

Our Ref: LM: sd:DA/4516 AD2022/0011034
Your Ref: OP01-22

14 December 2022

Yohan Wickramage
c/- David Klye
E-mail: jabiru@outlook.com
Attention: David Klye

Dear Mr Klye

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 14 December 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/4516

Approval Sought: Development Permit for Operational Works

Description of the Development: Earthworks

Category of Development: Assessable Development

Category of Assessment: Code Assessment

Planning Scheme: Cook Shire Council Planning Scheme 2017

Location Details

Street Address: 28 Garden Street COOKTOWN 4895

Real Property Description: Lot 144 C17949

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 (D22/27802)
Attachment 3 – Notice of Decision – Statement of Reasons (AD2022/0011035)
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)

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:
 - Response to Information Request dated 18 November 2022 (Ref No. D22/27802).
2. The applicant must undertake the stream re- profiling works with 28 Garden Street generally in accordance with the proposed works set out in the applicant's

response to the Information Request dated 18 November 2022. In particular, the following works must be undertaken:

- a) Reconstruct the upstream section of the drain to achieve the minimum invert base width of 4m and a minimum top of bank width of 9m;
- b) The re-profiled length of the drainage line is to be a minimum of 18m measured from the centreline of the drain at the upstream boundary;
- c) Transitions are to be outside this 18m length;
- d) The bed and banks must be appropriately stabilised and revegetated on completion of the works without encroaching on the minimum base and top widths;
- e) Erosion and Sediment controls are to be installed prior to works commencing and must be maintained on site until the drain surface has been stabilised and revegetated; and
- f) The applicant must undertake periodic reviews and maintenance of the drain and culverts on 28 Garden Street to ensure any sediment that is washed downstream is removed to avoid impacting the stream capacity and profile.

The works must be completed within 3 months to avoid undue risk to existing properties in the event of high rainfall events.

The applicant must provide suitable documentation that the completed works achieve compliance with this condition. If an as-constructed survey is not provided, the applicant must provide such alternative records to clearly demonstrate compliance. At a minimum, a further report by the supervising engineer must be provided to certify that the works comply with these conditions. The report must include photographic evidence and site measurements (including photographs of the measurements and locations).

The report must be approved by Council prior to the conditions being satisfactorily completed.

3. The applicant must provide a written statement acknowledging that the stream re-profiling works undertaken within 28 Garden Street have been modelled to show an impact on water levels and inundation area within the property. On this basis the landowner must acknowledge that Council is indemnified from flooding impacts associated with the landowner's actions.

B. Assessment Manager (Council) Advice

1. Property Notation – The operational works involving excavation and fill were carried out without the required development approval. The works are subject to an Operational Works Approval (DA/4516) providing retrospective approval for assessable works. Notwithstanding the remediation works, the modelling confirms some impacts remain on site as a result of the changes to the drainage line. The applicant has provided a written statement acknowledging

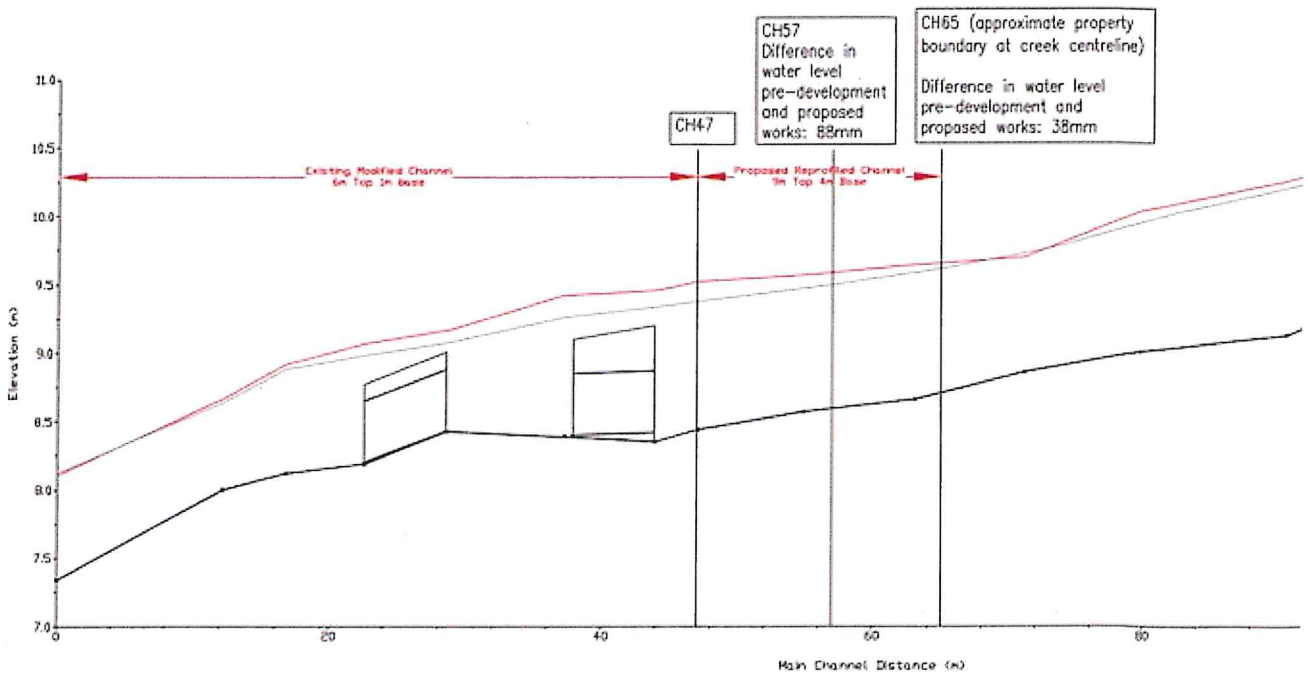
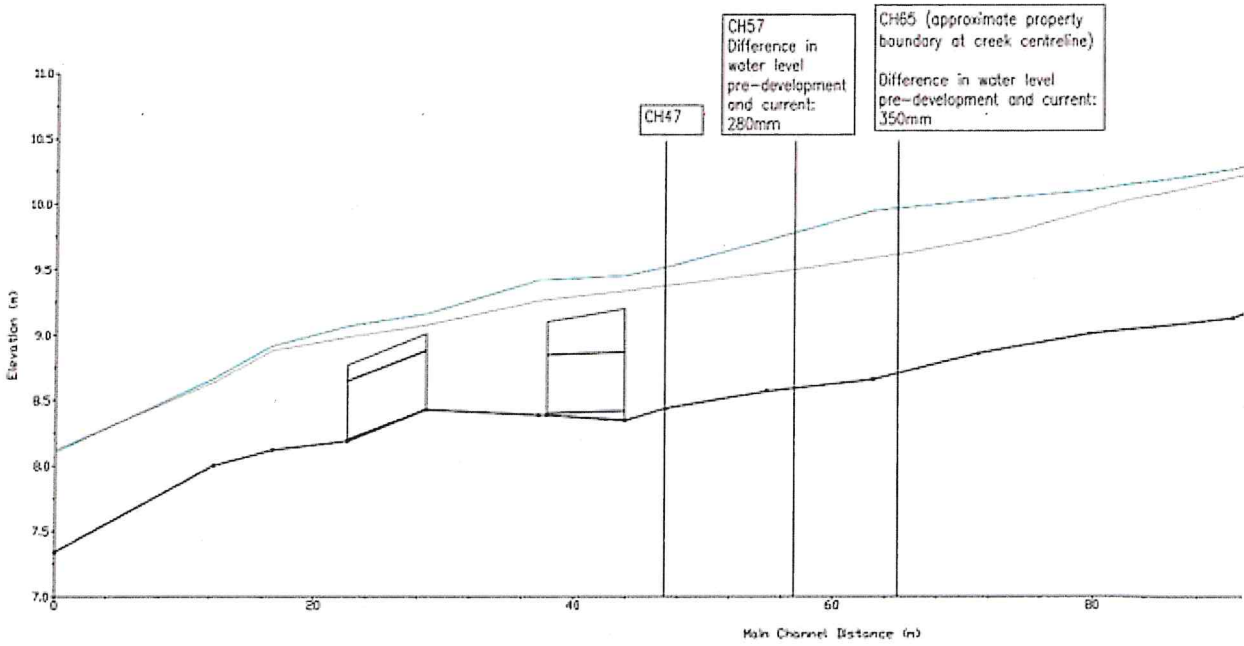
that the stream re-profiling works undertaken within 28 Garden Street have been modelled to show an impact on water levels and inundation area within the property. The landowner has acknowledged that Council is indemnified from flooding impacts associated with the landowner's actions.

2. 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.
3. 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 (D22/27802)



Attachment 3 – Notice of Decision – Statement of Reasons (AD2022/0011035)

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/4516
Applicant:	Yohan Wickramage c/ David Klye
Proposal:	Development Permit for a Material Change of Use
Description of the Development:	Earthworks
Street Address:	28 Garden Street
Real Property Description:	Lot 144 on C17949
Planning Scheme:	Cook Shire Council Planning Scheme 2017
Land Zoning:	Low Density Residential
Assessment Type:	Code Assessment

DECISION DETAILS

Type of Decision:	Approval with Conditions
Type of Approval:	Development Permit for Earthworks
Date of Decision:	14 December 2022

ASSESSMENT BENCHMARKS

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

Assessment Benchmarks	Comment
<i>Planning Regulation 2017</i> (Schedule 9)	Schedule 9 is not applicable as the application is not for building work under the Building Act.
<i>Planning Regulation 2017</i> (Schedule 10)	This application did not trigger a referral. SARA updated pre-lodgement advice dated 11 August 2022 confirmed that the application did not trigger a referral under Schedule 10.
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 (SPP), 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):

- Low Density Residential Zone 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. Subject to undertaking remedial works as required in the conditions of approval the applicant has demonstrated the excavation and fill undertaken onsite will not have an adverse impact on the subject site or adjacent properties.

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.

- (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 31(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.