



Our ref: LM:DA/4569:D23/8890
Your ref: PR152779

20 March 2023

Hongyu Feng
c/- RPS Australia East Pty Ltd
PO Box 1948
CAIRNS QLD 4870

E-mail: owen.caddick-king@rpsgroup.com.au

Dear Sir

Negotiated Decision Notice – Refusal
Given under section 76 of the *Planning Act 2016*

I refer to your Change Representations application for Development Application DA/4569 – Material Change of Use for Multiple Dwelling (12 Units) at 19,21 and 23 John Street, Cooktown received by Council on 15 February 2023.

Council at the Ordinary Meeting held on 14 March 2023 refused the application on the following grounds:

- a) The infrastructure charges in the Infrastructure Charges Notice dated 15 December 2022 are in accordance with the adopted Infrastructure Charges Resolution (No. 2) of 2018.
- b) Council is currently considering the development of a policy to support and encourage development within the Shire, and the waiver or reduction of Infrastructure Charges may be considered in the development of the policy. Should Council adopt a policy that provides for the opportunity to apply for a waiver or reduction of Infrastructure Charges an application can be made in accordance with that policy prior to the payment of the applicable charges.

In accordance with section 125(7) of the *Planning Act 2016*, the appeal period for the infrastructure charges notice starts again when the local government gives the decision notice to the recipient.

Should you require any further information or assistance on this matter please contact Council's Planning and Environment Department on 07 4082 0500 or email: mail@cook.qld.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lisa Miller', with a long horizontal flourish extending to the right.

Lisa Miller
Manager Planning and Environment
Cook Shire Council

Attachment 1 – Infrastructure Charges Notice dated 15 December 2022

Our Ref: HK:TS:DA/4569:D22/30812

15 December 2022

Hongyu Feng
c/- RPS Group AAP Consulting Pty Ltd
PO Box 1948
CAIRNS QLD 4870
E-mail: owen.caddick-king@rpsgroup.com.au
Attention: Owen Caddick

Dear Mr Caddick

ADOPTED INFRASTRUCTURE CHARGES NOTICE

Development Application - DA/4569

19, 21 and 23 John Street, Cooktown – Lot 46 C17922, Lot 47 C17922 and Lot 48 C17922

Proposal:	Material Change of Use for Multiple Dwelling (12 units)
Applicant:	Hongyu Feng c/- RPS Group AAP Consulting Pty Ltd
Location of Site:	19, 21 and 23 John Street, Cooktown 4895
Real Property Description:	Lot 46 C17922, Lot 47 C17922 and Lot 48 C17922
Level of Assessment:	Code Assessment

CHARGES CALCULATION
Material Change of Use for Multiple Dwelling – (4 units) Lot 46 C17922

Development Class	Charge	Unit of Measure	No. of Units	Amount of Charge
Residential (1 or 2 bedroom dwelling)	\$1,500.00 (Water Supply)	Per dwelling	4	\$6,000.00
Residential (1 or 2 bedroom dwelling)	\$1,500.00 (Sewerage)	Per dwelling	4	\$6,000.00
Residential (1 or 2 bedroom dwelling)	\$1,800.00 (Transport)	Per dwelling	4	\$7,200.00
Residential (1 or 2 bedroom dwelling)	\$600.00 (Public Parks & Community Land)	Per dwelling	4	\$2,400.00
Residential (1 or 2 bedroom dwelling)	\$600.00 (Stormwater)	Per dwelling	4	\$2,400.00
Total Charge				\$24,000.00

CREDIT CALCULATION
1 x Vacant Lot - refer clause 3.1(d)

Development Class	Charge	Unit of Measure	No. of Units	Amount of Charge
Residential RAL	\$2,100.00 (Water Supply)	Per lot	1	\$2,100.00
Residential RAL	\$2,100.00 (Sewerage)	Per lot	1	\$2,100.00
Residential RAL	\$2,520.00 (Transport)	Per lot	1	\$2,520.00
Residential RAL	\$840.00 (Public Parks & Community Land)	Per lot	1	\$840.00
Residential RAL	\$840.00 (Stormwater)	Per lot	1	\$840.00
Total Credit				\$8,400.00

NET ADOPTED INFRASTRUCTURE CHARGES SUMMARY:

Total Adopted Charge	Total Credit	Total Infrastructure Charge
\$24,000.00	\$8,400.00	\$15,600.00

(Note: The Total Infrastructure Charge = Total Charges – Total Credit for Existing Use)

CHARGES CALCULATION
Material Change of Use for Multiple Dwelling – (4 units) Lot 47 C17922

Development Class	Charge	Unit of Measure	No. of Units	Amount of Charge
Residential (1 or 2 bedroom dwelling)	\$1,500.00 (Water Supply)	Per dwelling	4	\$6,000.00
Residential (1 or 2 bedroom dwelling)	\$1,500.00 (Sewerage)	Per dwelling	4	\$6,000.00
Residential (1 or 2 bedroom dwelling)	\$1,800.00 (Transport)	Per dwelling	4	\$7,200.00
Residential (1 or 2 bedroom dwelling)	\$600.00 (Public Parks & Community Land)	Per dwelling	4	\$2,400.00
Residential (1 or 2 bedroom dwelling)	\$600.00 (Stormwater)	Per dwelling	4	\$2,400.00
Total Charge				\$24,000.00

CREDIT CALCULATION – Lot 47 C17922
1 x 3-bedroom Dwelling - refer clause 3.1(b)

Development Class	Charge	Unit of Measure	No. of Units	Amount of Charge
Residential (3 or more bedroom dwelling)	\$2,100.00 (Water Supply)	Per dwelling	1	\$2,100.00
Residential (3 or more bedroom dwelling)	\$2,100.00 (Sewerage)	Per dwelling	1	\$2,100.00
Residential (3 or more bedroom dwelling)	\$2,520.00 (Transport)	Per dwelling	1	\$2,520.00
Residential (3 or more bedroom dwelling)	\$840.00 (Public Parks & Community Land)	Per dwelling	1	\$840.00
Residential (3 or more bedroom dwelling)	\$840.00 (Stormwater)	Per dwelling	1	\$840.00
Total Credit				\$8,400.00

NET ADOPTED INFRASTRUCTURE CHARGES SUMMARY:

Total Adopted Charge	Total Credit	Total Infrastructure Charge
\$24,000.00	\$8,400.00	\$15,600.00

(Note: The Total Infrastructure Charge = Total Charges – Total Credit for Existing Use)

Material Change of Use for Multiple Dwelling – (4 units) Lot 48 C17922

Development Class	Charge	Unit of Measure	No. of Units	Amount of Charge
Residential (1 or 2 bedroom dwelling)	\$1,500.00 (Water Supply)	Per dwelling	4	\$6,000.00
Residential (1 or 2 bedroom dwelling)	\$1,500.00 (Sewerage)	Per dwelling	4	\$6,000.00
Residential (1 or 2 bedroom dwelling)	\$1,800.00 (Transport)	Per dwelling	4	\$7,200.00
Residential (1 or 2 bedroom dwelling)	\$600.00 (Public Parks & Community Land)	Per dwelling	4	\$2,400.00
Residential (1 or 2 bedroom dwelling)	\$600.00 (Stormwater)	Per dwelling	4	\$2,400.00
Total Charge				\$24,000.00

CREDIT CALCULATION
1 x Vacant Lot - refer clause 3.1(d)

Development Class	Charge	Unit of Measure	No. of Units	Amount of Charge
Residential RAL	\$2,100.00 (Water Supply)	Per lot	1	\$2,100.00
Residential RAL	\$2,100.00 (Sewerage)	Per lot	1	\$2,100.00
Residential RAL	\$2,520.00 (Transport)	Per lot	1	\$2,520.00
Residential RAL	\$840.00 (Public Parks & Community Land)	Per lot	1	\$840.00
Residential RAL	\$840.00 (Stormwater)	Per lot	1	\$840.00
Total Credit				\$8,400.00

NET ADOPTED INFRASTRUCTURE CHARGES SUMMARY:

Total Adopted Charge	Total Credit	Total Infrastructure Charge
\$24,000.00	\$8,400.00	\$15,600.00

(Note: The Total Infrastructure Charge = Total Charges – Total Credit for Existing Use)

Due Date for Payment:

Payment of the total infrastructure charge must be made prior to the commencement of the use of the new Multiple Dwelling (4 x Units).

Payment Details:

Payment of the adopted infrastructure charge must be made to Cook Shire Council.

Goods and Services Tax

The federal government has determined that rates and utility charges levied by a local government will be GST free. Accordingly, no GST is included in this infrastructure charge notice.

Adopted Infrastructure Charge is Subject to Price Variation

The amount of the adopted infrastructure charge is subject to variations in the Consumer Price Index (C.P.I.). All groups from the reference date stated in this notice until the date the payment is made.

This notice will lapse if the development approval stops having effect.

RIGHTS OF APPEAL:

Pursuant to the provisions of Chapter 6 of *The Planning Act 2016*, a person may appeal to the Planning & Environment Court against the decision of this Council. Please refer to <https://www.legislation.qld.gov.au/view/html/inforce/current/act-2016-025> to access the *Planning Act 2016*. Please refer to sections 124, 125, and 229 to 232 which detail your appeal rights regarding this notice.

Should you require any further information or assistance on this matter please contact Council's Planning and Environment Department on (07) 4082 0500 or E-mail: mail@cook.qld.gov.au.

Yours faithfully



Brian Joiner
Chief Executive Officer
Cook Shire Council

Attachment 2 – Extract of Appeal Provisions

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.