

Decision notice approval
Section 282 of the Planning Act 2016 for a decision notice (approval) under s63 Planning Act 2016



PLEASE QUOTE: RAL19/0006

YOUR REFERENCE:

OUR REFERENCE: IN:MP1904051425

ENQUIRIES TO: Isabella Newman – Planning Officer

5 April 2019

Amalfi Genoa Pty Ltd
ATF Amalfi Genoa Trust
5 Giverny Close
HIGHTON VIC 3216

Via email: daniele.tripodi@bigpond.com

Attention: Daniele Tripodi

Dear Sir/Madam

RAL19/0006 - Development application Reconfiguring a Lot - (One (1) Lot into Five (5) Lots) on land described as Lot 36 on SP176562 situated at 10 Genoa Court, South Mission Beach

I acknowledge receipt of the above application on 21 March 2019 and confirm the following details.

I wish to advise that, on 5 April 2019 the above development application was -

- ☐ approved in full or
- ☐ approved in part for the following or
- ☒ approved in full with conditions. The conditions of this approval are set out in Attachment 1. These conditions are clearly identified to indicate whether the assessment manager or a concurrence agency imposed them or
- ☐ approved in part for the following, with conditions

The conditions of this approval are set out in **Attachment 1**. These conditions are clearly identified to indicate whether the assessment manager or a concurrence agency imposed them.

Approval under s64(5)

This application is ☐ / is not ☒ taken to have been approved (a deemed approval) under section 64(5) of the Planning Act 2016.

1. Details of the approval

The following approvals are given:

	Planning Regulation 2017 reference	Development Permit	Preliminary Approval
Development assessable under the planning scheme, superseded planning scheme, a temporary local planning instrument, a master plan or a preliminary approval which includes a variation approval - building work assessable under the planning scheme - plumbing or drainage work - material change of use - reconfiguring a lot - operational work		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

2. Conditions

This approval is subject to the conditions in Attachment 1.

3. Further development permits

Please be advised that the following development permits are required to be obtained before the development can be carried out:

- Operational Works Permit

4. Approved plans and documents]

Plan/Document number	Plan/Document name	Date
Unnumbered	Proposal plan	Received by Council on 19 March 2019

5. Currency period for the approval (s.85)

The currency period for the development approval (Reconfiguring a Lot) shall be four (4) years starting the day the approval is granted or takes effect. In accordance with Section 85 of the Planning Act 2016 (PA), the development approval for a reconfiguration of a lot lapses if a plan for the reconfiguration is not given to Council within the abovementioned currency period.

An applicant may request Council to extend the currency period provided that such is made in accordance with Section 86 of PA and before the development approval lapses under Section 85 of PA.

6. Appeal rights

The rights of an applicant to appeal to a tribunal or the Planning and Environment Court against a decision about a development application are set out in chapter 6, part 1 of the Planning Act 2016. For particular applications, there may also be a right to make an application for a declaration by a tribunal (see chapter 6, part 2 of the Planning Act 2016).

Appeal by an applicant

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.

An applicant may also have a right to appeal to the Development tribunal. For more information, see schedule 1 of the *Planning Act 2016*.

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

Attachment 2 is an extract from the *Planning Act 2016* that sets down the applicant's appeal rights and the appeal rights of a submitter regarding this decision.

If you wish to discuss this matter further, please contact Planning Officer, Isabella Newman on Ph: (07) 4043 8824.

Yours faithfully



Manfred Boldy
DIRECTOR PLANNING & REGIONAL DEVELOPMENT

Attachment 1—Conditions of the approval

Part 1—Conditions imposed by the assessment manager

- 1. Proposal:** The development must be undertaken generally in accordance with the application, documentation and plans in the table below, accepted by Council on 21 March 2019, all relating to Development Application – RAL19/0006, subject to:

Plan/Document number	Plan/Document name	Date
Unnumbered	Proposal plan	Received by Council on 19 March 2019

- (a) The plans, specifications, facts and circumstances as set out in the application submitted to Council;
- (b) Ensuring that the development complies in all respects with the following conditions of approval and the requirements of Council's Planning Scheme and the FNQROC Development Manual; and
- (c) Any alterations found necessary by the Chief Executive Officer or his delegate at the time of examination of the Engineering Plans or during construction of the development because of a particular requirement;

except where modified by these conditions of approval.

- 2. Timing of Effect:** The conditions of this Development Permit must be complied with prior to the signing and dating of the Plan of Survey, except where specified otherwise in these conditions of approval.
- 3. Sewerage Reticulation & Connection:** The applicant/owner must design and install adequate internal sewerage reticulation to all lots and connect to the existing sewerage reticulation system (existing manhole within existing lot) at no cost to Council.

Three (3) copies of the plan of works from a Registered Professional Engineer of Queensland must be submitted with the Development Approval for Operational Works and must be endorsed by the Director Planning and Regional Development prior to the issue of a Development Permit for carrying out Operational Works. All works must be carried out in accordance with the approved plans.

- 4. Electricity and Telecommunications Supply:** The applicant/owner must provide electricity and telecommunication services (including NBN if available) to each lot in accordance with the requirements of the FNQROC Development Manual and the relevant service provider, prior to the endorsement of the Plan of Survey. Written evidence from the electricity supplier and telecommunications authorities must be provided to confirm that services have been provided to each lot.
- 5. Stormwater Drainage:** The applicant/owner must ensure that the flow of all external stormwater from the property is directed to a lawful point of discharge (Genoa Court) , such that stormwater does not adversely affect surrounding properties to the satisfaction of the Director Planning & Regional Development.

6. **Excavating & Filling:** The applicant/owner must ensure that all excavation and filling works are carried out in compliance with 9.4.3 Excavating and Filling Code of the Cassowary Coast Regional Council Planning Scheme 2015, to the satisfaction of the Director Planning and Regional Development.
7. **Erosion and Sediment Control:** Effective erosion and sediment control must be maintained at all times during and after construction work until there is adequate vegetation cover, paved or other controls to prevent any silt run-off from the site.
8. **Outstanding Rates:** The applicant/owner is to ensure that all rates, interest and other charges levied on the property are paid prior to the endorsement of the Plan of Survey, to the requirements of the Chief Executive Officer.
9. **Survey Marks:** All existing survey marks are to be reinstated, new survey marks are installed in accordance with the Plan of Survey, and a cadastral surveyor is to certify the survey work in writing, to the requirements and satisfaction of the Manager Planning Services, prior to the endorsement of the Plan of Survey.
10. **Public Infrastructure/Utilities - Alterations:** Any relocation or alteration to any public utilities in association with works pertaining to this reconfiguration must be undertaken as required by the relevant service provider and at no cost to Council. This includes stormwater infrastructure.

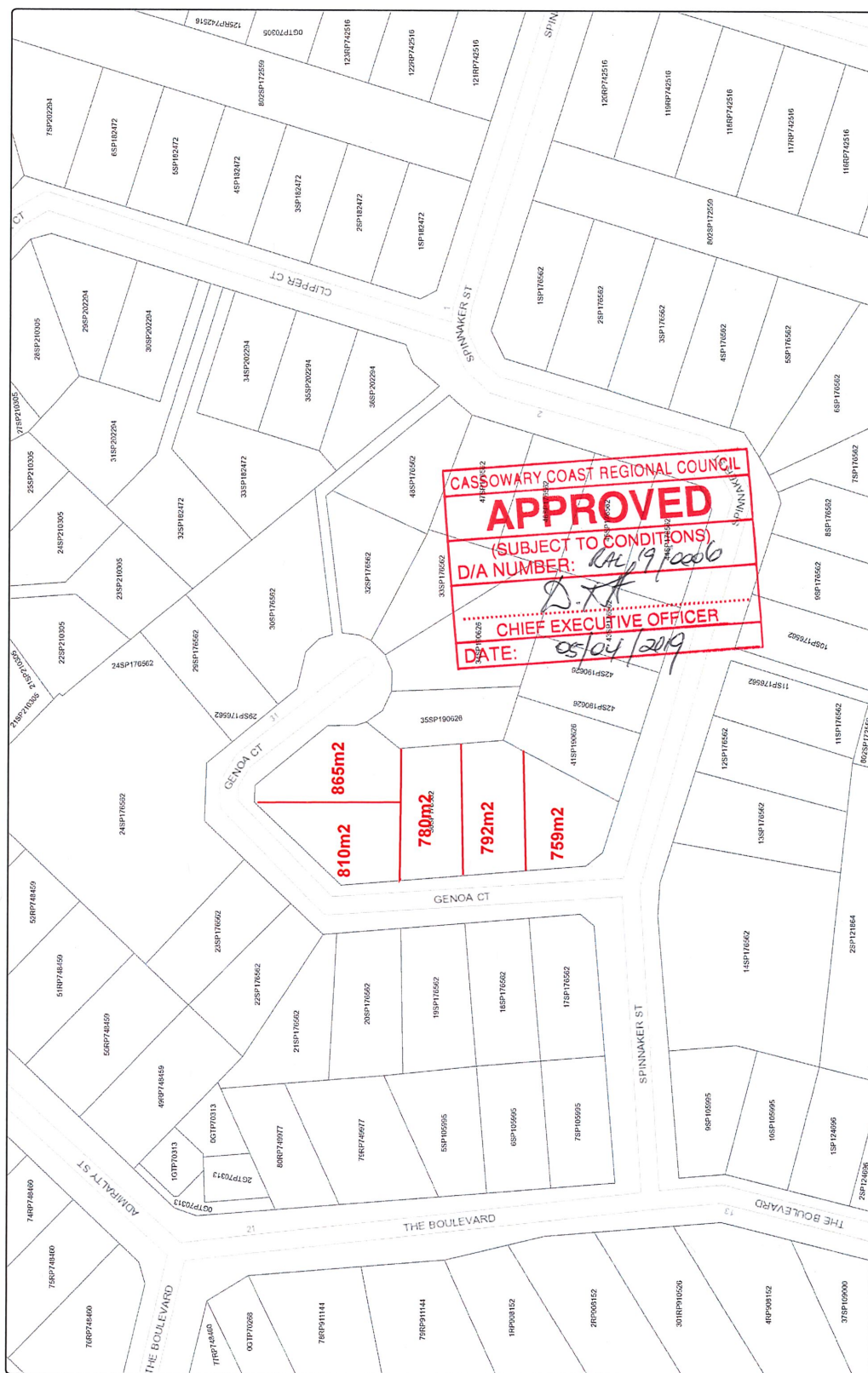
Assessment Manager's Advice:

- a) **Currency Period:** The currency period for the development approval (Reconfiguring a Lot) shall be four (4) years starting the day the approval is granted or takes effect. In accordance with Section 85 of the *Planning Act 2016 (PA)*, the development approval for a reconfiguration of a lot lapses if a plan for the reconfiguration is not given to Council within the abovementioned currency period.

An applicant may request Council to extend the currency period provided that such is made in accordance with Section 86 of *PA* and before the development approval lapses under Section 85 of *PA*.
- b) **Required Approvals:** A Development approval for Operational works will be required, with a permit for these works issued prior to any works commencing.
- c) **Water Connection & Meter:** The applicant/owner/future purchaser is to apply to Council's Infrastructure Services Department (Water Section) to install a water service fitted with meter to each lot at no cost to Council, prior to the issue of a final inspection certificate. The fee/charge for each water service installed and any associated upgrades required to be carried out by Council is per Council's Fees and Charges Schedule at the rate applicable on application and must be paid prior to the works being undertaken.
- d) **Aboriginal Cultural Heritage:** 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 all landowners, developers and the like; and
- e) **Fees and Charges:** When the plan of subdivision for the reconfiguring of a lot is submitted to Council for endorsement, such plan shall be accompanied by the endorsement fee in accordance with Council's Schedule of Fees and Charges.
- f) **Council Indemnity:** The Council is indemnified against any claims arising from works carried out by the Applicant/Owner on Council property.
- g) **Compliance with Laws:** This approval does not negate the requirement for compliance with all other relevant local laws and other statutory requirements.

- h) Commonwealth Environment Protection and Biodiversity Conservation Act 1999: You are advised that the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999* applies to action that has, will have or is likely to have a significant impact on matters of national environmental significance. Further information on the *EPBC Act* can be obtained from the Department Environment and Energy website www.environment.gov.au/epbc EPBC Act Policy Statement 1.1 Significant Impact Guidelines Matters of National Environmental Significance (Oct. 2009).

Approved Plans



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Date: 15/03/2019

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Attachment 2–Planning Act 2016 extract on appeal rights

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 and 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.

Statement of Reasons

The following information is provided in accordance with section 63 of the Planning Act 2016.



Development Application:	RAL19/0006
Property Description:	Lot 36 on SP176562
Property Address:	10 Genoa Court ,South Mission Beach
Proposal:	Reconfiguring a Lot - (One (1) Lot into Five (5) Lots)
Planning Scheme:	Cassowary Coast Regional Council Planning Scheme 2015
Decision Date:	Approved with conditions on 5 April 2019

REASONS FOR DECISION

The development involve the subdivision of land within a Residential Precinct to create 5 lots which comply with the requirements of the planning scheme. The development is consistent with the surrounding area and the intent of the planning scheme.

ASSESSMENT BENCHMARKS

Assessment Benchmarks:	State Planning Policy - Far North Queensland Regional Plan 2009-2031 Cassowary Coast Regional Council Planning Scheme 2015 <ul style="list-style-type: none">• Township Zone Code• Greater Mission Beach Local Plan• Reconfiguring a Lot Code
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COMPLIANCE WITH BENCHMARKS

Assessment Benchmark	Reasons for the approval despite non-compliance with benchmark
Nil	Nil