

In the Planning and Environment Court
Held at: Brisbane

No. BD2001 of 2021

Between: **SDA PROPERTY NOMINEES PTY LTD ACN 634 072 030 ATF SDA HOLDINGS TRUST** Appellant
And: **SCENIC RIM REGIONAL COUNCIL** Respondent
And: **AMANDA HAY** Eighth Co-Respondent By Election
And: **TAMBORINE MOUNTAIN PROGRESS ASSOCIATION INC.** Twentieth Co-Respondent By Election

AFFIDAVIT

Filed on: 25 November 2022
Filed by: Amanda Joanne Hay, Eighth Co-Respondent by Election
Service Address: 13-25 Chalmette Drive, Tamborine Mountain, QLD 4272
Phone: 07 55452253
E-mail: frangipani1956@msn.com

COPY

I, **Amanda Joanne Hay**, Eighth Co-Respondent by Election, of 13-15 Chalmette Drive, Tamborine Mountain in the State of Queensland, retired, solemnly and sincerely, affirm and declare:

1. I am the self-represented Eighth Co-Respondent by Election in these proceedings.
2. This is an affidavit in support of my written submission in relation to application in pending proceedings filed by the Respondent on 24 October 2022, pursuant to section 60(1)(b) of the *Planning and Environment Court Act 2016*. I note that Court document 140 – the Respondent's Application in Pending proceedings whilst filed on 24 October 2022 – was signed and dated **21 October 2022**.

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Amanda Hay

Deponent

AFFIDAVIT

Filed on behalf of the 8th Co-Respondent
by Election
Form PEC-4

J.P. (A.M.)
Amanda Joanne Hay
13-15 Chalmette Drive
Tamborine Mountain QLD 4272
Ph: 07 55452253
Email: frangipani1956@msn.com




A.

3. I am informed and verily believe that any instruction from the Respondent to its legal representative King & Company Solicitors to commence the Application in Pending Proceeding was not made by way of the use or application of Delegated Authority bestowed upon the Respondent's acting Chief Executive Officer. I confirmed my belief by way of a telephone conversation with one of the SRRC Councillors.
4. Exhibit "AH-01" to this my affidavit is a true copy of pages 281-282 of the Scenic Rim Regional Council (SRRC) - Register of Delegations - Delegations Register of Council to Chief Executive Officer – Adopted by Council 23/11/2020 which was in force at the time King and Company Solicitors filed its Application. This document was provided to me via an e-mail link by the SRRC Principal Specialist Governance and Assurance Council Sustainability on 18 November 2022. No delegations are recorded in respect of section 60(1)(b) of the *Planning and Environment Court Act 2016*.
5. Exhibit "AH-04" to this my affidavit is a true copy of an email I caused to be sent to the Integrity section of SRRC on 14 November 2022 requesting a link to the current version of SRRC's Register of Delegations; a further email sent on 17 November 2022 to the Acting CEO requesting a response; and an email response received on 18 November 2022 from SRRC's Principal Specialist Governance and Assurance Council Sustainability which provided a link to the current version of Council's Register of Delegations (current as at that date).
6. I am also informed and verily believe that, as no decisions can be made by Scenic Rim Regional Council in confidential session or meeting independent of a scheduled Ordinary Meeting, the authority to commence or file the Application in Pending Proceedings was required to have been made by resolution and a majority vote of the elected Divisional Councillors of the SRRC in open session, prior to the commencement of such action.
7. Exhibit "AH-02" to this my affidavit is a true copy of page 208 of 208 of the Agenda of the Ordinary Meeting of the SRRC to be held on **25 October 2022** which was published on SRRC's website on **19 October 2022**, and which contained Agenda Item 11 Confidential Matters 11.1 at page 208 of 208.
8. The subject of Agenda Item 11.1 was "Judgement – MCU20/050 SDA Property Nominees Pty Ltd v Scenic Rim Regional Council and Ors – Planning and Environment Court Appeal No. BD2001 of 2021, 1-11 Eagles Retreat Place, Tamborine Mountain (Closed s.254J(3)(e))."
9. The Ordinary Meeting was held on **25 October 2022** and was broadcast live.
10. Exhibit "AH-03" to this my affidavit is a true copy of an extract from the SRRC Minutes of the Meeting of **25 October 2022** – Agenda Item 11 and 11.1.

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Amanda Ng
Deponent

[Signature]
JP (QUAL)



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11. Part 3 of the 4-part recommendation at Item 11.1, which was Moved, Seconded and carried unanimously by all Councillors present, states "3. Council note that finalisation of the matter will include preparation of draft conditions and cost applications for the Court's consideration; and..."
12. The draft Minutes of the Ordinary Meeting of 25 October 2022 were moved, seconded and carried unanimously at the Ordinary Meeting held on 08 November 2022, which I attended.
13. All of the facts and circumstances herein deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my Affidavit.

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Amanda Day
.....
Deponent

[Signature]
JP (QUAL)



In the Planning and Environment Court
Held at: Brisbane

No. BD2001 of 2021

Between: **SDA PROPERTY NOMINEES PTY LTD ACN 634 072 030 ATF SDA HOLDINGS TRUST** Appellant

And: **SCENIC RIM REGIONAL COUNCIL** Respondent

And: **AMANDA HAY** Eighth Co-Respondent By Election

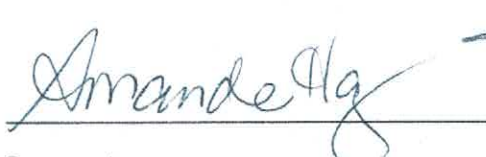
And: **TAMBORINE MOUNTAIN PROGRESS ASSOCIATION INC.** Twentieth Co-Respondent By Election


CERTIFICATE OF EXHIBIT


Exhibit **AH-01** to **AH-04** to the affidavit of Amanda Joanne Hay affirmed 25 November 2022.

EXHIBIT	DESCRIPTION	PAGE
AH-01	Pages 281-282 of the Scenic Rim Regional Council - Register of Delegations - Delegations Register of Council to Chief Executive Officer – Adopted by Council 23/11/2020	1-2
AH-02	Page 208 of 208 of the Agenda of the Ordinary Meeting of the SRRC held on 25 October 2022	3
AH-03	Page 164 of the Minutes of the Meeting of 25 October 2022 were confirmed at the Ordinary Meeting held on 08 November 2022	4-5
AH-04	Email correspondence between A.Hay (14 November 2022 and 17 November 2022) and SRRC Principal Specialist Governance and Assurance Council Sustainability (18 November 2022)	6-7

Affirmed by Amanda Joanne Hay on 25 November 2022, at Brisbane in the presence of:

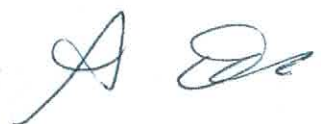

Deponent


JPC



CERTIFICATE OF EXHIBIT
Filed on Behalf of the 8th Co-Respondent by
Election
Form 47, Version 3
Uniform Civil Procedure Rules 1999
Rule 435

Amanda Joanne HAY
13-15 Chalmette Drive
Tamborine Mountain QLD 4272
Tel: 07 55452253
Email: frangipani1956@msn.com



AH-01

Scenic Rim Regional Council - Register of Delegations - Delegations Register of Council to Chief Executive Officer – Adopted by Council 23/11/2020

Planning and Environment Court Act 2016

Name of Legislation / Legislative Powers		Delegations by Council to CEO (s257 LGA 2009)	
Description of Power - <i>Planning and Environment Court Act 2016</i>	Section	Delegation Date	Condition(s)
Power to start a declaratory proceeding.	11(1)	23/11/2020	
Power, as the assessment manager, to start a declaratory proceeding for a matter done, to be done or that should have been done in relation to the call in.	12(2)	23/11/2020	
Power, as a party to a P&E Court proceeding, to participate in an ADR process.	16	23/11/2020	
Power, as a party, to confer with the ADR registrar about the way to conduct the P&E Court proceeding.	16(3)	23/11/2020	
Power, as a party to a P&E Court proceeding, to agree to the resolution of all or part of the dispute in an ADR process.	18(1)	23/11/2020	
Power, as a party to a P&E Court proceeding who has agreed on resolution of the dispute, to sign the resolution agreement.	18(1)	23/11/2020	
Power, as a party to a P&E Court proceeding, to apply to the P&E Court for an order giving effect to an agreement reached as a result of an ADR process.	20(1)	23/11/2020	
Power, as a party to a P&E Court proceeding, to agree to the ADR registrar or mediator disclosing information acquired as part of the ADR process.	s21(2)(a)	23/11/2020	
Power, as a party to a P&E Court proceeding for which the ADR registrar is exercising, or has exercised, a power, to apply for a court review.	s26(2)	23/11/2020	
Power, as a party to a P&E Court proceeding, to consent in writing to the ADR registrar making an order or direction in the proceeding.	s27(1)(a)	23/11/2020	

Page 281...continued on page 282

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Name of Legislation / Legislative Powers		Delegations by Council to CEO (s257 LGA 2009)	
Description of Power - <i>Planning and Environment Court Act 2016</i>	Section	Delegation Date	Condition(s)
Power to consent to a person starting a declaratory proceeding or a proceeding for an enforcement order under the Planning Act on behalf of Council.	s41(2)(a)	23/11/2020	
Power to pay the expenses, including legal costs, incurred by the representative in relation to the proceeding.	s41(3)	23/11/2020	
Power to certify a document to be a true copy of all or part of Council's planning instruments in force at a stated time.	s55(1)	N/A	N/A
Power, as an enforcement authority CEO, to sign a certificate stating any of the matters identified in subsection (1)(a).	s57(1)(a)	N/A	N/A
Power, as a party to a P&E Court proceeding, to appeal a decision in the proceeding.	s63(1)	23/11/2020	
Power to apply to the Court of Appeal for leave to appeal.	s64(1)	23/11/2020	
Power to file and serve a Notice of Appeal following the granting of leave by the Court of Appeal.	s64(2)	23/11/2020	

EXHIBIT AH-02

Ordinary Meeting Agenda

25 October 2022

11 Confidential Matters

- 11.1 Judgement - MCU20/050 SDA Property Nominees Pty Ltd v Scenic Rim Regional Council and Ors - Planning and Environment Court Appeal No.BD2001 of 2021, 1-11 Eagles Retreat Place, Tamborine Mountain [Closed s.254J(3)(e)]**

Executive Officer: General Manager Customer and Regional Prosperity

Item Author: Manager Regional Development, Health and Biodiversity

This report is **CONFIDENTIAL** in accordance with Section 254J(3)(e) of the *Local Government Regulation 2012*, which permits the meeting to be closed to the public for business relating to the following:

- (e) legal advice obtained by the local government or legal proceedings involving the local government including, for example, legal proceedings that may be taken by or against the local government.

Extract – page 208 of 208 pages of the published Agenda for SRRC's Ordinary Meeting of 25 October 2022.



EXHIBIT AH-03

Extract from the Minutes of the Ordinary Meeting of SRRC held on 25 October 2022 – pages 163 and 164 of 164

Ordinary Meeting Minutes

25 October 2022

11 Confidential Matters

At 1:15 pm, Council resolved into closed session, in accordance with Council's Meetings and Other Forums Procedure relating to closed Council Meetings and the provisions of Section 254J(3) of the Local Government Regulation 2012, to discuss confidential items relating to:

- (e) legal advice obtained by the local government or legal proceedings involving the local government including, for example, legal proceedings that may be taken by or against the local government.

Moved: Cr Jeff McConnell
Seconded: Cr Duncan McInnes

Carried unanimously

At 1:45 pm, following discussion in closed session, Council resumed in open session for the proposal of resolutions.

Moved: Cr Jeff McConnell
Seconded: Cr Michael Enright

Carried unanimously



11.1 Judgement - MCU20/050 SDA Property Nominees Pty Ltd v Scenic Rim Regional Council and Ors - Planning and Environment Court Appeal No.BD2001 of 2021, 1-11 Eagles Retreat Place, Tamborine Mountain [Closed s.254J(3)(e)]

Executive Officer: General Manager Customer and Regional Prosperity

Recommendation

That:

1. Council note the Judgement - MCU20/050 SDA Property Nominees Pty Ltd v Scenic Rim Regional Council and Ors - Planning and Environment Court Appeal No.BD2001 of 2021, 1-11 Eagles Retreat Place, Tamborine Mountain;
2. Council note the Judgement comments that the co-respondents persistence with their refusal cases resulted in a waste of public and private resources and that Council has incurred significant costs to be represented at the hearing, it is reasonable to seek recovery of costs;
3. Council note that finalisation of the matter will include preparation of draft conditions and cost applications for the Court's consideration; and
4. In accordance with clause 22.6.3 of the Scenic Rim Regional Council Standing Orders Procedure CM03.01PR.01, confidentiality be maintained and this report not be released to the public, noting that at the conclusion of the Planning and Environment Court process, orders will be issued, which will be publicly available.

Moved: Cr Michael Enright
Seconded: Cr Duncan McInnes

That the General Manager Customer and Regional Prosperity's recommendation be adopted

Carried unanimously

The Ordinary Meeting ended at 1:47 pm.

To be confirmed on 8 November 2022.

Cr Greg Christensen
Mayor



EXHIBIT AH-04

RE: Request for link to current Register of Delegations



Integrity <integrity@scenicrim.qld.gov.au>

18/11/2022 9:16 AM



To: Amanda Hay: Office of CEO, Scenic Rim Regional Council Cc: Integrity



2020 Delegations Register...
3.97 MB

Good morning Amanda,

Sorry for the delay.

I can confirm that the Register of Delegations dated 26 November 2018 is not the latest version.

I have attached the latest version, approved by Council on 23 November 2020. Please note that the delegations are an agenda item for next week's 22 November Ordinary meeting. Once the delegations are approved, I will place a link on Council's website to access them.

I will let you know once that is done.

Kind regards

John Pukallus

Principal Specialist Governance and Assurance
Council Sustainability

Scenic Rim Regional Council
PO Box 25 | 82 Brisbane Street | Beaudesert Qld 4285
P 07.5540.5283 | F 07.5540.5103
mail@scenicrim.qld.gov.au | www.scenicrim.qld.gov.au

From: Amanda Hay <frangipani1956@msn.com>

Sent: Thursday, 17 November 2022 2:58 PM

To: Office of CEO, Scenic Rim Regional Council <CEO@scenicrim.qld.gov.au>

Cc: Integrity <integrity@scenicrim.qld.gov.au>

Subject: RE: Request for link to current Register of Delegations

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A Hay

Dear Acting CEO,

Please advise when I might expect a response to my simple request (below) made on 14 November 2022.

The latest version of the Register of Delegations is required in relation to a current court proceeding and I do not want to misquote the version or content in my Affidavit.

If the version approved on 26 Nov 2018 is the current version, please confirm.

Regards
Amanda Hay

From: Amanda Hay
Sent: Monday, November 14, 2022 1:48:46 PM
To: Integrity <Integrity@scenicrim.qld.gov.au>
Subject: Request for link to current Register of Delegations

Good afternoon,

Can you please provide a link to the current Register of Delegations? I can only locate a version dated 26/11/2018 on council's website.

 Loading...

Regards
Amanda Hay

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