

PLANNING & ENVIRONMENT COMMITTEE**10 JUNE 2009****19**

COMPENSATION CLAIMS & APPEALS – MAY 2009

Simon Clarke: 1/59/2 : #536015 v83

RECOMMENDATION:

1. That the report on the Compensation Claims & Appeals for May 2009 be received and noted.
 2. Council resolves that it is satisfied that the services of a barrister and consultants to act for Council in The Appeals are of such a confidential nature that it would be impractical or disadvantageous to the Council to invite quotations and will proceed to procure these services utilising the provisions outlined in Section 486(3)(b) of the *Local Government Act 1993*.
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Simon Clarke

Manager Development Assessment

**CAIRNS REGIONAL COUNCIL
APPEALS / OTHER MATTERS
AS AT 1/6/2009**

Description	Applicant	Comment	Solicitor
Supreme Court Appeal No. 26 of 2000	Middin Pty Ltd	The proceedings and negotiations are currently in abeyance whilst the parties consider alternative terms to resolve the dispute.	MacDonnells
Appeal No 7 of 2005	Our Stuff Pty Ltd	41-43 Murphy Street, Port Douglas – Applicant appeal against a refusal for Multiple Dwellings - All action on appeal appears to have ceased soon after lodgement of appeal in 2005. However there appears to have been action taken with respect to other development application that will ultimately resolve this matter. Further discussions with applicant occurred in late April.	Williams Graham Carmen
Appeal No. 17 of 2005	Colin Watson Investments No. 3 Pty Ltd	Without prejudice discussions have occurred. Amendments to CairnsPlan complete. Appeal held in abeyance pending resolution of Appeal No. 154 of 2005. No recent progress.	MacDonnells
Appeal No. 154 of 2005	Colin Watson No. 3 Pty Ltd.	Without prejudice discussions have occurred. Response from Appellant's solicitor that the Appeal will be held in abeyance while related appeal 50452 is being negotiated. Appellant has advised it accepts DMR concurrence agency conditions. Parties discussing appropriate form of consent order for resolution of appeal. Council to advise of appropriate conditions. Mediation before the ADR Registrar took place on 8/10/2008. The parties have identified the disputed issues in the appeal & experts have been engaged. Expert conclaves & preparation of joint reports have concluded. The appeal has been set down for review before the Court on 6/7/2009, however settlement is likely.	MacDonnells

Appeal No. 86 of 2006	Sevmere Pty Ltd	1 Stratford Parade, Stratford. Appellant to pursue superseded planning scheme application and put appeal in abeyance. No recent action on this appeal. Also see appeal No 144 of 2008 below.	MacDonnells
Appeal No 329 of 2006	John Lordan	10 Lifu Close, Wonga – 8 lot subdivision at the end of a cul-de-sac. Awkward shaped blocks. Without prejudice discussion held late April. Revised plan to be presented to Council for consideration in due course.	McCullough Robertson
Appeal No 105 of 2007	Bernhard Graf	White Beech Road, Cow Bay – House with many separate rooms – geotechnical issues. Without prejudice on-site meeting held in May. Council agreed to conditions paving way for settlement of appeal.	McCullough Robertson
Appeal No 106 of 2007	Bernhard Graf	Kauri Close, Cow Bay – House with many separate rooms – geotechnical issues. Without prejudice on-site meeting held in May. Council agreed to conditions paving way for settlement of appeal.	McCullough Robertson
Appeal No 109 of 2007	Redlynch Valley Property Company Pty Ltd	Stapleton Close, Redlynch Valley Estate Appeal against Council refusal of an application for a MCU & Recon of a lot (1 lot into 3). Directions Order made by Judge Everson on 18/8/08 progressing this matter for hearing. Without prejudice meeting held on 27/10/2008. Council considering without prejudice offer and draft conditions of approval. Council without prejudice offer sent to Appellant. Awaiting response. Without prejudice negotiations continuing. Application for new directions listed for 3/2/2009. Experts notified. Parties required to attend ADR mediation before 27/3/09. ADR mediation to resume on 28/4/09. Directions Order vacated whilst parties negotiate. Negotiations continuing.	MacDonnells

Appeal No 187 of 2007	Ian Gordon Coates & Sally Coates	Bruce Highway, Woree (off Quail Close) – Appeal Lodged against Council’s refusal. Without Prejudice discussions held. Applicants have submitted a revised plans. Mediation held 25/2/2009. Applicants have reviewed land constraints and submitted a new lot layout for further consideration.	King & Company
Appeal No 216 of 2007	Patricia Manning	29 Magee Street, Aeroglen – Appeal against Council’s refusal of Lot Reconfiguration. Request for Further and Better Particulars Received. Directions Order & Timetable issued. Without prejudice meeting held 24.2/2009. No further action pending outcome of Appeal No 260 of 2008.	King & Company
Appeal No 289 of 2007	CQ Innovations Pty Ltd	Behana Gorge Road, Alooomba – Extractive Industry – No current action.	King & Company
Appeal No 322 of 2007	Stephen Tognalini	Reconfiguration of Rural Land at Redlynch Intake Road, Redlynch. Directions hearing on 15 February to obtain draft Orders. Without prejudice discussions held. Applicants have supplied new plans. Council refused settlement. External experts appointed.	King & Company
Appeal No 337 of 2007	Oasis Retirement Pty Ltd	Retirement Village – Appeal against Council’s Preliminary Approval lodged in late December 2007. Conditions of settlement agreed via mediation. Some outstanding matters relating to stormwater discharge to be sorted out via Courts. Negotiations continuing.	King & Company
Appeal No 73 of 2008	Amsal Pty Ltd	Rykers Road, Cape Tribulation – Multiple Dwellings (Tourist) – Without Prejudice discussions held – 1 June 2009. Further needs report to be submitted for Council’s consideration regarding the merits of the development proposal.	King and Company

Appeal No 144 of 2008	Sevmere Pty Ltd	1 Stratford Parade, Stratford Appeal against refusal of Development Application (Superseded Planning Scheme). Appeal lodged to Court of Appeal on preliminary issues judgement by Appellant. P & E Appeal held in abeyance pending Court of Appeal matter.	MacDonnells
Appeal No 150 of 2008	Carol Ross	Progress Road, White Rock. Appeal against Council's refusal of a combined application for reconfiguration and multi-unit housing. Mediation set down for 28/4/2009. Council has agreed to settlement. Final terms of conditions and infrastructure agreement to be determined.	King & Company
Appeal No. 229 of 2008	Our Stuff Pty Ltd	Captain Cook Highway, Mowbray – Appeal against Council's refusal of a 1 into 2 Lot Reconfiguration. Report to be presented to Council with the view to settling the appeal (10/7/2009).	King & Company
Appeal No. 260 of 2008	P Manning	29 Magee Street, Aeroglen – Appeal against Council refusal to extend currency period. Expert reports have been finalised. Report to be presented to Council with the view to settling the appeal (10/7/2009).	King & Company
Appeal No. 265 of 2008	Coral Horizons CTS	135 Williams Esplanade, Palm Cove. Submitter Appeal, lodged against Council's decision to approve the Redevelopment of the Cairns Surf Life Saving club. Mediation occurred 25/2/2009. Agreement appears to have been reached between submitters and applicants for settlement of this appeal - pending.	King & Company
Appeal No. 301 of 2008	Telstra Corporation Pty Ltd	1-5 Elford Street, Clifton Beach – Appeal against council's refusal of Telecommunications Facility. Entry of Appearance lodged. Without prejudice meeting held. Conclave reports being prepared by experts. Appeal set down for hearing 3 days mid-June	King & Company

Appeal No. 326 of 2008	Freeman & Richards	South Ellison Drive, Clifton Beach – Appeal against Council refusal of 1 into 3 lot reconfiguration. Entry of Appearance lodged. Without prejudice meeting held.	King & Company
Appeal No 331 of 2008	Buchan Point Pty Ltd	Col Cummings Drive, Buchan Point – Applicant appeal against Council's refusal to extend currency period for houses.	King & Company
Appeal No. 12465 of 2008	Sevmere Pty Ltd	Application for leave to appeal filed by Sevmere Pty Ltd on 3/12/09. Received Applicant's Outline. Christopher Hughes SC & Tracey Fantin briefed by Council. Council's Outline filed & served on 20/2/09. Matter set down for hearing on 8/5/09. Council to consider without prejudice letter recd from Appellant dated 26/2/09 & discuss with MacDonnells & consider a without prejudice meeting or conference with ADR Registrar. Listed for hearing in Court of Appeal 8/5/09. Outlines filed & List of Authorities filed by each party. Hearing on 8/5/09 & Judgement reserved by Court of Appeal.	MacDonnells
Appeal No. 1466 of 2008	Stockland Property Management	Court of Appeal No. 1466 of 2008 Appln for leave to appeal filed by Stockland Prop Management on 11/2/09. Applicant's Outline was delivered by 4/3/09. Briefs for C Hughes SC & M Williamson were delivered & have been updated as required . Council's Outline was delivered by 31/3/09. Applicant's reply has been received . All parties have filed Outlines & replies save for Council on advice from Senior Counsel no reply was required . Appeal record book has been filed by Stockland & copies served on parties in preparation for Hearing. To date, no hearing date has been allocated by the Court of Appeal. Contingent Liability: Nil	MacDonnells

Appeal No. 3105 of 2008	Wroxall Investments Pty Ltd	Oasis Drive, Wonga Beach – Appeal against Council’s refusal of lot reconfiguration. Amended plans submitted for review. Draft conditions provided on without prejudice basis with the view to settling the appeal.	King & Company
Appeal No. 3284 of 2008	Perpetual Trustees Victoria Ltd	Kenny Street, Portsmith – Submitter appeal against Council approval of Homemaker Centre. Mediations, conclaves and expert reporting underway.	King & Company
Appeal No. 12 of 2009	Clarke	29-31 Moore Street, Trinity Beach – Appeal against Council’s approval of Multi Unit Housing, Entry of Appearance lodged. Awaiting response from applicant.	King & Company
Appeal No. 30 of 2009	Cairns Aquarius Body Corporate	1-3 Florence Street, Cairns City – Submitter appeal against Council approval of Indoor Sport & Entertainment, Holiday Accommodation, Function Rooms. Entry of Appearance Lodged. Some technical legal matters being considered at present.	King & Company
Appeal No 75 of 2009	Hartley Group	50 Scott Street & 172 Buchan Street, Cairns – Applicant appeal against Council refusal to approval extension to Commercial premises. Entry of Appearance Lodged.	King & Company
Appeal No 90 of 2009	Kenfrost Pty Ltd	Bruce Highway and Anderson Road, Woree – Applicant Appeal against Council’s preliminary Approval for Multi Unit Housing. Entry of Appearance submitted.	King & Company
Appeal No 113 of 2009	J Pope & B Kalkowski	Stager Road, Miriwinni – Submitter appeal against Council Decision to approve an Extractive Industry. Entry of Appearance submitted.	King & Company
Appeal No. 629 of 2009	Matthew Whitfield	Bruce Highway, Fishery Falls – Appeal against Council’s refusal of Caravan Park – Entry of Appearance lodged	King & Company

Appeal No. 856 of 2009 (8/13/1334)	Pregno Family Investments Pty Ltd	(ROL 1) Dalla Costa, Swallow, Richards, Carne Access and Thomson Road, Edmonton – Applicant Appeal against Council’s Preliminary Approval. Entry of Appearance Lodged.	King & Company
Appeal No 1056 of 2009	Houston v’s Chief Executive of Department of Infrastructure & Planning	Silver Ash & Kauri Road, Cow Bay – Appeal against the Douglas Shire Iconic Places Panel’s refusal of a House in the Rainforest Conservation Precinct. Entry of Appearance lodged.	King & Company
Appeal No. 1190 of 2009 (8/13/1335)	Pregno Family Investments Pty Ltd	(ROL A) 2L & 8L Thomson Road, Edmonton – Applicant Appeal against Refusal of Lot Reconfiguration. Entry of Appearance Lodged.	King & Company
Appeal No. 1298 of 2009 (8/8/979)	Pregno Family Investments Pty Ltd	(MCU D) Dalla Costa, Swallow, Richards, Carne Access and Thomson Road, Edmonton – Applicant Appeal against Council’s Preliminary Approval. Entry of Appearance Lodged.	King & Company
Appeal No. 1316 of 2009 (8/8/976)	Pregno Family Investments Pty Ltd	(MCUA) 2L Thomson Rd, Edmonton – Applicant Appeal against Refusal of Mixed Use Homemaker Centre, incl Bus, Fac., Business & Tech. Park, Display Facilities, Limited Shopping Facilities & Tavern. Entry of Appearance Lodged.	King & Company
Appeal No. 1318 of 2009 (8/8/977)	Pregno Family Investments Pty Ltd	(MCU B) 8L & Part 2L Thomson Road, Edmonton – Applicant Appeal against Refusal of Hospital, Business Facilities (ancillary to Hospital) & Limited Shopping Facilities. Entry of Appearance Lodged.	King & Company
Appeal No. 1319 of 2009 (8/8/978)	Pregno Family Investments Pty Ltd	(MCU C) 1L & Part 2L Swallow Road, Edmonton – Applicant Appeal against Refusal of Display Fac, Service Station, Business Fac, Business & Technology Park & limited Shopping Facilities. Entry of Appearance Lodged.	King & Company
Appeal No. 1320 of 2009 (8/8/980)	Pregno Family Investments Pty Ltd	(MCU E) Part L2 & Part L40 Swallow Rd, Edmonton – Applicant Appeal against Refusal of Display Facilities & Limited Shopping Facilities. Entry of Appearance Lodged.	King & Company