

Our Ref: LM:DA/4497 AD2022/0001954

Your Ref:

14 June 2022

Desmond J Savage & Gloria I Savage
PO Box 68
Cooktown Qld 4895
E-mail: glorys1@bigpond.com

Dear Mr and Mrs Savage

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 by delegation on 10 June 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/4497 |
| Approval Sought: | Development Permit for a Reconfiguration of a Lot |
| Description of the Development: | Reconfiguration of a Lot - two (2) into two (2) lots (Boundary Realignment) |
| Category of Development: | Assessable Development |
| Category of Assessment: | Code Assessment |
| Planning Scheme: | Cook Shire Council Planning Scheme 2017 |

Location Details

| | |
|----------------------------|---|
| Street Address: | 1 Racecourse Road and 8 Buhmann Street, COOKTOWN 4895 |
| Real Property Description: | Lot 15 C17953 and Lot 16 SP293154 |
| Local Government Area: | Cook Shire |

Assessment Manager Conditions

This approval is subject to the conditions in Attachment 1.

Further Development Permits

Not Applicable.

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

This development approval will lapse at the end of the period set out in section 85 of the *Planning Act 2016*.

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 (A)** – Conditions imposed by the assessment manager
Attachment 2 – Approved Plans
Attachment 3 – Notice about a Decision Notice
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 Plan

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 Survey Plan of Lot 15 and 16.

Confirmation of setback of existing building

2. Written notification must be submitted to Council confirming that the existing horse stable on proposed Lot 15 achieves the required 3m setback from the proposed new boundary or alternatively demolish the building prior to lodgement of the survey plan with Council.

Water Supply

3. Proposed Lot 15 and Lot 16 must be connected to the reticulated water supply by means of a separate metered connection at the time of application for a development permit to carry out building works.

Effluent Disposal

4. An effluent disposal must be provided to proposed Lot 15 and Lot 16 at the time of construction of a dwelling house. Any application for wastewater treatment and disposal application 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

5. Access to proposed Lot 15 must be provided to Racecourse Road. Written notification must be submitted to Council confirming that the access has been constructed in accordance with the relevant approval from the Department of Transport and Main Roads. Vehicle access to Annan Road (Mulligan Highway) is not permitted.
6. Access to proposed Lot 16 must be provided from the existing access crossover to Buhmann Street. Vehicle access to Annan Road (Mulligan Highway) is not permitted.

Electricity

7. Proposed Lot 15 and Lot 16 must be connected to the reticulated electricity supply at the time of application for a development permit to carry out building works. If the development is proposed to be connected to another means of electricity supply, details of this supply must be provided for Council approval at the time of building application.

Fire Management

8. The development must be maintained at all times to a standard so as not to create a fire hazard.

Vegetation Clearing

9. 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 Drainage

10. All stormwater drainage must be to a legal point of discharge.
11. Site works must not adversely affect flooding or drainage characteristics of properties that are upstream, downstream, or adjacent to the development.

Sediment Control

12. The developer must ensure that effective measures are put in place to ensure construction activity does not cause erosion.
13. The developer must ensure that no soil or silt runoff occurs from the site during the construction and operational phase of the development.

Public Utilities

14. The development is responsible for the cost of any alterations to public utilities as a result of complying with the conditions of this approval.

Compliance

15. All conditions of this development permit, unless otherwise stated, must be complied with prior to Council endorsement of the Plan of Survey.

Outstanding Charges

16. 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. 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.
2. Property notation for proposed Lot 16. Proposed Lot 16 is designated in the Scenic Amenity Overlay. Future development on this lot must be assessed against the provisions of the Scenic Amenity Overlay Code. If the acceptable outcomes of the Code cannot be achieved a Development Application for Material Change of Use will be required to be lodged with Council
3. The currency period for this application is four (4) years. Should the approved use not commence within this time, the approval shall lapse.
4. 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.
5. **Removal of Protected Vegetation**
This development approval does not approve of 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)*.

Attachment 2 – Approved Plans

SURVEY PLAN

Reference Marks

| Stn | To | Origin | Bearing | Dist |
|-----|-----|----------|------------|-------|
| 1 | OIP | IS150999 | 254°55' | 1.0 |
| 2 | OIP | IS150999 | 147°24' | 0.5 |
| 3 | OIP | IS150999 | 188°42' | 1.0 |
| 4 | OIP | IS150999 | 57°24'10" | 0.5 |
| 4 | Pin | IS150999 | 349°04'40" | 9.905 |
| 5 | OIP | IS150999 | 82°20'10" | 1.0 |
| 5 | Pin | IS150999 | 305°10'40" | 2.065 |
| 7 | OIP | IS150999 | 263°39' | 3.865 |
| 8 | OIP | SP219099 | 176°08' | 1.17 |

Permanent Marks

| PM | Origin | Bearing | Dist | Nº | Type |
|-------|----------|------------|-------|--------|----------|
| 4-OIP | IS150999 | 32°03'40" | 34.93 | 97716 | Standard |
| 8-OIP | SP219099 | 200°29'40" | 13.4 | 105094 | Standard |



Original information compiled from SP293154 in the Department of Natural Resources, Mines and Energy.

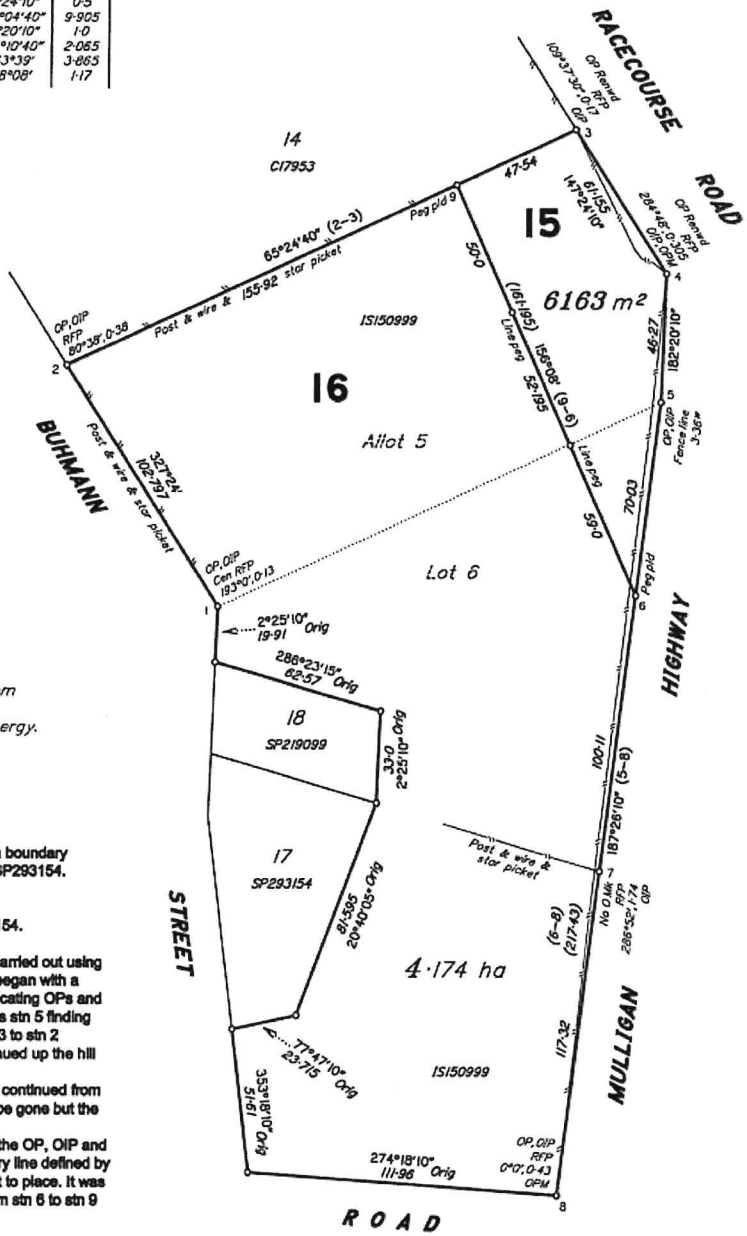
SURVEY REPORT

Purpose of survey is to amend the common boundary between Lot 15 on C17953 and Lot 16 on SP293154.

Survey Plans perused:
C17953, IS150999, SP219099 and SP293154.

Methodology and Datum: The survey was carried out using traditional Electronic Total Station. Survey began with a traverse from the OPM 97716 near stn 4, locating OPs and OIPs at stns 3 & 4. Then I traversed towards stn 5 finding the OP and OIP. Then I traversed from stn 3 to stn 2 finding the OP and OIP. The traverse continued up the hill to stn 1 finding the OP and OIP. Upon returning to job later the traverse was continued from Stn 5 to Stn 7, where the OP was found to be gone but the OIP was in position.

The traverse was continued to stn 8 where the OP, OIP and OPM 106094 were found. The new boundary line defined by stn numbers 6 and 9 were the only pegs left to place. It was decided since it was not possible to see from stn 6 to stn 9 to place two line pegs.



I Thomas Stanley Lowe hereby certify that the land comprised in this plan was surveyed by me personally, and that the plan is accurate, that the said survey was performed in accordance with the Survey and Mapping Infrastructure Act 2003 and Surveyors Act 2003 and associated Regulations and Standards and that the said survey was completed on 15/10/2019.

T. Lowe
Cadastral Surveyor
25/10/2019
Date

0 75m 150m 225m State copyright reserved.

Plan of Lots 15 & 16
Cancelling Lot 15 on C17953
and Lot 16 on SP293154

Scale: **1:1500**
Format: **STANDARD**

SP297336

LOCAL GOVERNMENT: **Cook Shire Council** LOCALITY: **Cooktown**
Meridian: **Of SP293154** Survey Records: **No**

Attachment 3 – Notice about a Decision Notice

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/4497 |
| Applicant: | Desmond and Gloria Savage |
| Proposal: | Development Permit for a Reconfiguration of a Lot |
| Description of the Development: | Reconfiguration of a Lot (Boundary Realignment) |
| Street Address: | 1 Racecourse Road and 8 Buhmann Street, COOKTOWN 4895 |
| Real Property Description: | Lot 15 C17953 and Lot 16 SP293154 |
| Planning Scheme: | Cook Shire Council Planning Scheme 2017 |
| Land Zoning: | Rural Residential |
| Assessment Type: | Code |

DECISION DETAILS

| | |
|-------------------|---|
| Type of Decision: | Approval with Conditions |
| Type of Approval: | Development Permit for a Reconfiguration of a Lot (2 into 2 lots) Boundary Realignment |
| Date of Decision: | 10 June 2022 |

ASSESSMENT BENCHMARKS

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

| Assessment Benchmarks | Comment |
|--|---|
| Schedule 9 | Schedule 9 is not applicable as the application is not for building work under the Building Act |
| Schedule 10 | The development application did not trigger a referral to SARA for development fronting a state-controlled road. |
| 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 mapping 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 Government Infrastructure Plan (LGIP) | This matter is included in Part 4, Cook Shire Council Planning Scheme 2017. No infrastructure charges are applicable as no additional lots are created. |
| Any development approval for, and any lawful use of the premises, or adjacent premises | Previous development approval for Reconfiguring a Lot (boundary realignment) has lapsed (Council file reference (DA/3881). |
| The common material | All the material received about the application has been assessed and has informed the recommendation of this report. |

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

- Strategic Framework;

- Rural Residential Zone Code;
- Reconfiguring a Lot Code;
- Parking and Access Code;
- Works, Services, and Infrastructure Code;
- Biodiversity Overlay Code;
- Bushfire Hazard Overlay Code;
- Landslide Hazard Overlay 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:

- An assessment was made against the applicable assessment benchmarks and the proposed development demonstrated compliance.
- The proposed development will have no detrimental impacts on the environment or amenity of surrounding land uses.

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) 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.