



Our Ref: LM: DA/4320 AD2022/0009259

Your Ref: 401171

28 September 2022

Tony Physick
c/- Veris
PO Box 687
EDGE HILL QLD 4870
E-mail: d.westbrook@veris.com.au
Attention: Drew Westbrook

Dear Mr Westbrook

Decision Notice - Approval
Given under section 63 of the *Planning Act 2016*

With reference to the abovementioned Development Application, please find attached the relevant Decision Notice, which was approved by Cook Shire Council in full, subject to conditions.

Details of the decision are as follows:

Decision Details

Date of Decision: Council approved the Development Application at a Council meeting on 27 September 2022.

Approval Details: **Approved in full** with conditions. These conditions are set out in Attachment 1 and are clearly identified to indicate whether the assessment manager or concurrence agency imposed them.

Variation approval details

Not Applicable

Application Details

Application Number: DA/4320

Approval Sought: Development Permit for a Reconfiguration of a Lot

Description of the Development: Reconfiguration of a Lot - one (1) into five (5) lots

Category of Development: Assessable Development

Category of Assessment: Code Assessment

Planning Scheme: Cook Shire Council Planning Scheme 2017

Location Details

Street Address: Unnamed Road via Mulligan Highway, Cooktown 4895

Real Property Description: Lot 1 SP262357

Local Government Area: Cook Shire

Assessment Manager Conditions

This approval is subject to the conditions 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:

1. Development Permit for Operational Works

Properly Made Submissions

Not applicable - no part of the application required public notification.

Referral Agencies

Not applicable - no part of the application required referral.

Other requirements under section 43 of the *Planning Regulation 2017*

Not Applicable.

Approved Plans and Specifications

Copies of the approved plans, specifications and/or drawings are enclosed in **Attachment 2**.

Currency Period for the Approval

(For a configuring a lot) This approval lapses if a plan for the reconfiguration that, under the *Land Title Act 1994*, is required to be given to a local government for approval is not given within *four (4) years*.



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Lapsing of approval if development started but not completed

In accordance with section 88(1) of the *Planning Act 2016*, a development approval, other than a variation approval, for development lapses to the extent the development is not completed within any period or periods required under a development condition.

Rights of Appeal

You are entitled to appeal against this decision. A copy of the relevant appeal provisions from the *Planning Act 2016* are provided in Attachment 4 of this Decision Notice.

Other Details

Council relies on the accuracy of information included in the application documentation when assessing and deciding applications.

If you find an inaccuracy in any of the information provided above, have a query, or need to seek clarification about any of these details, please contact Cook Shire Council's Planning and Environment Department on 07 4082 0500 or E-mail: mail@cook.qld.gov.au.

Yours sincerely

Lisa Miller

Manager

Planning and Environment

Cook Shire Council

enc: **Attachment 1** – Conditions imposed by the assessment manager
Attachment 2 – Approved Plans (D22/21868)
Attachment 3 – Notice about a Decision Notice (D22/23059)
Attachment 4 - Extract of Appeal Provisions (Chapter 6 part 1 of the *Planning Act 2016*)



Attachment 1 (A) - Conditions imposed by the assessment manager (Cook Shire Council)

A. Assessment Manager (Council) Conditions

Approved Plans

1. The development must be carried out generally in accordance with the following plans/specialist reporting submitted with the application, except for any variations required to comply with the conditions of this approval:

- Proposed Lots 1-5 Cancelling Lot 1 SP262357, Drawing No.401171-PP05-C, Issued C.

Water Supply

2. A separate source of water supply must be provided to proposed lot at the time of construction of a dwelling house. This would be satisfied by the provision of a rainwater tank with a minimum capacity of 50,000 litres. Where an alternative source of supply is available within the allotment, the applicant can provide certified evidence as to the flow rates and water quality of the bore water or other supply to eliminate or reduce the requirement of on-site water storage.

Building Envelope

3. Prior to Council endorsement of the Plan of Survey, a proposed building envelope must be provided for proposed Lot 1, Lot 2 and Lot 3 for approval by Council's delegated officer. The building envelope must be outside the designated Annan River Resource buffer area on the Water Resources Overlay map and located to ensure a maximum internal driveway length of 60 metres from the proposed new internal road. All buildings or structures must be located within the identified building envelope. Should the owner wish to locate any building or structures outside the identified building envelope, approval must be obtained from the Manager Planning and Environment Services at the time of Building application.

4. Prior to Council endorsement of the Plan of Survey, a proposed building envelope must be provided for proposed Lot 5 for approval by Council's delegated officer. The building envelope must be located outside the designated Mt Amos (Local Resource) Separation Area on the Extractive Resources Overlay map and located to ensure a maximum internal driveway length of 60 metres from the proposed new internal road. All buildings or structures must be located within the identified building envelope. Should the owner wish to locate any building or structure outside the identified building envelope, approval must be obtained from the Manager Planning and Environment Services at the time of Building application.

Effluent Disposal

5. On-site septic systems must be provided on all lots at the time of construction of a dwelling house. Any application for wastewater treatment and disposal must include details of the proposed wastewater disposal systems and calculations demonstrating compliance with the Queensland Plumbing and Wastewater Code and AS/NZS 1547:2000 – 'On-site domestic wastewater



management'. Details are to be provided at the time of lodgement of a plumbing and building application.

Access

6. Access to proposed Lot 1, Lot 3 and Lot 5 must be provided from the new internal road and constructed in accordance with the FNQROC Development Manual at the time of construction of a dwelling house. The construction of the access will be subject to a Local Laws Permit to 'Make Alterations or Improvements to a Road'.
7. Access to proposed Lot 2 and Lot 4 must be provided from the new internal road. The location and design of the access crossovers and internal driveway must form part of the development application for Operational Works. The access crossovers must be constructed prior to the endorsement of the Survey Plan. The internal access driveway must be located to ensure the driveway does not exceed a gradient of 12.5%, have a minimum width of 3.5 metres and a maximum driveway length of 60 metres from the proposed new internal road. The internal driveway must be constructed at the time of construction of a dwelling house and in accordance with the Development Approval for Operational Works.

Road Construction

8. The applicant is to design and construct a road to provide access to the new lots from the Mulligan Highway intersection for the full extent of the identified road reserve in accordance with the approved plan.
9. The new road is to be designed with a 7m wide gravel carriageway to facilitate two-way traffic flow and constructed in accordance with the requirements of the FNQROC Development Manual. A development application for Operational Works must be submitted and approved prior to commencement of works.
10. All sections of the road with longitudinal grades steeper than 5% are to have rock pitching applied to the table drains. The RPEQ is to assess whether table drains less than 5% longitudinal grade need treatment based on contributing catchment area, flow velocity, and material types.

The works will be subject to an 18-month on-maintenance period to allow the performance to be assessed over two wet seasons. In the event that scouring occurs during this period, additional protection will be required at the developer's cost prior to the works being accepted by Council.

11. The applicant must provide a two-lane concrete causeway style crossing of the waterway that crosses the existing road reserve providing access to the new lots. The need for culverts under the causeway is to be assessed by the applicant's Engineering Consultant. The consultants design must confirm that the crossing design provides the opportunity for access to the lots in the minor rainfall event.

The applicant must assess and advise the frequency of events that would prevent the causeway being trafficable. The fording depth per the Queensland Urban Drainage Manual should be used to assess the safe crossing depth. As per the condition above, the crossing must be operational for the minor event. At a minimum the operation of the causeway during a 10-year ARI rainfall event must allow convenient and flood-free movement of vehicles and pedestrians.

12. The applicant is to design the approaches to the waterway crossings having regard to sight distance and road safety. In addition, the longitudinal grade of the approaches must consider road maintenance for both the road surface and roadside table drains. The designer is to confirm how these matters have been addressed in the design submission.

Fire Management

13. The development must be maintained at all times to a standard so as not to create a fire hazard.
14. Any new building (other than a Class 10a) erected on any of the proposed lots shall:
 - (i) Achieve setbacks from fire hazardous vegetation of 1.5 times the predominant mature canopy tree height or ten (10) metres, whichever is greater;
 - (ii) Be provided with a source of water for fire-fighting purposes of not less than 10,000 litres. This must be satisfied by the provision of an accessible dam, swimming pool, or water tank. In the case of a tank supply, delivery of the water should be provided through a 50mm male Camlock fitting. The outlet from the tank water supply or the dam/pool shall be located within an accessible position within forty (40) metres from the habitable buildings.

Vegetation Clearing

15. Vegetation clearing must be limited to that required for firebreaks, dwelling houses, and associated infrastructure. Any regulated vegetation not required for building works or bushfire management purposes must be retained.

Stormwater

16. Stormwater drainage must be directed to a legal point of discharge.
17. Site works must not adversely affect flooding or drainage characterises of properties that are upstream, downstream, or adjacent to the development site.

Sediment Control

18. The developer must ensure that effective measures are put in place to ensure construction activity does not cause erosion.



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19. The developer must ensure that no soil or silt runoff occurs from the site during the construction and operational phase of the development.

Compliance

21. All conditions of this development permit must be complied with prior to Council endorsement of the Plan of Survey.

Outstanding Charges

22. All rates, service charges, interest and other charges levied on the land must be paid prior to Council endorsement of the Plan of Survey.

B. Assessment Manager (Council) Advice

1. The reconfiguring a lot approval authorised under this Development Permit must be completed and the Plan of Survey submitted to Council for endorsement within **four (4) years** from the commencement of this approval or the approval will lapse.
2. A development permit is required for carrying out Building Works, and a Plumbing and Drainage Approval/compliance permit is required for Plumbing and Drainage Works prior to construction of any buildings associated with this development.
3. **Property Notation for proposed Lot 1, Lot 3 and Lot 5** – All buildings or structures must be located within the approved building envelope (Council file reference DA/4320). Should the owner wish to locate any building or structure outside the identified building envelope, approval must be obtained from the Manager Planning and Environment Services at the time of Building application.
4. At the time of construction of a dwelling house, compliance with the Bushfire Hazard Overlay code will be required. The private access driveways servicing the dwelling house must not exceed a gradient of 12.5%, have a minimum width of 3.5 metres and maximum driveway length of 60m.
5. **Removal of Protected Vegetation** - This development approval does not approve or authorize the removal of vegetation that is otherwise protected under separate State or Federal legislation, including under the following:
 - A. *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*;
 - B. *Nature Conservation Act 1999 (Qld)*;
 - C. *Vegetation Management Act 1999 (Qld)*.
6. The applicant/owner must notify Council their intention to commence the use after acceptable of and compliance with these conditions or negotiated conditions (or court determined conditions)



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and prior to the commencement of the use. This will allow a check for compliance with conditions to be carried out by Council officers.

7. The applicant/owner is to ensure compliance with the requirements of the *Aboriginal Cultural Heritage Act* and in particular 'the duty of care' that it imposes on all landowners.



Attachment 2 – Approved Plans (D22/21868)

'Killarney'
Mulligan Highway,
Cooktown
For
Tony Physick

IMPORTANT NOTES:
(These notes are an integral part of this plan)
This plan has been prepared for Tony Physick
for the purposes of Proposed plan
and is not to be used for any other person or
corporation or for any other purpose and is
subject to the following limitations:
[APPROPRIATE NOTES TO BE INSERTED
HERE]

Copyright © Veris Australia Pty. Ltd.
8 August 2022
THIS PLAN AND DRAWINGS ARE PREPARED
AND ARE NOT TO BE USED IN ANY MANNER
WITHOUT THE WRITTEN PERMISSION OF VERIS

Data Sources

401171-PP04-B	401171-PP04-B
Cadastral Boundaries	401171-PP04-B
Topographic	Old Globe
Aerial Images	N/A
Flood Level	N/A
Engineering Design	N/A
Architectural Design	N/A
Landscape Design	N/A

Level	Revisions	Date	Drawn
C	Access Road & Lots 2,3 amended	20/07/2022	AUG
B	Waterways added	08/08/2022	RCS
A	Original	08/08/2022	RCS

Locality: Cooktown
Local Authority: Cook Shire
Projection: SP262357
Horizontal Meridian: .
Vertical Level Datum: .
Scale: 1:15000 @ A3
Surveyed: .
Designed: .
Drawn: .
Checked: .
Plot Date: 08 Aug, 2022
Plot File Path: 401171-PP05 Rev C.dwg

Plan of Proposed
Lots 1-5
Cancelling Lot 1
SP262357



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Drawing No
401171-PP05-C
Issue
C

LEGEND

- Proposed Road
- Existing Road
- Existing Dam
- Existing Track
- Queenstand Waterways for waterway barrier works
 - Major
 - High
 - Moderate
 - Low



Scale 1:15000 Lengths are in Metres
100 0 500 1000 1500 2000
100mm 500mm 1000mm 1500mm 2000mm
SCALE BAR





Attachment 3 – Notice about a Decision Notice (D22/23059)

NOTICE ABOUT DECISION – STATEMENT OF REASONS

This Notice is prepared in accordance with s63(5) and s83(9) of the Planning Act 2016 to provide information about a decision that has been made in relation to a development application. The purpose of the Notice is to enable a public understanding of the reasons for the planning decision, specifically having regard to:

- the relevant parts of the Planning Scheme and Assessment Benchmarks against which the application was assessed; and*
- any other information, documents or other material Council was either required to, or able to, consider in its assessment.*

All terms used in this Notice have the meanings given them in the Planning Act 2016 or otherwise their ordinary meaning.

APPLICATION DETAILS

Application No:	DA/4320
Applicant:	Tony Physick c/- Veris
Proposal:	Reconfiguration of a Lot
Description of the Development:	Reconfiguration of a Lot one (1) into five (5) lots
Street Address:	Unnamed Road via Mulligan Highway, Cooktown 4895
Real Property Description:	Lot 1 on SP262357
Planning Scheme:	Cook Shire Council Planning Scheme 2017
Land Zoning:	Rural Zone
Assessment Type:	Code

DECISION DETAILS

Type of Decision:	Approval with Conditions
Type of Approval:	Development Permit for a Reconfiguration of a Lot one (1) into five (5) lots
Date of Decision:	27 September 2022

ASSESSMENT BENCHMARKS

The following Assessment Benchmarks applied to the development from the following Categorising Instruments:

Assessment Benchmarks	Comment
Planning Regulation 2017 (Schedule 9)	Schedule 9 is not applicable as the application is not for building work under the Building Act.
Planning Regulation 2017 (Schedule 10)	The application did not require referral to the State Assessment and Referral Agency or other referral agency.
Regional Plan	Section 2.2 of the Planning Scheme identifies that the Cape York Regional Plan has been adequately reflected in the Planning Scheme. A separate assessment against the Regional Plan is not required.
State Planning Policy, part E	Section 2.1 of the Planning Scheme identifies that the superseded version of the <i>State Planning Policy</i> is integrated in the Planning Scheme. A review of the current version of the SPP (July 2017) and assessment benchmark mapping applicable to Part E has determined that the state interests are reflected in the Planning Scheme and no additional assessment provisions in the current SPP (part E) or updated mapping are applicable requiring further assessment against the SPP.
Temporary State Planning Policy	There are no Temporary State Planning Policies

Local Categorising Instrument (Cook Shire Council Planning Scheme 2017):

- Rural Zone Code;
- Reconfiguring a Lot Code;
- Biodiversity Overlay;
- Bushfire Hazard Overlay;
- Extractive Resources Overlay Code; and
- Works, Services, and Infrastructure Code.

Local Categorising Instrument (Variation Approval)

Not Applicable

Local Categorising Instrument (Temporary Local Planning Instrument)

Not Applicable

PUBLIC NOTIFICATION

Not Applicable

REASONS FOR THE DECISION

The application is **approved** on the following grounds:

- a. An assessment was made against the applicable assessment benchmarks and the proposed development demonstrated compliance.
- b. The proposed development for Reconfiguring a Lot one (1) into five (5) lots is an appropriate use to be located on the site and will have no adverse impact on the rural character and amenity of the locality or adjoining lots.

REASONS FOR APPROVAL DESPITE NON-COMPLIANCE WITH ASSESSMENT BENCHMARKS

Not Applicable

ADDITIONAL RELEVANT MATTERS FOR IMPACT ASSESSMENT

Not Applicable

OTHER MATTERS PRESCRIBED BY THE *PLANNING REGULATION 2017*

Not Applicable

OTHER DETAILS

If you wish to obtain more information about Council's decision, including a copy of Council's Decision Notice and any conditions or plans relating to the development, please refer to Council's webpage.



Attachment 4 - Extract of Appeal Provisions (Chapter 6 part 1 of the *Planning Act 2016*).

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.

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- (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.

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- (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.