

Enquiries to: Planning Department
Our Reference: RAL23/0002
Your Reference: N/A

**Address all communications to
The Chief Executive Officer**

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17 April 2023

Russel and Debbie Searle
C/- Brazier Motti
PO Box 130
Ayr Qld 4807

Via email: burdekin@braziermotti.com.au

Dear Russel and Debbie,

Development Approval – Decision Notice for RAL23/0002

Reconfiguring a lot – Subdivision (2 Lots into 3 Lots) on land described as Lot 4 on RP741084 and Lot 2 on SP327682, located at 126 and 210 Jones Road, Rita Island.

In reference to the above-described application, Council advises that the Development Application **RAL23/0002** was assessed and approved in full, subject to conditions on the **6 April 2023**.

Council's Decision Notice is attached and outlines the developments conditions of approval, currency period, and approved plans and includes extracts from the *Planning Act 2016* with respect to making representations about conditions, suspension of the appeal period, negotiated decisions and lodging an appeal, should you wish to do so.

Should you have any further queries in relation to the above, please do not hesitate to contact the Planning Department on the above number.

Yours faithfully



Kellie Galletta
Manager Planning and Development

Enc: Decision Notice
Appeal Rights

Decision Notice

Planning Act 2016

17 April 2023

Section 83 of the *Planning Act 2016*

Application Details

This Decision Notice relates to the below Development Application:

Application Number:	RAL23/0002
Applicant Details:	Russel and Debbie Searle C/- Brazier Motti PO Box 130 Ayr Qld 4807 Email: burdekin@braziermotti.com.au
Owner Details:	Russel Joshua Searle and Debbie Lee Searle PO Box 2165 Ayr QLD 4807
Street Address:	126 and 210 Jones Road, Rita Island
Real Property Description:	Lot 4 on RP741084 and Lot 2 on SP327682
Proposal:	Reconfiguring a Lot – Subdivision (2 Lots into 3 Lots)
Planning Scheme:	Burdekin Shire IPA Planning Scheme 2011
Level of Assessment:	Code

Decision Details

The information below outlines the specifics of any approval or refusal issued by the Assessment Manager resulting from development assessment as per the provision of the *Planning Act 2016*.

Type of Decision:	Approval with conditions
Date of Decision:	6 April 2023
Decision Type:	Development Permit
Deemed Approval:	The Development Permit is not a deemed approval under Section 64 of the <i>Planning Act 2016</i>
Submissions:	Not applicable – The application was not subject to public notification

Conditions of Approval

The Conditions of Approval are set out in **Attachment 1** of this Decision Notice. The conditions are identified to indicate whether the Assessment Manager or a Referral Agency imposed them.

Approved Plans and Documents

The approved development must be completed and maintained generally in accordance with the approved plans and documents, except where amended by the conditions of this permit. Copies of the approved plans are included as **Attachment 2** of this Decision Notice.

Referral Agencies

Not Applicable.

Further Approvals Required

Not Applicable.

Infrastructure Charges

An Infrastructure Charges Notice is enclosed.

Rights of Appeal

The rights of an applicant to appeal to the Planning and Environment Court against a decision about a Development Application area set out in Chapter 6, Part 1 of the *Planning Act 2016*. There may also be the right to make an application for a declaration by Tribunal (refer Chapter 6, Part 2 of the *Planning Act 2016*).

An applicant for a development application may appeal to the Planning and Environment Court against the following:

- the refusal of all or part of the development application
- a provision of the development approval
- the decision to give a preliminary approval when a development permit was applied for
- a deemed refusal of the development application.

The timeframes for starting an appeal in the Planning and Environment Court are set out in section 229 of the *Planning Act 2016*.

A copy of the relevant appeal provisions from the *Planning Act 2016* is **attached**.

Approval Currency Period

Pursuant to Section 85 of the *Planning Act 2016*, the Development Approval will lapse four (4) years after the approval starts to have effect, unless otherwise conditioned. The currency period can only be extended if the request is received before the approval lapses.

Notice About Decision – Statement of Reasons

This Notice is prepared in accordance with s63(5) and s83(7) of the *Planning Act 2016* to inform the public 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*.

Reasons for the Decision

Assessment of the development against the relevant zone purpose, planning scheme codes and planning scheme policies demonstrates that the proposed development will not cause significant adverse impacts on the surrounding natural environment, built environment and infrastructure, community facilities, or local character and amenity.

Assessment Benchmarks

The following assessment benchmarks applied to the proposed development:

- Rural Zone Code
- Reconfiguring a Lot Zone Code

Compliance with Assessment Benchmarks

Following an assessment of the development application against all of the assessment benchmarks listed above, it was determined the proposed development complies where relevant with the exceptions listed below:

- The proposal is consistent with relevant codes and provisions of the Planning Scheme; and
- Does not detract from the rural amenity of the area;

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.

Attachment 1 – Conditions of Approval

Condition	Reason	Timing
1. General and Administration <u>Compliance with Conditions</u> 1.1 The Applicant is responsible for ensuring compliance with this development approval and the conditions of the approval by an employee, agent, contractor or invitee of the Applicant. 1.2 Where a discrepancy or conflict exists between the written condition(s) of the approval and the approved plans, the requirements of the written condition(s) will prevail. 1.3 Where these conditions refer to 'Council' in relation to requiring Council to approve or be satisfied the role of the Council may be fulfilled in whole or in part by an officer acting under appropriate delegation. 1.4 The proposed development must comply in full with all conditions of this approval, relevant Planning Scheme requirements and the relevant policies, guidelines and standards, as applying at the date of this approval, except as otherwise specified by any condition, to Council's satisfaction prior to the commencement of the use. 1.5 All civil works associated with this development permit must be constructed by a suitably qualified/licenced contractor and delivered as per the accepted design plans, as per Council specifications and requirements. 1.6 Council's assessment of the design has been an audit only. In the issuing of this permit Council makes no acknowledgement that the design meets the above requirements. 1.7 It is a condition of this permit that any errors in the design are the responsibility of the consulting engineer, and that any rectification costs which may be applicable are to be borne by the developer. Council bears no responsibility for any errors associated with the design or any costs arising therefrom. <u>Works – Applicant's Expense</u> 1.8 The cost of all works associated with the development and construction of the development including services, facilities and/or public utility alterations required are met at no cost to the Council, unless otherwise stated in a development condition. <u>Infrastructure Conditions</u> 1.9 All development conditions contained in this development approval about infrastructure under Chapter 4 of the <i>Planning Act 2016 (the Act)</i>, should be read as being non-trunk infrastructure conditioned under section 145 of the Act, unless otherwise stated.	The development must comply with all planning scheme requirements as approved and conditioned by this development permit.	During the operation and life of the development.

Attachment 1 – Conditions of Approval

Condition	Reason	Timing
<u>Works – Applicants Responsibility</u>		
1.10 The Applicant must repair any damage to existing infrastructure (e.g. kerb and channel, footpath or roadway) that may have occurred during any works undertaken as part of the development. Any damage that is deemed to create a hazard to the community, it must be repaired immediately.		
<u>Works – Design and Standard</u>		
1.11 Unless otherwise stated, all works must be designed, constructed and maintained in accordance with the relevant Council policies, guidelines and standards.		
2. Approved Plans and Supporting Documents		
Drawing Title	Drawing/Revision	Date
Proposed Reconfiguration Lots 7, 8 & 9, Cancelling Lot 4 on RP741084 and Lot 2 on SP327682	56952/001A	2 February 2023
Associated Reports		
Development Application prepared by the Brazier Motti, 10 February 2023.		
2.1 The proposed development must be completed, comply with and maintained generally in accordance with the drawings/ documents identified in the above, except as otherwise specified and/or amended by any condition of this approval.	The development must comply with all planning scheme requirements as approved and conditioned by this development permit.	At all times.
2.2 The development must be constructed in the position and at the levels identified on the approved plans or as stipulated by a condition of this approval, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.		
2.3 Where there is any conflict between the conditions of this approval and the details shown on the approved plans and documents, the conditions of approval must prevail.		
3. Payment of Rates, Charges and Expenses		

Attachment 1 – Conditions of Approval

Condition	Reason	Timing
3.1 Prior to signing the Plan of Survey, payment is required of any outstanding rates or charges levied by the Council or any expenses being a charge over the subject land. 3.2 Pay the sum calculated at the current charge per lot to be levied on the Council by the Department of Natural Resources, Mines and Energy, for each new valuation.	Confirmation to be provided to Council prior to the release of the Plan of Survey.	
4. Confirmation of Existing Services The existing services for each lot must be contained within the individual allotments, post reconfiguration.	To ensure the development is appropriately serviced by in accordance with relevant code/s and policy direction.	Confirmation to be provided to Council prior to the release of the Plan of Survey.
5. Relocation/alteration of Public Utilities The developer must at its own cost undertake all necessary alterations to public utility mains and services as rendered necessary by the carrying out of any required external works or other works associated with the approved development to the satisfaction of Council, and at no cost to Council.	To ensure development is appropriately serviced by public services and/or facilities in accordance with relevant code/s and policy direction.	Prior to the release of the Plan of Survey.
6. Roadworks The construction of any crossovers to give access to the land is to be the owner's responsibility and at no cost to Council, to the satisfaction of the Chief Executive Officer.	To provide appropriate access in accordance with relevant code/s and policy direction.	Prior to the issuing of a Development Permit for Building Works.
7. Drainage/Stormwater The approved development and use(s) must not interfere with the natural flow of stormwater in the locality in such a manner as to cause ponding or concentration of stormwater on adjoining land or roads.	To convey stormwater across other lands legally and in an environmentally responsible manner in accordance with relevant code/s and policy direction.	At all times.

Attachment 1 – Conditions of Approval

Advice
1. Infrastructure Charges An Infrastructure Charges Notice outlining the estimated infrastructure contributions payable relevant to the Development Permit is attached for your information.
2. Acid Sulfate Soils Should the presence of acid sulfate soils or potential acid sulfate soils be detected, an Acid Sulfate Soils Management Plan may be required to be prepared and submitted to Council for approval.
3. Compliance with Conditions Unless otherwise specified by these conditions, the conditions must be complied with prior to Council's endorsement of the Plan of Survey.
4. Future Development 4.1 Any future on-site sewerage treatment and disposal on the proposed lots must be in accordance with the On-Site Sewerage Code and AS/NZS 1547:2000. 4.2 Any development application for building works which includes habitable rooms may have to include a 1% AEP Flood Certificate. N.B. this applies in Localised and River Flood areas as identified in Burdekin Shire Councils mapping.
5. Existing Easements Any changes to the existing easement documents due to the Reconfiguring a Lot application is the full responsibility of the applicant or landowner.