

19 MAR 2025

FILED
MAROOCHYDORE

In the Planning and Environment Court

No D29/25

Held at: **MAROOCHYDORE**

Between: Mark and Julianne Grunske

Appellant
(Applicant)

And: Fraser Coast Regional Council

Respondent
(Assessment Manager)

And: Chief Executive
Queensland Government

Co Respondent
(Concurrence Agency)

NOTICE OF APPEAL

Filed on

19/03/2025.

Filed by:

Warren Bolton [Agent]

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We, Mark and Julieanne Grunske of 29 Col Kitching Drive Karumba Queensland 4891 appeals to the Planning and Environment Court at Maroochydoore against:

The Conditions of Decision Notice, dated 21 February 2025 (Decision Notice) of the Respondent, (Assessment Manager) for Development Application **RAL21-0138** (DA21) for the development of *Reconfiguring a Lot* and seek the following orders:

1. That the matters, set out in the Grounds of Appeal, be referred for Alternative Dispute Resolution (ADR) process; and
2. If the ADR process does not resolve all the issues, the outstanding matters be referred back to the Court for determination.



NOTICE OF APPEAL

Filed on behalf of: - Mark and Julianne Grunske

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A handwritten signature in blue ink, likely of Warren Bolton, the agent.

The Grounds of Appeal are:

1-Relevant Legislation

A. By the correct interpretation of the Planning Act 2016 (PA16) and the Planning Regulations 2017 (PR17) for DA21, the:

- a. *assessment manager* is: **local government**; and
- b. *referral (concurrent) agency*, is: **chief executive**; and
- c. *category of development*, is **assessable**; and
- d. *category of assessment*, is **code**; and
- e. relevant *assessment benchmarks* assigned are:

For the **chief executive**-

State development assessment provisions: by delegation-

- State code 8: Coastal development and tidal works; and
- State code 9: Great Barrier Reef wetland protection areas; and

For the **local government**-

The *local planning instrument* (Planning Scheme)

- Applicable zone code-Low Density Residential; and
- Reconfiguring a lot code; and
- Transport and parking code; and
- Acid sulfate soils overlay code; and
- Agricultural land overlay code; and
- Biodiversity areas, waterways and wetlands overlay code; and
- Bushfire hazard overlay code; and
- Coastal protection overlay code; and

B. Section 45(3) of PA16 provides that for **code** assessment, the **assessment** process required by Section 60 of PA16 to determine a code assessable development application, must be carried out **only**



against the *assessment benchmarks* in a *categorising instrument* for that development and having regard to a matter prescribed by the regulation, that is relevant to a **code assessable development**.

- C. Section 60(2) of PA16 requires the assessment manager to determine, for a relevant development application, compliance with the relevant assessment benchmarks for the development; and
- D. Section 60(2)(d) of PA16 provides that, if a relevant development application does not comply with some or all of the requirements of the *assessment benchmarks*, the assessment manager may impose **only** those development conditions that will achieve compliance with the relevant *assessment benchmarks*.
- E. Section 43(2) of PA16 provides that an *assessment benchmark* is **not** to include:
 - (i.) a matter of the **person's opinion**; and
 - for **code** assessment:
 - (ii.) a strategic outcome required by section 16 (1)(a) of PA16 or
 - (iii.) a matter prescribed by regulation
- F. Section 55 of PA16 requires a referral agency to undertake the assessment process of a development application in accordance with the same prescribed processes, as that for an *assessment manager*.
- G. Section 63 of PA16 provides the requirements in relation to a *decision notice*. It requires amongst other things; the decision notice include a description of the *assessment benchmarks* applying for the *assessable* development.

ASSESSMENT MANAGER

2-Decision Notice

- A. The assessment manger incorrectly and/or inappropriately interpreted provisions of PA16 and the Planning Scheme's relevant *assessment benchmarks*, in undertaking assessment of DA21 and thereby incorrectly and/or inappropriately imposed unreasonable, and/or not reasonably required conditions on the development approval.



Such conditions are:

- (i) The Development was for **reconfiguring a lot** only, not any other type of development. Therefore, Conditions Nos 3, 13, 18, 21, 22 and 24 while may be appropriate under assessment benchmarks for other types of assessable developments, are not relevant and therefore not reasonably required for DA21; and
 - (ii) Conditions 2, 4, 8, 9, 10, 14, 15, 17 and 25 constitute **advice** on matters, with no relationship to the *assessment benchmarks* against which the *assessment manager*, for DA21, was required to undertake assessment against, nor conditions required for compliance with relevant *assessment benchmarks* and therefore are not reasonably required; and
 - (iii) Conditions 5, 6, and 7 constitute **circumstances** whereby they are already required by existing law, plus are not called up by requirements within relevant *assessment benchmarks*, against which the assessment manager was required for DA21, to undertake assessment against, nor conditions required for compliance and further pose the circumstances for creating exposure to a 'double jeopardy' style situation [Comply with legislation and comply with a statutory development conditions (PA16-Section 164)] without any apparent responsible reason and are therefore unreasonable conditions; and
 - (iv) Conditions 11, 12, 13, 16, 19 and 20 are **not** the only interpretation of the relevant '*performance outcome*' provided for in the relevant *assessment benchmark* and therefore are unreasonable conditions; and
- B. The decision notice issued by the assessment manager, **failed to define**, as required by Section 63 of PA16, the assessment benchmarks, used by the assessment manager to determine compliance for DA21.

REFERRAL AGENCY

3-Decision Notice

- A. State Code 9 is titled *Great Barrier Reef wetland protection areas*. The Co-



Respondent, as referral (concurrence) agency, (SARA) used this code as an assessment benchmark to assess some aspects of DA21. The wetland against which the assessment was made is not located in the area defined as 'runoff catchment area' of Great Barrier Reef by the Great Barrier Reef Marine Park Authority.

The assessment benchmark is therefore not relevant in assessing DA21; and


- B. The Co-Respondent, as referral (concurrence) agency, (SARA) incorrectly and or inappropriately interpreted provisions of the PA16 and relevant *assessment benchmarks*, in undertaking assessment of DA21 and thereby incorrectly and or inappropriately instructed the *Assessment Manager* to include in the *Decision Notice*, the **imposition** of unreasonable conditions, and conditions not reasonably required by the development; and
- C. Further, if those conditions are correctly interpreted, then SARA in undertaking assessment of **Code** assessable of DA21, applied the following conditions which are **unreasonable** and/or not **reasonably required** by the Development:

Because:

- (i) The Development was for *reconfiguring a lot only*, not any other type of development. Therefore, Conditions Nos 4, 5, 8, 9(b) while may be appropriate to other types of developments are not relevant for DA21; and
- (ii) In undertaking a *Code assessment* process for the development application, SARA did not, in accordance with the PA16, carry out the assessment - **solely** against the:
- a. the provision of the prescribed *assessment benchmarks*; and/or
 - b. a matter prescribed by regulation for that development type,
- resulting in assigning, for Conditions Nos 4, 5, 8, 9(b), unreasonable impositions, thus making those aspects not reasonably required; and

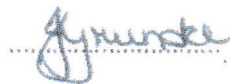


- (iii) Some components of determinations reached in Conditions Nos 1, 3, 4, 5, 6, 8, and 9 could only have been achieved through the application of '**personal opinion**' and therefore contrary to the requirement for **Code** Assessment under PA16 and therefore are unreasonably imposed; and
- (iv) Condition No 9(b) is too **vague**, in order to provide the Applicant with a clear understanding of what is required to be delivered by the development and therefore, is unreasonable; and
- (v) Condition Nos 1, 3, and 6 are **contrary** to the lawful facility open to the Development and therefore unreasonable; and
- (vi) Condition Nos 1, 3, and 6 **denies** the applicant lawful **choice** in providing a compliance solution, available and therefore is an unreasonable imposition on the development, or the use of premises.
- (vii) Condition Nos 1, 5, 6, and 9(a) pose the circumstances for creating exposure to a '**double jeopardy**' style situation [comply with legislation and comply with a statutory development condition (PA16-Section 164)] without any apparent responsible reason and is therefore an unreasonable condition.



Appellant

Mark Grunske



Appellant

Julianne Grunske



RESPONDENT - CO RESPONDENT

If you are named as a respondent or co respondent in this notice of appeal and wish to be heard in this appeal you must:

- (a) within 10 business days after being served with a copy of this Notice of Appeal, file an Entry of Appearance in the Registry where this notice of appeal was filed or where the court file is kept; and
- (b) serve a copy of the Entry of Appearance on each other party.

The Entry of Appearance should be in Form PEC – 5 for the Planning and Environment Court.

CO RESPONDENT by ELECTION

If you are entitled to elect to be a party to this appeal and you wish to be heard in this appeal you must:

- (a) within 10 business days of receipt of this Notice of Appeal, file a Notice of Election in the Registry where this Notice of Appeal was filed or where the court file is kept; and
- (b) serve a copy of the Notice of Election on each other party.

The Notice of Election should be in Form PEC – 6 for the Planning and Environment Court.

