
 - (ii) Include on-site water storage of not less than 5,000 litres, with a 50mm male camlock fire brigade fitting where necessary, to be provided at the same time the dwelling is constructed.
- 3.10.2 A Bushfire Management Plan will be prepared to the satisfaction of Council's delegated officer. The approved use must comply with the requirements of the Management Plan at all times.
- 3.11 Rural Addressing
- The applicant must pay the relevant fee per additional lot for provision of rural addressing at the rate identified in the Fees and Charges Schedule at the time of payment.

3.12 Charges

All outstanding rates, charges and expenses pertaining to the land are to be paid in full.

4. Infrastructure Services and Standards

4.1 Access

4.1.1 An access crossover must be upgraded/constructed to each lot (from the edge of the road to the property boundary) in accordance with FNQROC Development Manual Standards (as amended), to the satisfaction of Council's delegated officer.

4.2 Roadworks – External Construction

4.2.1 Two Chain Road

Two Chain Road between chainage 560m to 600m must be constructed to Rural Road gravel <100VPD standard, with improved vertical and horizontal alignments in accordance with FNQROC Development Manual Standards to the satisfaction of Council's delegated officer.

These road works must be designed and certified by a RPEQ (Civil Engineer).

Prior to works commencing, plans for the works described above must be approved as part of an Operational Works Application.

Advice:

Council officers have concerns with this section of Two Chain Road, immediately to the east of the One Mile Creek crossing. This section of road contains a steep crest and sudden "S" bend that could potentially be a safety issue for road users, particularly considering the additional vehicle traffic associated with the creation of two additional lots serviced from Two Chain Road.

4.2.2 Two Chain Road (Cont'd)

In order to service Lot 31, Two Chain Road must be upgraded/constructed (from the end of the existing constructed section of Two Chain Road to a point 10 metres past the access to Lot 31) to Rural Road Class <100vpd standard in accordance with the FNQROC Development Manual (as amended), to the satisfaction of Council's delegated officer.

In accordance with footnote 7 of Table D1.4 Rural Road Elements, Council will relax the requirement for bitumen sealing and will accept a gravel standard.

4.2.3 McCorry Road

In order to service Lot 30, McCorry Road must be upgraded/constructed (from rural address number 121 to a point 10 metres past the access to Lot 30) to Rural Road Class <100vpd standard in accordance with the FNQROC Development Manual (as amended), to the satisfaction of Council's delegated officer.

In accordance with footnote 7 of Table D1.4 Rural Road Elements, Council will relax the requirement for bitumen sealing and will accept a gravel standard.

- 4.2.4 In lieu of completing the works required by Condition 4.2.3 McCorry Road, Council will accept, for the purposes of access to Lot 30, the establishment of a 10 metre wide access easement through Lot 31 to service Lot 30. The applicant/developer must construct an all-weather gravel access road within the easement and for its full length, to the satisfaction of Council's delegated officer.

Easement Form 9 and Form 20 must be submitted to Council for review by Council's delegated officer prior to the endorsement of any plan of survey.

4.3 Stormwater Drainage

- 4.3.1 The applicant/developer must take all necessary steps to ensure a non-worsening effect on surrounding land as a consequence of the development.
- 4.3.2 All stormwater drainage must be collected from site and discharged to an approved legal point of discharge.

4.4 Landslide

For any new buildings on a slope of 15% or greater, the land owner must provide site-specific geo-technical report prepared by a suitably qualified Registered Professional Engineer of Queensland (RPEQ) that certifies:

- The long term stability of the development site; and
- The development site will not be adversely affected by landslide activity originating on sloping land above the development site.

4.5 On-Site Wastewater Management

At the time of construction of a new dwelling on Lot 30 & 31, any associated on-site effluent disposal system must be constructed in compliance with the latest version On-Site Domestic Wastewater Management Standard (ASNZ1547) to the satisfaction of the Council's delegated officer.

5. Additional Payment Condition

- 5.1 The additional payment condition has been imposed as the development will create additional demand on trunk infrastructure which will create additional trunk infrastructure costs for council.
- 5.2 The developer must pay \$47,439.00 as a contribution toward trunk infrastructure with the amount of the contribution increased on 1 July each year in accordance with the increase for the PPI index for the period starting on the day the development approval takes effect, adjusted by reference to the 3-yearly PPI index average to the date of payment.
- 5.3 The trunk infrastructure for which the payment is required is:
 - The trunk transport network servicing the land (\$47,439.00)
- 5.4 The developer may elect to provide part of the trunk infrastructure instead of making the payment.
- 5.5 If the developer elects to provide part of the trunk infrastructure the developer must:
 - Discuss with Council's delegated officer the part of the works to be undertaken;
 - Obtain the necessary approvals for the part of the works;
 - Indemnify the Council in relation to any actions, suits or demands relating to or arising from the works;
 - Take out joint insurance in the name of the Council and the developer in the sum of \$20,000,000 in relation to the undertaking of the works;
 - Comply with the reasonable direction of Council officers in relation to the completion of the works;
 - Complete the works to the standards required by the Council; and
 - Complete the works prior to endorsement of the plan of subdivision.
- 5.6 The value, as agreed by Council's delegated officer, of the external works required under Condition 4.2 will be credited towards the additional payment required under Condition 5.2. Any credit will not exceed \$47,439.00.

REFERRAL AGENCIES

Not Applicable.

APPROVED PLANS

The following plans are Approved plans for the development:

Approved Plans

Plan No.	Plan Name	Date
34347_001 A	Proposed Reconfiguration Lots 30 & 31 Cancelling Lot 3 on RP745187 prepared by Brazier Motti	14/06/2017

REFERENCED DOCUMENTS

Not Applicable.

ADVISORY NOTES

The following notes are included for guidance and information purposes only and do not form part of the assessment manager conditions:

(A) ASSESSMENT MANAGER'S ADVICE

- (a) A number of other charges or payments may be payable as conditions of approval. The applicable fee is set out in Council's Fees & Charges Schedule for each respective financial year.
- (b) Endorsement Fees

Council charges a fee for the endorsement of a Survey Plan, Community Management Statements, easement documents, and covenants. The fee is set out in Council's Fees & Charges Schedule applicable for each respective financial year.

- (c) Compliance with applicable codes/policies

The development must be carried out to ensure compliance with the provisions of Council's Local Laws, Planning Scheme Policies, Planning Scheme and Planning Scheme Codes to the extent they have not been varied by a condition of this approval.

(d) Easement Documents

Council has developed standard easement documentation to assist in the drafting of formal easement documents for Council easements. Please contact the Planning Section for more information regarding the drafting of easement documents for Council easements.

(e) Notation on Rates Record

A notation will be placed on Council's Rate record with respect to each lot regarding the following conditions:

- conditions regarding bushfire management
- an approved bushfire management plan
- conditions regarding slope
- flood immunity
- At the time of dwelling construction a 22,500L rainwater tank is to be provided in accordance with the Dwelling House Code to the satisfaction of Council's delegated officer
- An on-site effluent disposal system must be constructed in accordance with an approved site and soil evaluation report

(f) Environmental Protection and Biodiversity Conservation Act 1999

The applicant is advised that referral may be required under the *Environmental Protection and Biodiversity Conservation Act 1999* if the proposed activities are likely to have a significant impact on a matter of national environmental significance. Further information on these matters can be obtained from www.environment.gov.au

(g) Cultural Heritage

In carrying out the activity the applicant must take all reasonable and practicable measures to ensure that no harm is done to Aboriginal cultural heritage (the "cultural heritage duty of care"). The applicant will comply with the cultural heritage duty of care if the applicant acts in accordance with gazetted cultural heritage duty of care guidelines. An assessment of the proposed activity against the duty of care guidelines will determine whether or to what extent Aboriginal cultural heritage may be harmed by the activity. Further information on cultural heritage, together with a copy of the duty of care guidelines and cultural heritage search forms, may be obtained from www.datsip.qld.gov.au

PROPERTY NOTES

Not Applicable.

VARIATION APPROVAL

Not Applicable.

FURTHER DEVELOPMENT PERMITS REQUIRED

- Development Permit for Operational Works

SUBMISSIONS

Not Applicable.

RIGHTS OF APPEAL

You are entitled to appeal against this decision. A copy of the relevant appeal provisions from the *Planning Act 2016* is attached.

During the appeal period, you as the applicant may suspend your appeal period and make written representations to council about the conditions contained within the development approval. If council agrees or agrees in part with the representations, a “negotiated decision notice” will be issued. Only one “negotiated decision notice” may be given. Taking this step will defer your appeal period, which will commence again from the start the day after you receive a “negotiated decision notice”.

OTHER DETAILS

If you wish to obtain more information about Council’s decision, electronic copies are available on line at www.msc.qld.gov.au, or at Council Offices.

Yours faithfully



BRIAN MILLARD
SENIOR PLANNER

Enc: Approved Plan

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Parish of Formative
County of Nares
Marrickville Shire Council



The field of development and for discussion purposes only. All social, demographic and financial data are preliminary, subject to verification, survey, engineering, and/or other relevant and Agency approval.

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26/9/2017

Appeal Rights

PLANNING ACT 2016 & THE PLANNING REGULATION 2017

Chapter 6 Dispute resolution

Part 1 Appeal rights

229 Appeals to tribunal or P&E Court

(1) Schedule 1 of the *Planning Act 2016* 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.

(Refer to Schedule 1 of the Planning Act 2016)

(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 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, table 1, item 1 – each principal submitter for the development application; and
 - (d) for an appeal about a change application under schedule 1, table 1, item 2 – each principal submitter for the change application; and
 - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); 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 has 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 by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

231 Other appeals

- (1) Subject to this chapter, 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 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, a tribunal or another entity; and
- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a 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 the rules of the P&E Court.