

### 6.3. EXTENSION APPLICATION MATERIAL CHANGE OF USE AT 71-85 PORT DOUGLAS ROAD PORT DOUGLAS, CHIDO CORPORATION PTY LTD

<b>REPORT AUTHOR</b>	Jenny Elphinstone, Senior Planning Officer
<b>MANAGER</b>	Paul Hoyer, Manager Environment and Planning
<b>DEPARTMENT</b>	Environment and Planning
<b>APPLICATION NO</b>	MCUI 2013_5148/3
<b>PROPOSAL</b>	Request to Extend Relevant Period (Impact) for the Material Change of Use for 79 Multiple Dwellings (Tourist) {of which, 47 were able to be used as Multiple Dwelling (Tourist) and Accommodation Premises (Motel) in a dual key arrangement and 3 are able to be temporarily used as a Display Home (Multiple Dwelling)}, 127 Accommodation Premises (Motel) and ancillary uses including Gym, Spa, Relaxation Lounge, Retail, Restaurant, Cafe, Bar, Function Centre, Meeting Rooms and Administration Facilities
<b>APPLICANT</b>	75 Port Douglas Road Pty Ltd C/- Mills Oakley Lawyers Level 23, 66 Eagle St BRISBANE QLD 4000
<b>LOCATION</b>	71-85 Port Douglas Road Port Douglas
<b>PROPERTY</b>	Lot 1 on SP150468
<b>PLANNING SCHEME</b>	2018 Douglas Shire Council Planning Scheme Version 1.0
<b>ZONING</b>	Tourist Accommodation Zone
<b>LEVEL OF ASSESSMENT</b>	Impact
<b>PROPERLY MADE DATE</b>	24 January 2024
<b>STATUTORY ASSESSMENT DEADLINE</b>	22 March 2024
<b>REFERRAL AGENCIES</b>	N/A

#### LOCALITY

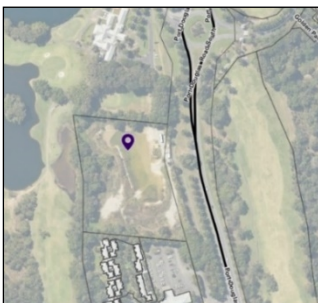


Figure 1 – Locality Plan

## RECOMMENDATION

**A.** That Council refuses the application to Extend the Relevant Period over land described as Lot 1 on SP150468 for the Material Change of Use for 79 Multiple Dwellings (Tourist) {of which, 47 were able to be used as Multiple Dwelling (Tourist) and Accommodation Premises (Motel) in a dual key arrangement and 3 are able to be temporarily used as a Display Home (Multiple Dwelling), 127 Accommodation Premises (Motel) and ancillary uses including Gym, Spa, Relaxation Lounge, Retail, Restaurant, Cafe, Bar, Function Centre, Meeting Rooms and Administration Facilities, on the following reasons for decision.

1. Since the issue of the Development Permit the 1996 Douglas Shire Planning Scheme has been superseded by new planning controls. The assessment and determination of the original approval was dependant on particular provisions of a superseded Scheme. These considerations no longer apply;
  2. The existing approval and the conditions therein are outdated having regard to current planning considerations;
  3. The development approval under the Development Permit is inconsistent with the current planning considerations and the 2018 Planning Scheme;
  4. The extension to the Development Permit is contrary to community expectation that development should meet the current Planning Scheme and planning considerations;
  5. Based on the information provided in the Applicant's request to extend the Relevant Period of the Development Permit, it is not considered that the request has sufficient merit, having regard to section 87(1) of the *Planning Act 2016*, to support an extension to the relevant period. Having regard to the *Planning Act 2016* and the Council's 2018 Planning Scheme, the request is unable to be supported.
  6. The conditions of the material change of use approval nominate that where the adjoining land is utilised as a point of stormwater discharge, a consent agreement must be achieved by that landowner. Council would normally now require this consent to be part of a properly made application for a new development. No consent of use of the neighbouring land was provided in the extension application. It is questionable whether the extension application is properly made having regard to this issue; and
- B.** In respect to the development of a resort development and / or short-term accommodation with other uses on the land Council advise the Applicant that there remains opportunity to lodge an application for a Material Change of use under the current Scheme as the use is not prohibited development under the *Planning Act 2016*.
- C.** The applicant be advised that as there is no current Local Law approval for the site buildings and wire fence on the adjacent road reserve, these buildings and structures need to be immediately removed.

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## EXECUTIVE SUMMARY

An application was lodged in 2008 for a mixed-use development for Multiple Dwelling (Tourist), Accommodation Premises (Motel) and numerous ancillary facilities under the superseded 1996 Planning Scheme. By agreeing to the superseded scheme assessment, the former Council negated the risk of substantial compensation potentially being payable to the

landowner and provided the landowner with a window to develop as per the requirements of the 1996 Planning Scheme. The support of the superseded Planning Scheme application and issue of the Development Permit follows the ‘use it or lose it’ principle. The subsequent development application was approved on 22 January 2008.

Over time various extensions have issued to the current period and the approval was due to lapse on 30 January 2024. On 16 January 2024 an application was received seeking a further four years extension.

Unlike previous planning legislation (the former *IPA* and the *Sustainable Planning Act 2009* (*SPA*)) the current *Planning Act 2016* (the *Act*) gives a broad scope of determining the extension application,

s 86(1) *“the assessment manager may consider any matter that the assessment manager considers relevant, even if the matter was not relevant to assessing the development application.”*

However, the consideration of an extension of time cannot impose further conditions.

The superseded scheme under which the application was assessed and approved came into effect in 1996, nearly thirty years ago. The current Scheme came into effect on 2 January 2018 and is complemented by the recent Storm Tide Inundation Methodology Study. There are significant differences between the two Schemes. Council does not agree with the Applicant’s contentions that the development approval is consistent with the current Planning Scheme. The inconsistencies with the 2018 Scheme include, but are not limited to,

- a lack of disability access
- a lack of disability parking
- insufficient provision for parking
- insufficient private open space
- inappropriate utilisation of the public road verge of landscaping
- insufficient consideration of infrastructure services.

Issue is also raised with the compliance of the extension application with the Act in respect to the landowner’s consent for the neighbouring land, onto which the conditions of approval allow the discharge of water by agreement. Finally, it is noted that the applicant has occupied the adjacent road with fencing, site buildings and a bus for a significant period without a Local Law approval. As there is no current building approval in place, all temporary structures should be removed from the adjacent road.

The report recommends Council resolve to accept the extension application in respect to the fee payment, refuse the extension application and advise the applicant that the *PA* does not prohibit the Applicant lodging a new application for the development under the current Scheme.

## **TOWN PLANNING CONSIDERATIONS**

### **Background**

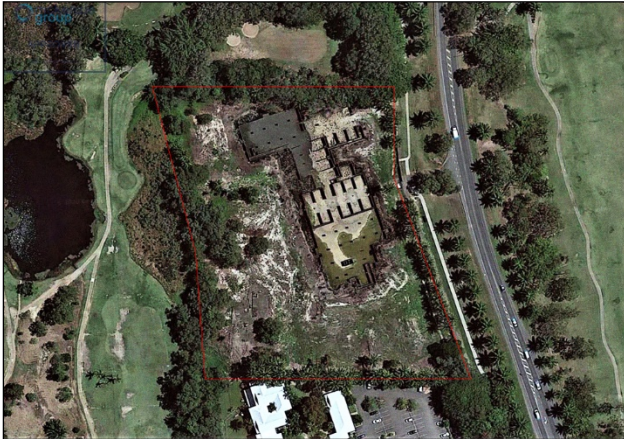
The subject site is located on the west side of Port Douglas Road approximately 2.5 kilometres south of the Port Douglas Town Centre. The site is approximately 20 metres south of the roundabout at the intersection of Port Douglas Road and the access roads to the Sheraton Mirage Resort and the Country Club.

Land to the north, west and opposite to the east is developed as the Sheraton Mirage Resort. Land to the south is developed as the Oaks Resort.

### **TPC 1098 Edan Palms / Havana**

An original approval for was issued for the development of units on the land (TPC 1098) under a revised Negotiated Decision Notice dated 17 December 2002 for 99 Multiple Dwellings

(Tourist), 70 Accommodation Premises (Motel), Caretaker's Residence, Shops and Ancillary uses. This development was originally known as "Edan Palms" and was later known as "Havana." The application was lodged and determined under the 1996 Planning Scheme. Developer contributions were paid to the former Council under this application and the Council utilised these monies to upgrade trunk infrastructure in anticipation of the need to service the development. The construction of the development commenced including the excavation for basement areas, the establishment of concrete slabs with reo bar extensions and the installation of civil works and service infrastructure. Due to a business failure the construction was halted, and the site remained unoccupied for many years in a state of unfinished development.



**Figure 2 – Former Havana Site Abandoned Building Work.**

In July 2007 request for a modification of the approval TPC 1098 was sought by the then new owners. The modifications sought a change to the approval to reduce the size and bulk of the development and to convert some of the three and four bedroom units (total 169 units) into two bedroom units and motel rooms (total 206 units). An extension to the currency period for approval TPC 1089 was granted on 18 April 2006 and extended until 12 December 2008.

#### **MCUC 021/06 Oakstand**

A new application (MCUC 021/06) was lodged on 30 October 2006 for 206 Holiday Accommodation units with ancillary uses including gym, spa, relaxation lounge, retail, restaurant, café, bar, function centre, meeting rooms and administration facilities. The application as lodged under the 2006 Planning Scheme. Issues were raised by Council officers that the development was inconsistent with the then new scheme in regard to the yield of units and the gross floor area calculations. This application was withdrawn.

#### **MCUI 041/07 Oakstand**

Request was then made to the former Council for an application MCUI 041/07 to be assessed against the superseded 1996 Planning Scheme. At that time, under the Integrated Planning Act 1997 a request for a superseded scheme application could be made within two years of the new Planning Scheme coming into effect. This request for superseded assessment was approved on 18 September 2007.

The Council's considerations noted the following advice.

*"The proposed redevelopment is of the same scale and approximately the same gross floor area of the previously approved development of the site (Havana).*

*Using the gross floor area (gfa) definition under the 2006 Planning Scheme, the proposed development was determined to be in excess of the plot ratio requirements under that Planning Scheme. Council will recall that the definition under the 2006*



*Planning Scheme was amended considerably as a direct result of the “Beach Club” ruling in the Planning & Environment Court.*

*As a direct result the amount of development permissible on the subject site is in the order of 20% less under the 2006 Planning Scheme, than the 1996 Planning Scheme as defined by Judge White’s decision.*

*The purpose of the Report is to consider whether Council will therefore assess the application under the Superseded Planning Scheme as a result of the difference in definitions and potential compensation claims.”*

*Section 5.4 of the Integrated Planning Act establishes the circumstances under which compensation is applicable for the loss of development rights. Specific to this example, section 5.4.4(2) includes circumstances where a change in the provisions/definitions in a Planning Scheme result in a reduced yield for development on a lot. Those circumstances are:*

- (a) The proposed residential building has a gross floor area of no more than 2000m<sup>2</sup>; and*
- (b) The gross floor area of the proposed residential building is reduced by no more than 15%.*

*The proposed development exceeds 2000m<sup>2</sup> and the gross floor area under the 2006 Planning Scheme is in the order of 20% less than the 1996 Planning Scheme permits. Therefore compensation is likely to be applicable should Council require assessment of the application under the 2006 Planning Scheme. It is difficult to assess the level of compensation without the assistance of a property valuer, but the Assessing Officer has roughly estimated a value of \$1.36million on the basis of the recent sale price of the site and the difference in the number of units.*

*It is important to note that the proposed development is no larger than the development previously approved by Council, which is the current development permitted on site, however the configuration, layout and architectural design have been amended.”*

The application was then lodged and assed under the superseded Scheme. As a superseded scheme application, the application assessment was bound only to the 1996 Planning Scheme. Regard for considerations against the then in effect 2006 Scheme could not be made.

The application by Oakstand Fund No.7 Pty Ltd was for Material Change of Use for the purpose of 79 Multiple dwellings (tourist) {of which 47 are able to be used as Multiple dwellings (tourist) and Accommodation premises (motel) in a dual key arrangement}, 127 Accommodation premises (motel) and 3 Display homes (Multiple dwellings) ancillary uses including gym, spa, relaxation lounge, retail, restaurant, café, bar, function centre, meeting rooms and administration facilities. The reporting to the Council in 2008 confused the use description, utilising the 2006 Scheme definitions.

The development comprised of a lower rear level and basement level with three storeys of development above. The resort is designed around central swimming pools and recreational areas.

Under the 1996 Scheme the land was included within the Resort Business. Within the Resort Business Zone the development of Multiple dwellings (tourist) was a Consent Development (Impact Assessment) and Accommodation premises (motel) was a Permitted Development Subject to Conditions (Code Assessment).

The application was required to undergo public notification. There were no submissions received.

At the Ordinary Council Meeting held on 22 January 2008 Council approved the application subject to numerous conditions. Particular conditions had regard to the then 2006 Planning

Scheme and Council considerations. These included the following matters.

*External and internal landscaping*

The Council's considerations had regard to the Planning Scheme provisions whereby for land identified in a High Density area on a Regulatory Map a basic plot ratio of 0.5 and a maximum bonus plot ratio, subject to satisfying design requirements, of 0.3 therefore creating a maximum possible plot ratio of 0.8 could be achieved. The proposed development has a plot ratio of 1:0.79 and required a bonus plot ratio of 0.29. The conditions reflected the requirement for the bonus to be achieved including landscaping changes. The 1996 Scheme gave opportunity for external verge landscaping as part of the development considerations. A condition required the owner to maintain the verge landscaping in an ongoing arrangement.

*Vehicle parking*

A condition required a minimum of 159 vehicle spaces (no tandem space), two (2) motorcycle spaces and twenty-six (26) bicycle spaces to be provided.

*No general public use*

A condition limited the ancillary uses to be for the exclusive use of internal guests only and not to open to the general public.

*Security bond and developer contributions*

As relevant at the time the conditions required a security bond and developer contributions.

*Stormwater drainage*

A condition required a stormwater drainage plan with drainage to Port Douglas Road and/or to the adjoining property at the rear boundary (Lot 132 on SP160477) in accordance with a legal agreement between the developer and the adjoining landowner to the effect that the adjoining landowner will accept the discharge of stormwater onto their property. No agreement or landowner consent for the application was in place at the time or the application lodgement.

The Council approved the application on the 22 January 2008 and the decision notice issued dated 30 January 2008 and had a four-year currency period as per the *IPA*. Section 3.5.19 of the *IPA* states date of effect is the date the Decision notice is issued, that is 30 January 2008 with the currency to the 30 January 2012.

A copy of the original Oakstand planning approval is included in Attachment 1.

Oakstand Fund No 7 Pty Ltd (the owner of the land at the time), achieved an approval for operational works on 20 January 2010. Under the *IPA* 3.5.21(4) as the application for a related approval was lodged within two years of the originating approval, the relevant period for the original approval is taken to have started on the day the latest related approval takes effect. The issue of the operational work approval had the result of extending the effect date of the planning approval's currency period to commence from 20 January 2010 and therefore extend the currency (four years) to 20 January 2014.

The operational work was for an advertising device seeking expressions of interest in the development. The operational work was not construction work associated with the development. Whether this approval is a related approval to the development is a matter for judicial consideration.

Two further extensions of currency were issued in respect to the Oakstand approval:

- a. Fund No 7 Pty Ltd made a request to extend the currency period of the Development Approval. By way of Council's Corrected Advice Request dated 29 July 2013, the Development Approval's currency period was extended for 4 years to 20 January 2018 (MCUC 041-07). A copy of this Decision Notice is included in Attachment 2.

- b. On 22 August 2017, Council approved a minor change to the Development Approval and extension to the currency period of the Development Approval for a further 4 years (MCUC 2013\_5148). The minor change included a new condition that had regard to the then current 2013 BMT-WBM Cairns Regional Storm Tide Inundation Study. This extended the approval to 30 January 2022. A copy of this approval is included in Attachment 3.

At the time of this last extension the current Planning Scheme was anticipated but did not come into effect until January 2018.

During late 2019 and through to 2021 Australia was impacted by the Covid-19 pandemic. The pandemic caused server impacts on the community's health and had further impacts on the development industry. In response, the Queensland State Government issued extension notices, essentially providing a further two years currency on approvals that were in effect at the time. These extensions extended the currency period for the Oakstand approval to 30 January 2024.

### **Oakstand Operational Work Approval – Advertising Device.**

An application for an advertising device was approved at the Ordinary Meeting of Cairns Regional Council held on 20 January 2010. This was during the period of the Shire's amalgamation with Cairns. The Decision Notice was also issued on 20 January 2010. A copy of the approval is included in Attachment 4.

### **Chiodo Building Work Demolition - McKenzie Group Decision Notice (Approval 200570-1)**

The private building certifier, McKenzie Group issued an approval to demolish the then existing former Havana abandoned building work. The accompanying plans nominate the removal of existing constructed work. There is no approval for replacement fill. The concrete was crushed on the site and utilised as fill. The approval nominated the demolition work to be substantially commenced by 27 September 2020 and substantially completed by 27 July 2021. A copy of the demolition plan is included in Attachment 5.

### **Current Situation**

There has been no approval for any new building work. There is no current Local Law approval for the temporary occupation for the fence, site office buildings and bus currently on the adjacent road. These structures need to be removed immediately and the site made safe with new boundary fencing.

The aerial photo below with added elevation contours detailing the current state of the land.



## MCUI 2020\_3711 - Chiodo Corporation

A separate application was lodged by the current landowner for a Resort Complex on 5 January 2021. The application was refused by Council. The applicant's subsequent appeal, Planning and Environment Court Appeal 2827 of 2021 dismissed the appeal and upheld the Council's decision. *Chiodo Corporation Operations Pty Ltd v Douglas Shire Council (2023) QPEC 44*. The appellant has since lodged an application for leave to appeal the Judgement (Court of Appeal No. 1614923) and an initial hearing date has been set down for 24 May 2024. The leave of appeal application cites complex legal arguments claiming the Judgement was incorrect. Leave to appeal applications against a Judgement can only be made on points of law.

### Proposal

The landowner has lodged an extension seeking an, *"Extension of the currency period up to and including 30 January 2026 for reasons stated in cover letter."* The Applicant nominated the following reasons by which Council should support this request.

- "
- (a) *The approved land use remains consistent with the Tourist Accommodation zoning of the land.*
  - (b) *The built form and associated parameters of the Development Approval are consistent with the requirements of the current planning scheme.*
  - (c) *There is no good town planning reason for the Development Approval to be the subject of a fresh assessment and decision.*
  - (d) *There is a need for the development associated with the Development Approval.*
  - (e) *The applicant has not acted on the Development Approval as it was pursuing an alternative development scheme for a resort complex which is the subject of Planning and Environment Court Appeal No. 2827 of 2021 (Development Application).*
  - (f) *A similar development over the land was publicly notified in 2020 as part of the Development Application and no properly made submissions were received.*
  - (g) *There are no significant adverse impacts associated with the Development Approval which would warrant a reassessment.*
  - (h) *There are planning and community benefits associated with implementing the Development Approval which includes providing employment opportunities in Port Douglas.*
  - (i) *The Development Approval reflects the built form which Council advocated for in relation to the appeal the subject of the Development Application. It would be inconsistent with Council's own position to not extend the currency period of the Development Approval in those circumstances."*

### Planning Act 2018 considerations

Section 87 of the *Planning Act 2016* states matters to which Council is to consider in determining the extension application.

#### 87 Assessing and deciding extension applications

- (1) *When assessing an extension application, the assessment manager may consider any matter that the assessment manager considers relevant, even if the matter was not relevant to assessing the development application.*

Note—

*For the assessment and deciding of an extension application for a development approval that was a PDA development approval, see also the Economic Development Act 2012, section 51AL.*

The land is not in a PDA (Priority Development Area). Section 87 (2) of the Act nominates the extension application to consist of the appropriate form, by notice and accompanied by the required fee. The application as lodged by email on the 16 January 2024. The fee was paid on the 24 January 2024.

Under s.86(3)(b) of the Act the assessment manager is unable to accept an application where the landowner's consent is not provided. The conditions of approval allow the discharge of water onto neighbouring land subject to an agreement with that landowner. No agreement is in place in respect to this original application. Issue is raised as to whether the original application was properly made in respect to this matter. Issue is raised as to whether the extension application is properly made in respect to this matter. These are questions of legislation interpretation that are matters for judicial determination if Council's decision is challenged.

The ongoing currency of the outdated approval unnecessarily complicates consideration of applications under the current Scheme. There remains opportunity for the applicant to lodge a new application under the current Scheme.

### Current Planning considerations

#### State Planning Requirements

##### Regional Plan

The location of the development would appear to be generally consistent with the Far North Queensland Regional Plan 2009-2031.

##### Land Use definitions

The definition of *Multiple dwelling (tourist)* allows for the normal ancillary functions associated with letting for tourist purposes. The 1996 Scheme use of *Multiple dwelling (tourist)* for an Accommodation premises both equate to the use of "Short-term accommodation" under the current 2018 Planning Scheme and the *Planning Regulation 2017* (PR).

Under the current Scheme the development would be considered a *Resort Complex*, rather than individual ancillary uses. The condition limiting ancillary uses to be provided only to guests and not available to the general public is an unreasonable condition. Most resorts in the Shire offer the opportunity for the general public to attend for functions, restaurants, recreational facilities and events.

### DOUGLAS SHIRE PLANNING SCHEME ASSESSMENT

The following benchmarks are applicable to the proposed development:

Douglas Shire Planning Locality	Comment
<b>Planning Zone</b>	
Tourist Accommodation Zone	Does not comply. A component of the development is setback 5.5m, rather than at least 6m from the road frontage. Site coverage appears to be below the 50% AO. The overall length of the buildings is more than 30m in several parts. There is no clarity in the plans or conditions regarding the enclose of balconies by screens, these appear to be more than 20%.



Local Plan Code	
Port Douglas/Craiglie	<p>Not within a Precinct.</p> <p>There is no plan identifying whether any existing trees are retained. There is no statement with the landscaping plan that ensures the landscaping achieves a 60% screening of the development within 5 years.</p>
Land Use Code	<p>Does not comply. There is no calculation as to whether the total site area is less than 40% and it is unclear whether this is achieved. Gross floor area complies on the calculations provided – note these do not take into account current definitions of GFA. Not all of the buildings are setback 6m from the boundary frontage.</p>
	<p>The lengths of buildings exceed 30 metres. The lengths of the continuous eaves exceed 18m. Building colours are not fully detailed. The minimum floor to ceiling appears to be at least 2.7m, but this is not clarified on the plans, nor in the conditions. Not all balconies have the required minimum 12m<sup>2</sup> with minimum dimensions of 3m. there is no clarity that all ground floor units have sufficient private open space.</p> <p>There is no clarity of the required side setback is suitably deeply planted, some of the setbacks are private open space. There is no clarity of detail for the front fencing to the street. Units do not have a private storage area.</p> <p>Ground floor and upper floors are setback a range of distance with some less than 6 metres. The ground floor setback areas are compromised with private open space use, limiting the depth of deep planting. The landscape deep planting was therefore permitted to go beyond the property boundary. Setback for buildings was measured to the building wall, not to the outer projection being the balcony.</p>
Overlay Codes	
Acid sulphate soils overlay	<p>Does not comply. The condition is outdated and does not meet current standards.</p>
Bushfire Hazard	<p>No details of assessment or consideration under existing approval.</p>

Flood and storm tide hazard overlay	The original approval had a ground floor level of 3.2m AHD. The amended approval required a minimum floor height of 3.87m AHD having regard to the 2013 Storm Tide Inundation Study. The current Storm Tide Inundation Methodology Study seeks a minimum floor height of 3.309 m AHD.
Landscape values overlay	No assessment against the Landscape values overlay. The current approval is dependent on landscaping of the road verge. This is inconsistent with the current Scheme considerations that require the development to be contained to the land.
Transport network overlay	Complies.
<b>Other Development Codes</b>	
Access, parking and servicing code	<p>Does not comply.</p> <p>The current scheme requires the provision of disability parking. No disability parking has been provided on the plans nor is required through a condition of the approval. There is no demonstration that the development meets the premises standards for disability access through the site.</p> <p>The current Scheme requires the provision of onsite parking spaces for occupants, visitors and staff/service vehicles. The original development created a demand of 273 spaces of which 136 spaces were nominated on the plans and 59 of these are tandem spaces, leaving only 77 spaces compliant with the then Scheme requirements. The condition of the approval required the provision of 159 spaces (no tandems). There is no clarity that all the spaces can be provided within the development. There is no certainty in the conditions for any provision for visitors and staff/service parking.</p>

	<p>There was no consideration of any demand associated with the ancillary uses as all users of these service would be inhouse. Concern is raised with this assumption and the enforceability of the condition excluding all general public use, in particular for restaurants, cafes, retail areas and function facilities. The current Scheme would still require the consideration of these uses, for at least staff and service provision.</p> <p>The bicycle parking demand has remains at 26 spaces for the residential components. No consideration is given to the demand created by staff that would be needed for the café, restaurant, function areas.</p>
Advertising devices code	No details provided on the plans.
Environmental performance code	Does not comply. There is no consideration of impacts for external lighting.
Filling and excavation code	<p>Does not comply.</p> <p>The assessment of the original application noted that no further cut and fill was required as the works undertaken in association with TPC 1098 would be utilised.</p> <p><i>"The sub-basement level car parking is approximately 2.5 metres to 3 meters in depth below the existing site level, achieving 1.65 AHD. The ground level has been raised from RL 4.62 to RL 5.70. Therefore excavation and filling will not have an impact on or compromise the visual amenity of the area and privacy and stability of adjoining properties.</i></p> <p><i>The cut is supported by reinforced wall and has be back fill to the reinforced walls. The proposal does not include any benches/terraces. The cut is located greater that 600mm from the property boundary.</i></p> <p><i>Excavation has not result in an increase in the flow of water across the site or adjacent land or road reserves as topography and the slope of the land will not be altered significantly as a result of the development.</i></p> <p><i>Excavation has not result in an increase in the volume of water or concentration of water in a Watercourse as topography and slope of the land will not be significantly altered as a result of the development."</i></p>

	These original excavation works have since been abandoned by the demolition undertaken by Chiodo Corporation. No details are provided as to the extent of cut and fill now necessary for the development.
Infrastructure works code	Does not comply.  The conditions for water supply and sewerage infrastructure are outdated and not to current standard. Current requirements seek calculations that would identify service load augmentation requirements. There is no clarity as to the infrastructure offsets for any service main upgrades.  Stormwater considerations are minimal and the conditions insufficient. There is no certainty of consent from the neighbouring property owner for this particular development.
Landscaping code	Does not comply. The approval allows on-street verge planting which is no longer supported by the current Planning scheme. The considerations for supporting the proposed gross floor area was based on the development providing this external landscaping.
Vegetation management code	There is no clarity in the conditions to retaining any existing trees.

### Public Notification / Submissions

Public notification was not required for the extension application. There were no submissions to the original application nor to the recent development application that was refused. There has been a significant period of time since the original approval and the opportunity for the current community to provide input should not be lost.

### Referral Agency Requirements

The extension application was not required to be referred.

### Internal Referrals

Nil. Referrals are not necessary at this stage due to the nature of the extension application, the lack of any accompanying detailed information and the inability under the Act to request further information.

### ADOPTED INFRASTRUCTURE CHARGES

The current approval includes conditions that refer to outdated developer contributions policy. As the application is not supported no further infrastructure charges are relevant.

### COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be

clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following area outlines where Council has a clear responsibility to act:

**Regulator:** Council has a number of statutory obligations detailed in numerous regulations and legislative Acts. Council also makes local laws to ensure that the Shire is well governed. In fulfilling its role as regulator, Council will utilise an outcomes based approach that balances the needs of the community with social and natural justice.

Under the *Planning Act 2016* and the *Planning Regulation 2017*, Council is the assessment manager for the application.

## ATTACHMENTS

1. Attach 1 Oakstand Superseded Scheme Approval 2000 [6.3.1 - 30 pages]
2. Attach 2 Oakstand Currency Extension Approval [6.3.2 - 29 pages]
3. Attach 3 Oakstand Minor Change Extension Approval 2017 [6.3.3 - 7 pages]
4. Attach 4 Oakstand OP Advertising Device Approval 2010 [6.3.4 - 6 pages]
5. Attach 5 Chiodo Building Work Demolition Plan 2020 [6.3.5 - 1 page]



Louise Stayte – Planning Officer  
 Planning Services Section - ☎ (07) 4099 9456  
 planning@dsc.qld.gov.au

MCUI 041/07

Oakstand Fund No.7 Pty Ltd  
 c/- Flanagans Consulting Group  
 PO Box 5820  
 CAIRNS QLD 4870

30 January 2008

## INTEGRATED PLANNING ACT DECISION NOTICE DEVELOPMENT APPLICATION

**Applicant's Name** : Oakstand Fund No.7 Pty Ltd

**Owner's Name** : Oakstand Fund No.7 Pty Ltd

**Proposal** : Material Change of Use for 79 multiple dwellings (tourist) {of which 47 are able to be used as multiple dwellings (tourist) and accommodation premises (motel) in a dual-key arrangement and three (3) are able to be temporarily used as display homes (multiple dwelling)}; 127 accommodation premises (motel); and ancillary uses including gym, spa, relaxation lounge, retail, restaurant, café, bar, function centre, meeting rooms and administration facilities.

**Application Number** : MCUI 041/07

**Site Address** : 71 to 85 Port Douglas Road, Port Douglas

**Property Description** : Lot 1 on SP150468, Parish of Salisbury, County of Solander

**A. Decision:** **Decision Date:** 22 January 2008

Approved subject to Conditions

**B. Type of Development Approval:**

Material Change of Use

Development Permit

.../2.

-2-

**C. Referral Agency:**

Concurrence  
 Department of Main Roads  
 Peninsular District  
 PO Box 6185  
 CAIRNS QLD 4870

Advice

Senior Resource Planning Officer  
 Catchment and Regional Planning  
 Department of Natural Resources, Mines &  
 Water  
 PO Box 210  
 ATHERTON QLD 4883

**D. Conditions**

1. The approved development and the conduct of the approved use, the carrying out of any works on the premises and the construction of any buildings on the premises associated with the development must be in accordance with the details of the application and the following approved plan/s of development:

Title	Plan No	Date
Building Bulk Analysis	DA 1.01 (Issue A)	August 2006
Roof and Site Plan	DA 1.02 (Issue A)	August 2006
Level B1 Plan	DA 2.00 (Issue B)	May 2007
Ground Floor Plan	DA 2.01 (Issue A)	August 2006
Level 01 Plan	DA 2.02 (Issue A)	August 2006
Level 02 Plan	DA 2.03 (Issue A)	October 2006
Typical Apartment Floor Plans	DA 2.04 (Issue A)	October 2006
East Elevation and Section AA	DA 3.01 (Issue A)	August 2006
Elevations	DA 3.02 (Issue A)	August 2006

Except where such plans are modified by the terms of this approval.

**Currency Period**

2. This development approval lapses four (4) years after the day that the development approval takes effect, unless extended under Section 3.5.22 of the Integrated Planning Act 1997.

**Display Homes**

3. Units CG.01, CG.02 and CG.03 are permitted to be used as display houses (multiple dwelling) for a period of twelve (12) months and are to revert back to multiple dwellings (tourist) and accommodation premises (motel) at the end of this period.

**Landscaping**

4. A detailed Landscaping Plan in accordance with Douglas Shire Superseded Planning Scheme and Superseded Planning Policy No 4 – Landscaping is to be submitted to Council for approval prior to obtaining a building permit/operational works permit. The plan is to incorporate the following:
  - a) the location of underground services; and
  - b) vegetation bonuses identified in Section 3.5 of the Douglas Shire Superseded Planning Scheme including:
    - Dense Tropical Vegetation – 0.10 bonus necessary;
    - Shade Trees – 0.045 bonus necessary;
    - Vegetation Retention - 0.06 bonus necessary; and
    - Street Landscaping – 0.04 bonus necessary.
5. (A) The owner/developer shall be responsible for all maintenance work on-street landscaping for a period of twenty-four (24) months. Council will not accept the on-street landscaping off maintenance or the associated transfer of irrigation to Council's reticulated water system until it meets the requirements of Council's Engineering Services;

OR

- (B) The owner/developer shall enter into an agreement with Council for the owner/developer to maintain the on-street landscaping to a standard specified by Council.
6. All vegetation adjacent to any pool fencing is to be maintained to comply with AS1926-1993 that requires a 1.2 m setback to climbable vegetation.
7. No trees are to be planted within two (2) m of the sewer manholes near the south western and north eastern corners of the property.

**Sewerage**

8. Developer to construct and maintain internal sewerage pump station and pressure main to Council's existing pressure main located on the eastern side of Port Douglas Road. Plans and design drawings to be submitted for approval at time of application for operational works.

9. All damage to the road and/or road reserve adjacent to the site as a result of, or in connection with this development must be repaired by the developer, at their expense, prior to completion of works associated with the development.

### **Electricity and Telephone Services**

10. All electrical lines along the full frontages of the subject site (Port Douglas Road) are to be placed underground. These works are to be undertaken by Ergon Energy at the developer's/owner's expense and are to be completed prior to commencement of the approved use.

### **Stormwater**

11. All stormwater run-off from non-permeable surfaces and roof areas occurring on the site must be collected within the premises and discharged to a legal and practical point of discharge which has been nominated as either:

(A) Port Douglas Road;

AND/OR

- (B) The adjoining property at the rear boundary (Lot 132 on SP160477) in accordance with a legal agreement between the developer and the adjoining landowner to the effect that the adjoining landowner will accept the discharge of stormwater onto their property. A copy of this legal agreement is to be submitted to Council prior to Operational Works or Building Approval, whichever comes first.

The approved use must not:

- a) Interfere with the natural flow of stormwater;
  - b) Cause ponding of stormwater on adjoining properties, except where in compliance with Council's Condition 11(B).
12. A stormwater drainage plan for the development is to be prepared in accordance with the Far North Queensland Regional Organisation of Council's Development Manual and submitted to Council prior to obtaining Operational Works approval.

### **Water Supply**

13. Developer to pay to Council the cost of connection to Council's existing water main on Port Douglas Road.

Details of the water supply connection are to be provided to Council prior to Operational Works approval.

### **Acid Sulfate Soils**

14. The developer is to submit with the application for approval of Operational Works, an Acid Sulfate Soil (ASS) management plan in accordance with QASSIT Guidelines. This ASS management plan must detail the controls to be utilised to ensure that no environmental harm or nuisance is caused from the proposed use of the land and construction of the works.

### **Contributions**

15. The developer/owner shall pay to the Council headworks contributions for water supply and sewerage in accordance with Council's Planning Scheme Policy No 11 – Water Supply and Sewerage Headworks and Works External Contributions (the policy). The contribution shall be calculated at the rate per Equivalent Domestic Connection (EDC) applicable at the time of payment in accordance with the policy.

The current number of EDC's for the approved use are:

Water Supply	97.2
Sewerage	133.4

### **Car parking**

16. A car parking area on site with a minimum of 159 vehicle spaces (no tandem space), two (2) motorcycle spaces and twenty-six (26) bicycle spaces shall be constructed, sealed, drained and line marked in accordance with the relevant Australian Standard, and maintained thereafter. An amended plan of development in accordance with these requirements is to be submitted to Council and approved prior to work commencing on site prior to operational works approval.

### **Ancillary Uses**

17. The ancillary uses are to be for the exclusive use of internal guests only and not to open to the general public.

### **Refuse**

18. There is to be provided within the development an area for the storage and washing of all refuse containers. Such area is to be:
  - (a) sufficient in size to be able to house all mobile garbage (wheelie) bins including recycling bins;
  - (b) situated so as not to cause an odour nuisance to any adjacent properties;
  - (c) imperviously paved and drained to a suitable silt trap;
  - (d) discharged to sewer to the satisfaction of the General Manager Engineering Services;
  - (e) provided with a suitable hose cock with backflow prevention device and hose; and
  - (f) roofed or provided with a suitable automatic diversion valve (or other approved method) designed to prevent the ingress of stormwater to sewer.



19. The applicant shall ensure that all areas where fuels, oils and automotive products are used or may accumulate shall be drained to a gross pollutant trap to prevent material/pollutants entering the stormwater drainage system.

### **Construction Stage/Site Management**

20. The applicant is to prepare with the submission for either Building or Operational Works approval (which ever comes first), an environmental management plan (EMP) detailing the controls to be utilised to ensure that no environmental harm or nuisance is caused from the proposed use of the land and construction of the works. In particular, this plan should address such issues as dust suppression, waste disposal, noise management and stormwater management (to minimise discharges of sediment, wastes and other substances). This EMP is required to meet the approval of the manager of Environmental Services.
21. At all times, the applicant is to ensure dust suppression measures are undertaken for the site and adjoining road reserves to ensure that all materials are appropriately stored and any unsealed areas do not create a dust nuisance to surrounding areas to the satisfaction of the Council.
22. All vehicles associated with the development of the site shall be legally parked and in a manner so as to not adversely impact on the immediate locality.
23. No building materials associated with the development of the site shall be stored or stacked on Council-owned land (including road pavement, road reserve and/or parklands) at any time.
24. All refuse and packing materials or similar associated with the development of the site shall be stored on the subject site in a neat and tidy manner and screened from public view.
25. Erosion and sediment control measures must be installed prior to works commencing on the site and these measures will be maintained in good working order during the construction.
26. The building site shall be maintained in good condition at all times to the satisfaction of the Council.

### **Fencing**

27. Any fencing to be provided at the Port Douglas Road frontage of the site shall have a setback of 2 m and maximum height of 1.2 m, and at the side and rear boundaries with a maximum height of 1.8 m.

### **Traffic Management**

28. The ingress/egress to the site shall be provided with a physical means of speed control. Such speed control device/s shall be shown on any plans submitted for approval for building works and shall be constructed and maintained at all times.

The developer shall provide bollard lighting at the property boundary to indicate access to the car parking area at the time of applying for a Building Permit.

### **Amenity**

29. The approved use must not be conducted so as to cause a nuisance or annoyance to persons not associated with the business and so as not to adversely affect any other property.
30. All service equipment, machinery, vehicles, outdoor lighting and air conditioning equipment must be located so as not to cause a nuisance to the occupants of adjoining units or neighbouring premises. The noise levels shall be maintained in accordance with the requirements of the Environmental Protection Act 1994.
31. All external lighting installed upon the premises shall conform to the relevant Australian Standards and be located so as not to cause a nuisance to the occupants of adjoining units or neighbouring properties.
32. Roofs of buildings are light coloured and non-reflective, and white and shining metallic finish are avoided on external surfaces in prominent view, in accordance the Planning Scheme Policy 2 – Building Design and Architectural Elements.
33. Access for pedestrians and cyclists to the building entry, from the parking area and from the street are to be in accordance with the provisions of the Australian Standards.

### **Swimming Pool Waste**

34. Swimming pool and spa filters shall not backwash the filter discharge or pool waste into the Council's sewerage system or stormwater drainage system or a waterway. Council approval shall be obtained for residential and commercial pool and spa filter backwash systems to a legal point of discharge prior to installation. This approval is to be via a plumbing and drainage application process.

### **Advertising**

35. Any proposed advertising devices are to be approved by Council and in accordance with the Codes of Localities, Codes for Planning Areas and Design and Siting of Advertising Devices Code within the Douglas Shire Planning Scheme.

### **Compliance**

36. All conditions shall be complied with prior to the occupancy of the building for the approved use or commencement of the approved use on the land. Any developer security, associated with this approval will not be released until all conditions of approval are complied with.

### **Miscellaneous**

37. No covered verandas, balconies or carports shall be enclosed without the consent of Council.

## **Security**

38. To guarantee the satisfactory completion of the landscaping and to ensure payment of headworks contributions, the developer shall lodge with the Council a cash bond or bank guarantee to the value of \$1 200 000. Such guarantee shall be lodged prior to the issue of a Building Work Permit. The Council may call up this guarantee to complete all or any part of the works mentioned herein in accordance with the conditions of this approval, should the developer fail to do so prior to issuing a permit for Building Work.

## **Advice**

### Vegetation Removal

A current Permit to Damage Protected Vegetation issued by Council is required for the removal of any vegetation on the site with a trunk circumference of 80 cm at chest height.

### Public Safety and Visibility

Trees located near pathways, driveways, access points, parking areas and street corners are to be maintained to ensure that at maturity the vegetation has minimum of three (3) m of clear trunk.

### Reserves and Easements

Drainage easements and/or reserves as reasonably required following review of Operational Works drawings are to be burdened to Council, at no cost to Council.

### Environmental Health Permits

As application has been made for multiple dwellings (tourist) and accommodation premises (motel) with ancillary restaurant/bar and cafes, further licenses will be required from Council's Environmental Health Section.

### Water Meters

In accordance with the Queensland Plumbing and Wastewater Code, commencing state-wide on 1 January 2008, any building development applications lodged for new premises drawing a water supply from a water service provider will be required to include sub-meters for separate lots in any type of building under a community title scheme and sole occupancy units in new buildings under a single title.

Developments shall comply with the Queensland Plumbing and Wastewater Code at Part Four (4) – Water Meters for New Premises.

For all classes of building built after 1 January 2008, sub-meters will be owned by Council. The water supply system from the Council Service or the Master Meter to the sub-meter shall be owned by the Community Title Scheme Body Corporate and the water supply from the sub-meter to the point of use will be owned either by the individual metered premises or by the Community Title Scheme Body Corporate as appropriate.

The installation of sub-meters shall be based on the following performance requirements:

- Accessibility within a common area due to regulatory restrictions on installation and access to ‘residential places’,
- Accessibility for reading and maintenance repair or replacement,
- The provision of supporting plumbing components that are part of Council’s meter installation eg ball valve, meter tails/unions and disassembly coupling,
- Suitable drainage for maintenance and management of leakage water,
- Consistency of installed formats to assist asset management and communication goals.

The design of plumbing installations shall be set out so that common facilities are sub-metered as individual sub-systems as follows:

- each hot water system that serves a floor will be sub-metered,
- all recreation facilities on land that is common property will be on a common sub-meter eg: the pool and the recreation room and the BBQ facility will be off the same sub-meter,
- external taps shall be connected through a common facilities sub-meter.

These common facilities sub-meters are to be owned by Council.

Where Community Title Scheme developments propose to have security systems where the public is restricted from access to the development or to buildings within the development then an Automatic Meter Reading (AMR) system shall be installed to the requirements of Council.

It is to be noted for developments that provide no security system at the time of development and later change to a development where security is to be provided, then these developments shall provide an AMR system as a part of the security upgrade.

The AMR system shall be installed by the developer and following commissioning, the AMR system shall be handed over to the Council for ownership.

The type and format of meters and AMR technologies shall comply with Council’s standards and specifications.

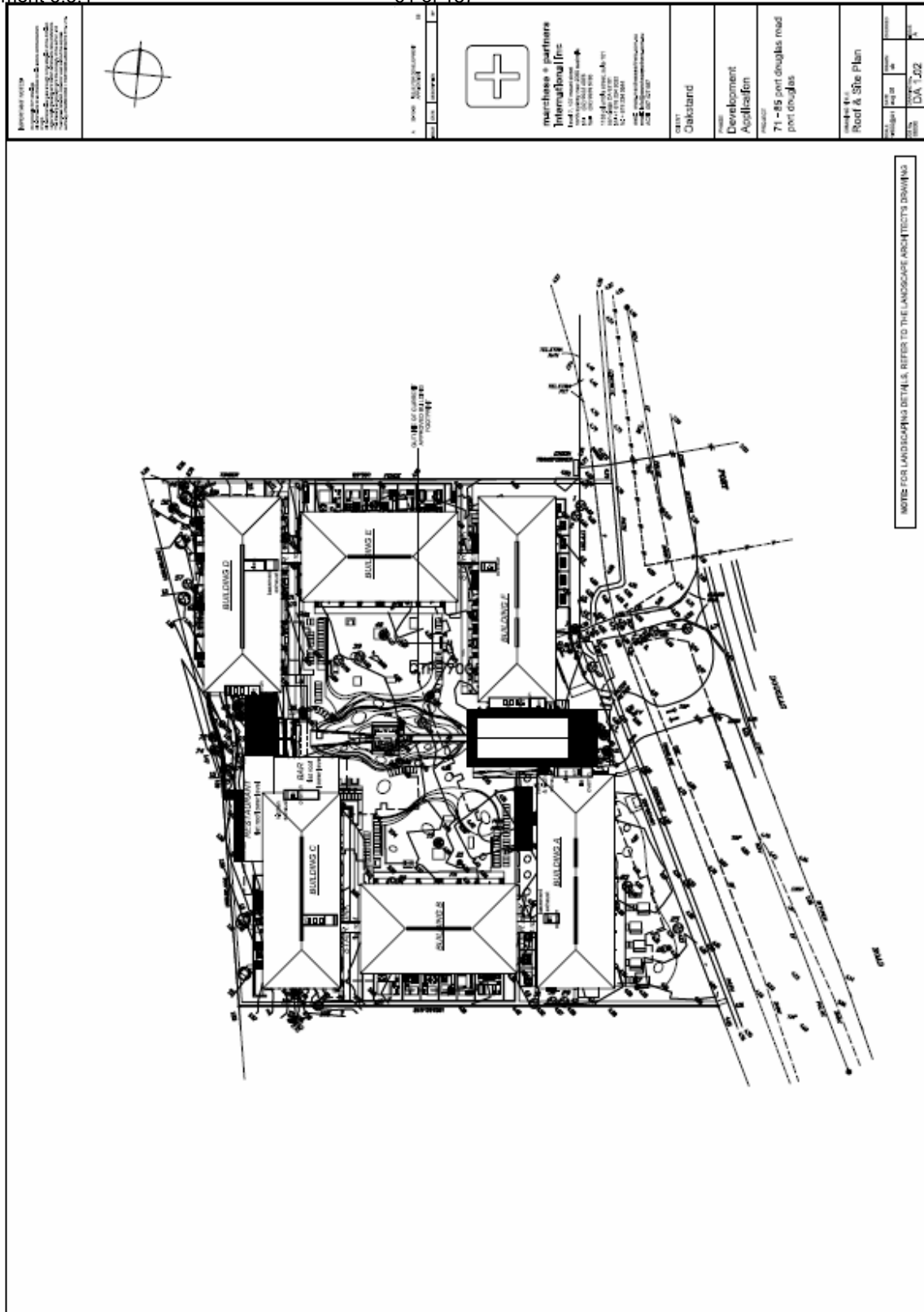
#### **E. Further Development Approvals Required:**

Operational Work	Development Permit
Building Permit	Development Permit
Plumbing & Drainage Permit	Development Permit

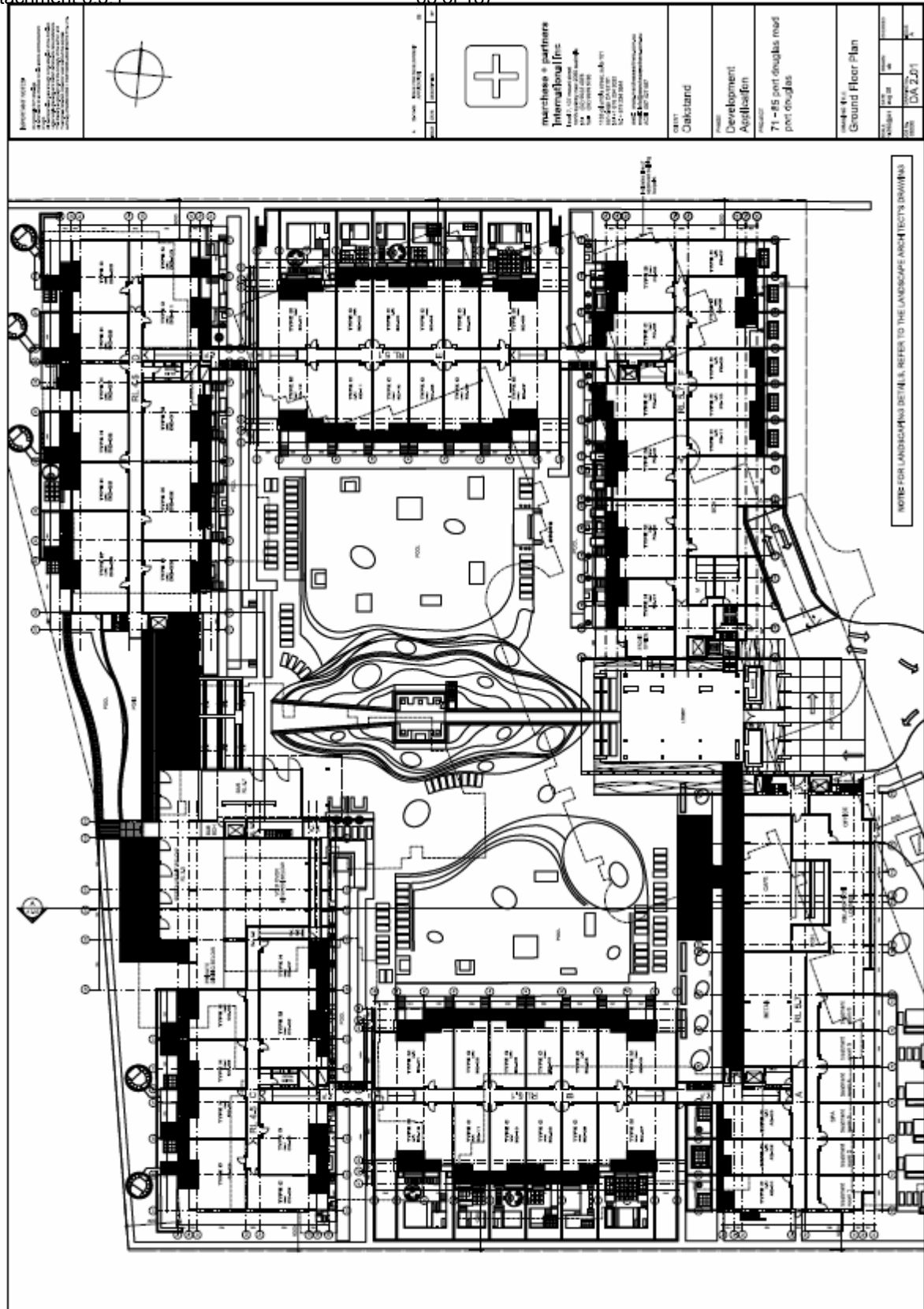
Paul Hoye  
**A/General Manager – Development & Environment**

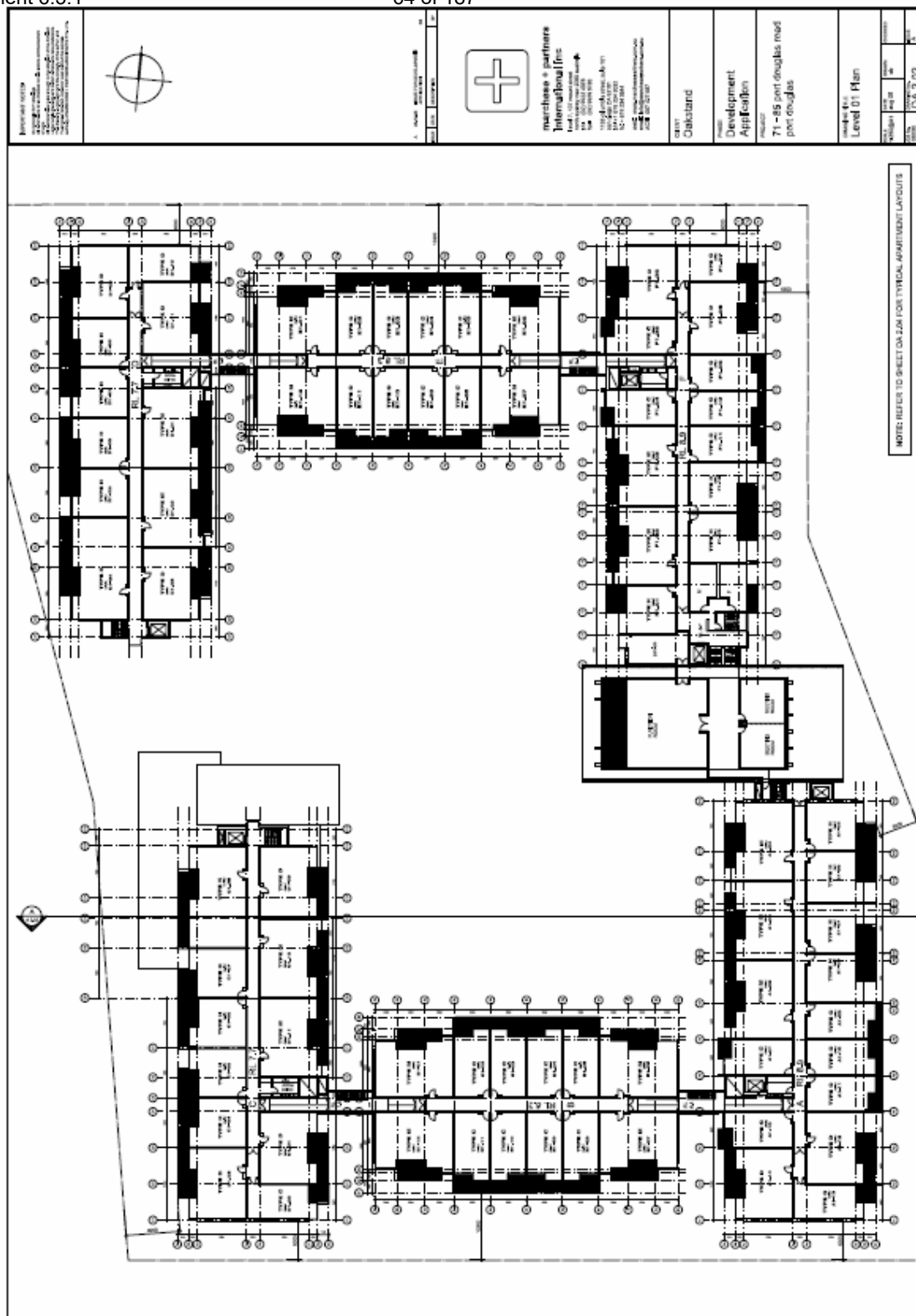


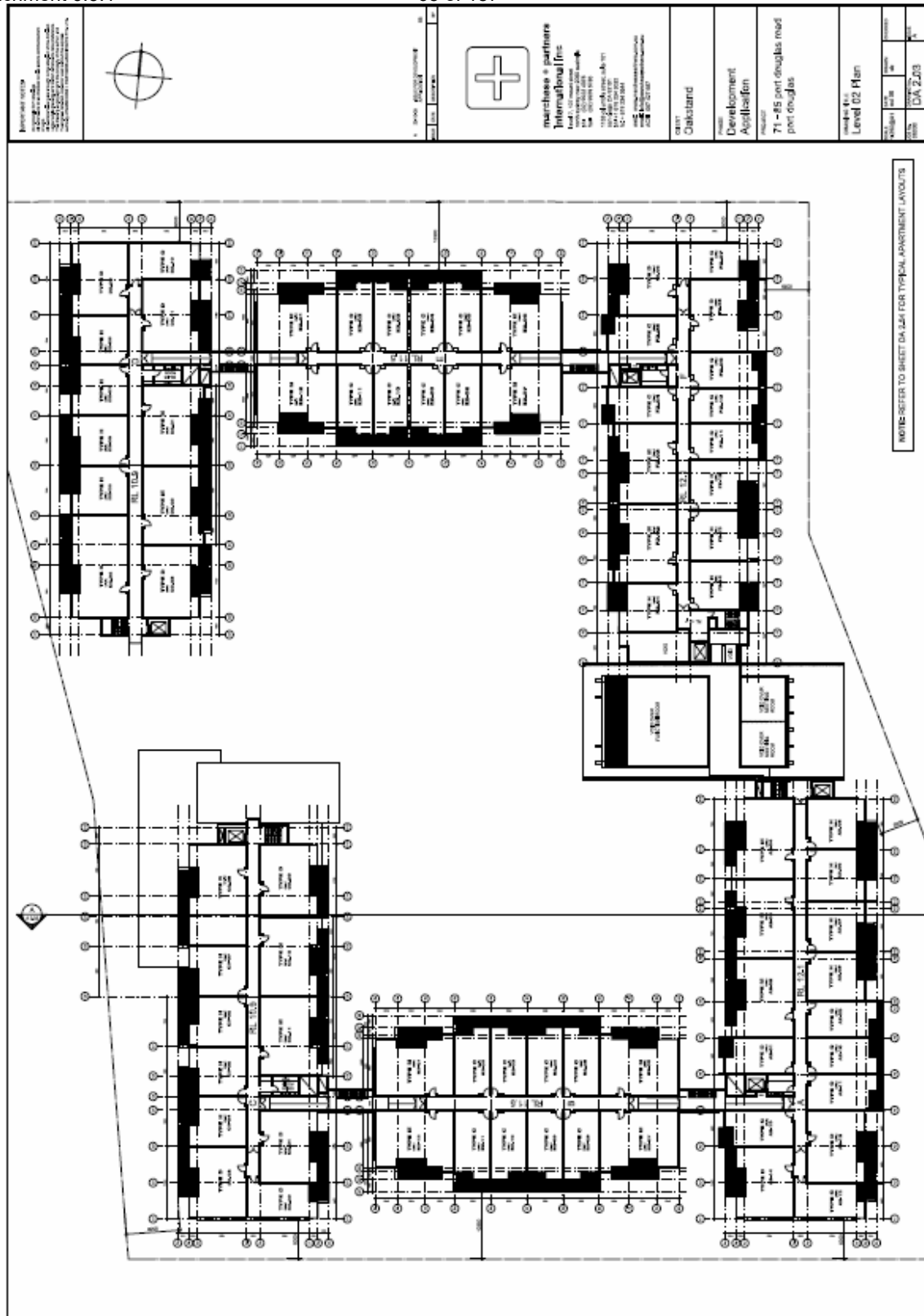




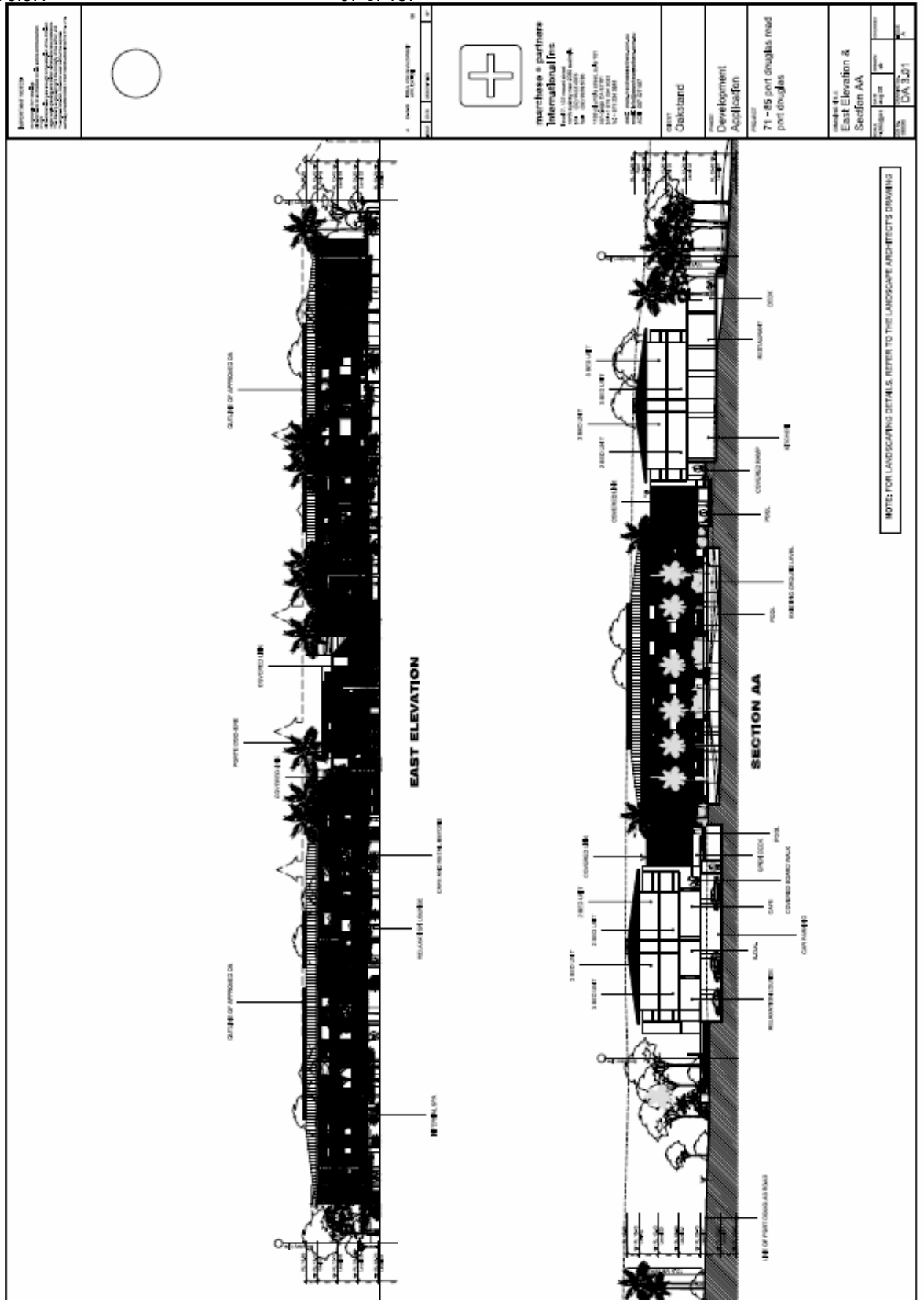


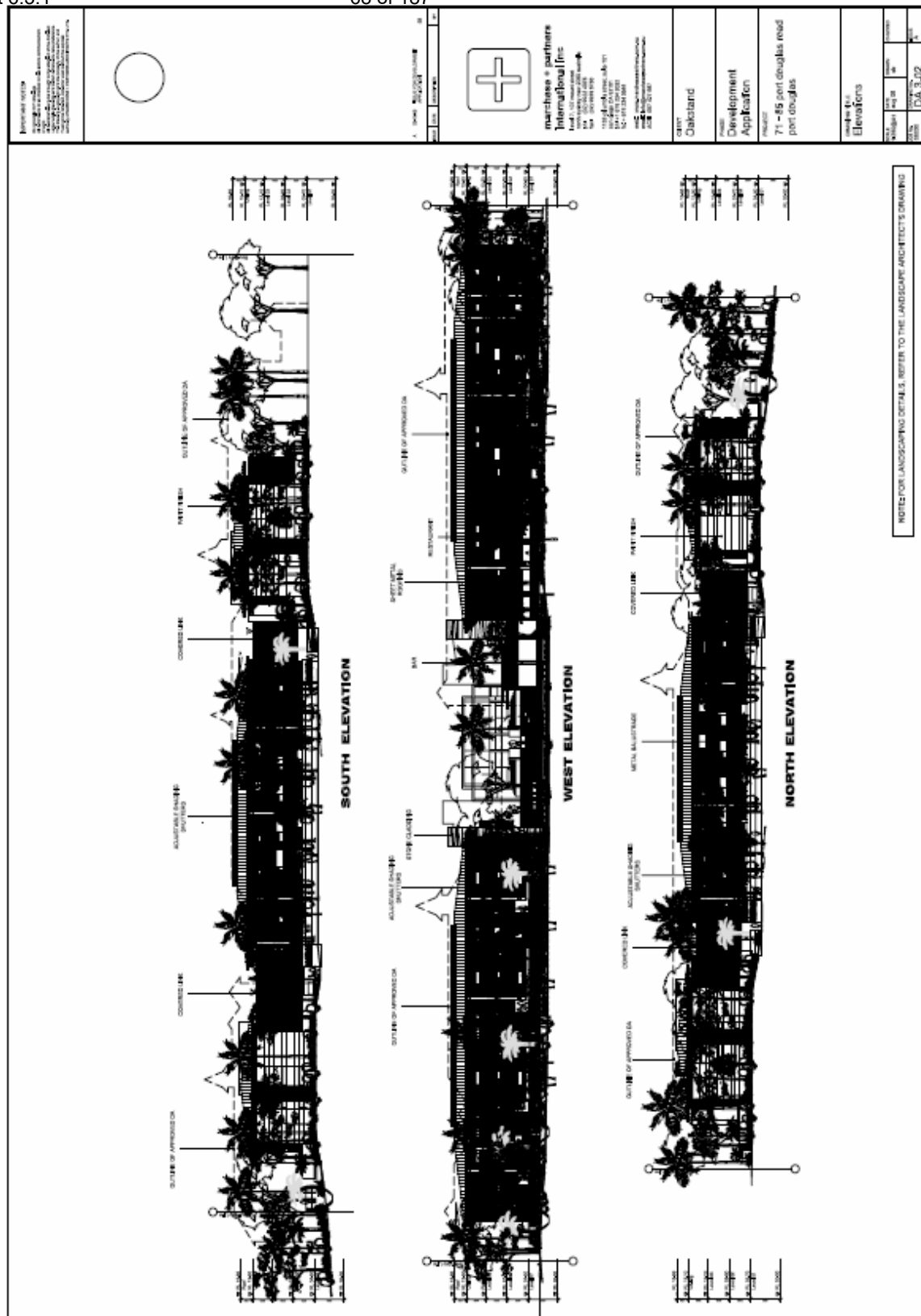




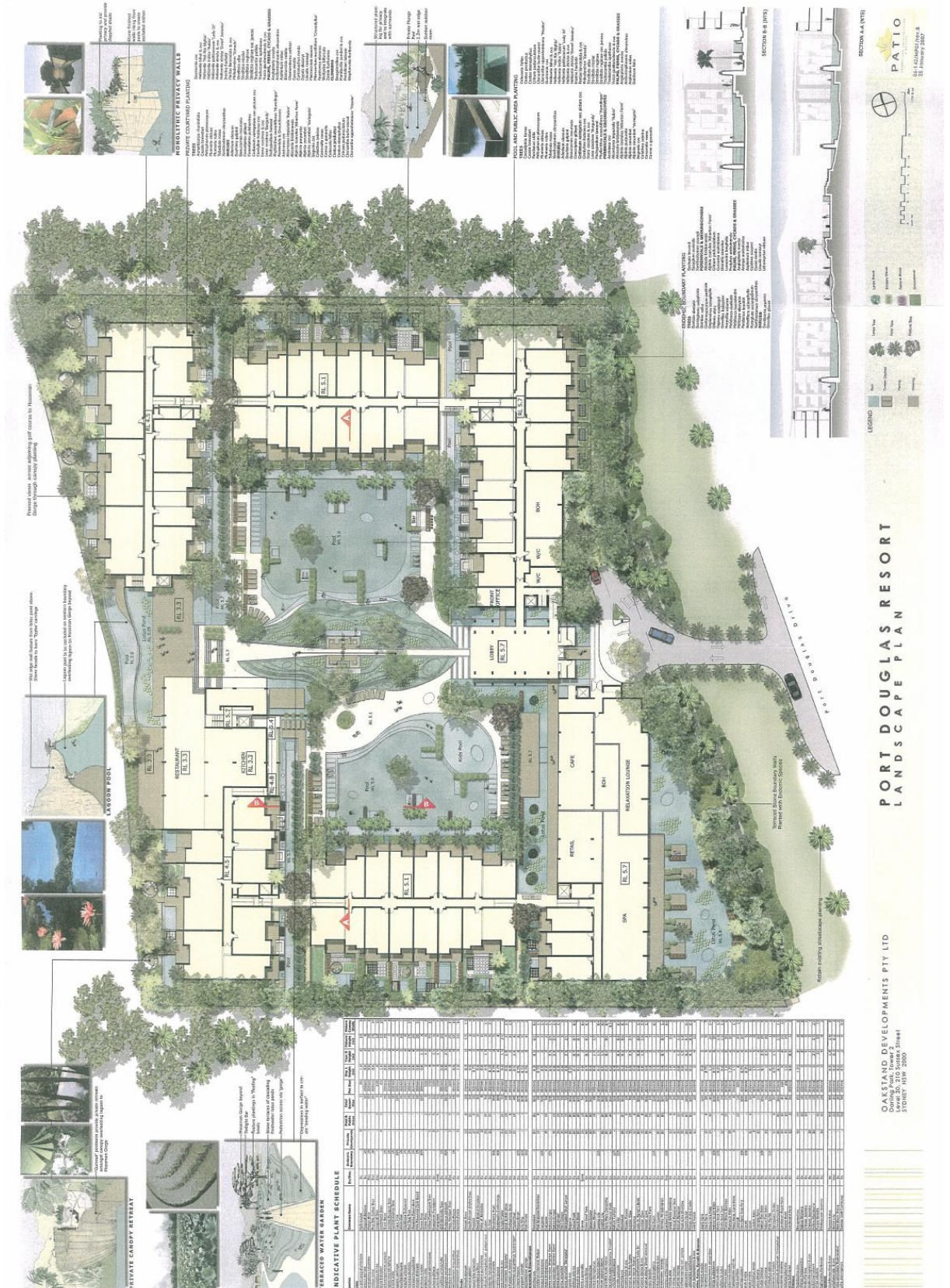


Ordinary Council Meeting - 27 February 2024

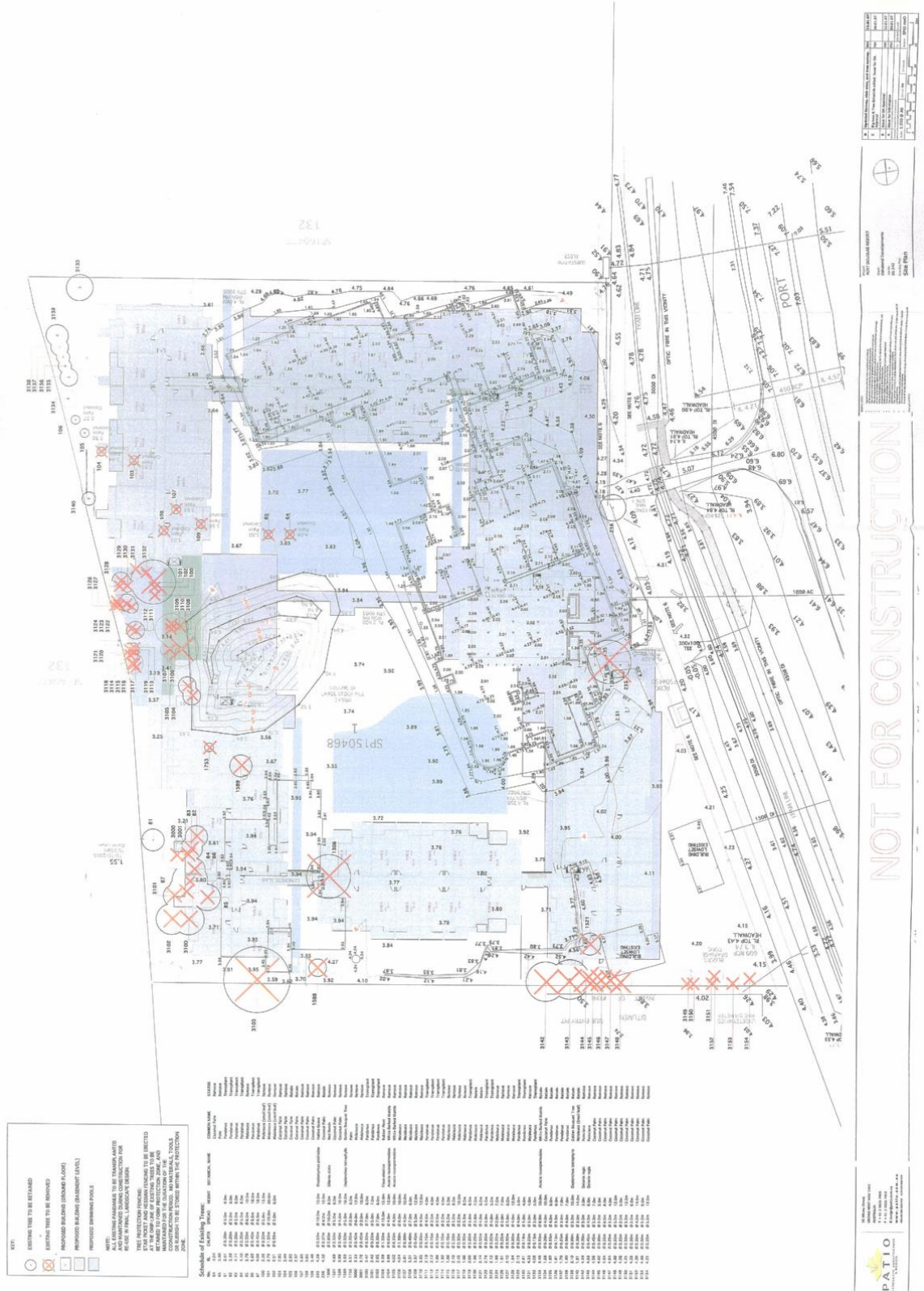


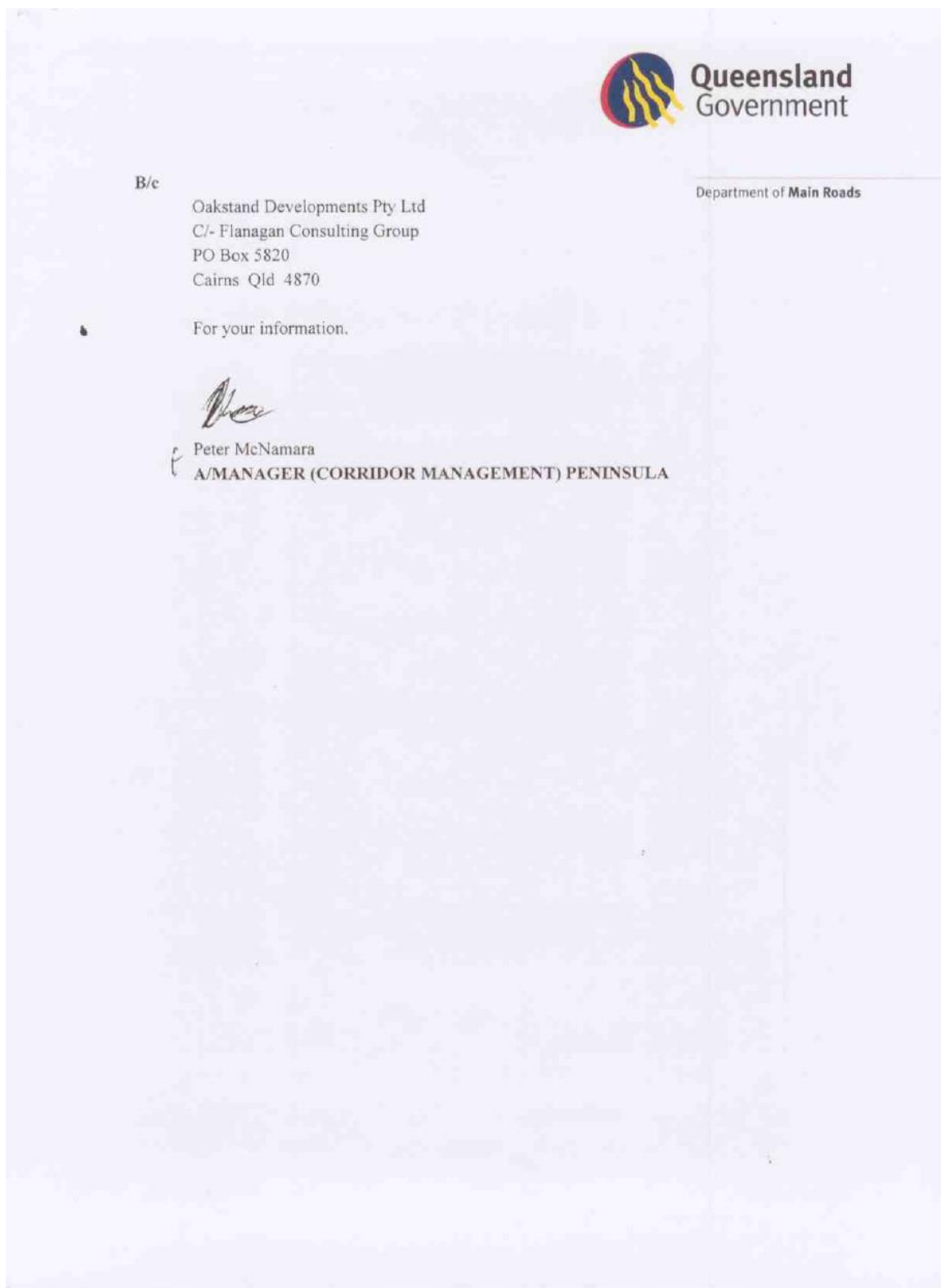










**Referral Agencies Conditions**



24 September 2007

Department of Main Roads

Ms Julia Leu  
A/ Chief Executive Officer  
Douglas Shire Council  
PO Box 357  
Mossman Qld 4873

Dear Ms Leu

**Douglas Shire : Port Douglas Road**  
Situating at 71-85 Port Douglas Road, Port Douglas  
Lot 1 on SP 150468, Parish of Salisbury  
Oakstand Developments Pty Ltd  
Proposed Material Change of Use (Holiday Accommodation (206 units) & ancillary uses)  
Application  
Referral Agency's Response (conditions apply)

I refer to the above application received at the Department 18 September 2007 requesting consideration of the above development.

**A. CONDITIONS OF DEVELOPMENT**

Pursuant to the *Integrated Planning Act 1997*, the Queensland Department of Main Roads, as a Concurrence Agency, has assessed the impact of the proposed development on the State-controlled road network and requires that Council include the following conditions of development for the subject application:

**1. Permitted Road Access Location**

- (i) Access between the State-controlled road (i.e. Port Douglas Road) and the subject land shall be via the proposed access driveway located about 80 metres from the northern side boundary of the subject land, only. The existing access driveway shall be permanently closed.
- (ii) No additional direct access between the State-controlled road reserve (i.e. Port Douglas Road) and the subject land is permitted.

**2. Road Access Works**

- (i) Road access works at the permitted road access location for the subject land are required and shall be constructed in accordance with:

North Queensland Region  
Peninsula District  
PO Box 6185  
CAIRNS Queensland 4870  
ABN 57 836 727 711

Our ref 45/6504/102(2951.01A)  
Your ref MCUI 041/07  
Enquiries MALCOLM HARDY  
Telephone +61 7 4050 5511  
Facsimile +61 7 4050 5438



- Department of Main Roads *Roads Planning and Design Manual (RP&DM)*, and
- current Department of Main Roads standards,

and to the Department's satisfaction.

A recent site inspection indicates the requirement for the provision of the following works within the State-controlled road reserve (i.e. Port Douglas Road):

- an auxiliary left turn treatment (AUL) from the south and a channelised right turn lane (CHR) into the development from the north as per Figures 13.82 and 13.60 of *RP&DM*, and
- with geometry configured to accommodate a possible future additional 3.5 metre wide traffic lane in Port Douglas Road on the western side.

(ii) Design aspects that include or address the following:

- No port cochere structure extending forward of property boundary onto road reserve,
- Port cochere vehicle turnaround designed to accommodate 12.5 metre long bus vehicle path i.e. no vehicles to reverse out of the access,
- Removal of existing access driveway and regrassing,
- 3.5 metre wide traffic lanes & turn lanes and 1.5 metre wide shoulders shall be provided on Port Douglas Road,
- 1.5 metre bicycle lane to be provided between the through lane north and the auxiliary left turn lane,
- Fill batter slopes to be 1:4 (Vert:Horiz),
- Painted traffic islands shall be used between the traffic lanes, and these islands shall have raised reflective pavement markers (RRPM's) installed in accordance with the *Manual of Uniform Traffic Control Devices (MUTCD)*,
- Semi-mountable kerbs, set back 1.5 metres from edge line, to be installed both sides of access,
- Asphalt surfacing to be provided to entire area of new works,
- Lighting shall be provided to V3 standard to ensure new works are appropriately lit. The completed lighting installation will need to comply with:
  - The Electrical Act,
  - Australian Standards (AS1158, 3000), and
  - Chapter 17 of the *RP&DM*.

All works are to be certified by Registered Professional Engineer Queensland (RPEQ) (Electrical).

- All associated works are to be completed to the Department's satisfaction (eg services relocation, drainage (including extension of culverts), line marking (including RRPM's), and signage in accordance with the *MUTCD*).
- Any necessary relocation of Council water mains, Telstra and electrical services are to be undertaken at no cost to DMR and works completed to the service provider's satisfaction. No existing water mains within 3.0 metres of the new sealed shoulder edge shall be permitted.
- DMR will also require an environmental management plan (including MRS 11.51) to be submitted.

- (iii) The applicant shall submit design drawings prepared by a suitably qualified RPEQ for approval to the Cairns office of the Department of Main Roads prior to works commencing within the State-controlled road reserve (i.e. Port Douglas Road).
- (iv) All required works shall be completed to the satisfaction of the Director-General of the Department of Main Roads prior to the commencement of the use on the subject land.

### 3. Road Traffic Noise & Visual Treatments

#### (a) Visual Amenity Works

The applicant/landowner shall provide landscaping along the frontage of the State-controlled road (i.e. Port Douglas Road/ Davidson Street).

The landscaping shall be designed installed and maintained such that existing State-controlled road infrastructure, noise ameliorative works, and on-site buildings and facilities, are screened as much as practicable from each other.

The species of plants used in the landscaping works shall be in accordance with Council's standards. If Council doesn't have standards, then the requirement is that they are native, low maintenance species which are effective at providing the necessary screening specified above and do not create a safety risk (i.e. no thorns or poisonous fruits or berries).

All landscaping shall be completed prior to the commencement of the approved use.

#### (b) Road Traffic Noise Ameliorative Works

##### (i) Location of Works

Road traffic noise ameliorative works shall be incorporated into the design of the development and the applicant/landowner shall have regard to the design criteria specified within AS3671. A noise barrier fence shall be located on the subject land and suitably screened from the State-controlled road (i.e. Port Douglas Road/ Davidson Street) with landscaping on the subject land. An acceptable alternative would be a noise barrier fence on the boundary of the subject land, with every second panel of the fence indented a minimum of one metre with landscaping of the indented areas. The fence would need to be suitably designed and painted to create a visually pleasing appearance to users of the State-controlled road reserve.

##### (ii) Maximum Noise Levels and Time Horizons

The following maximum road traffic noise free-field level must not be exceeded within 10 years of completion of the full development.

- External noise levels must not exceed 60 dB(A)  $L_{10}$  (18 hour), where existing levels measured at the local government deemed-to-comply dwelling setback distance are greater than 40 dB(A)  $L_{90}$  (8 hour) between 10pm and 6am; or
- External noise levels must not exceed 57 dB(A)  $L_{10}$  (18 hour), where existing levels measured at the local government deemed-to-comply

- 4 -

dwelling setback distance are less than or equal to 40 dB(A)  $L_{90}$  (8 hour) between 10pm and 6am;

- Internal noise levels (i.e., within buildings above the ground floor level only) must not exceed the maximum noise levels specified in AS2107-2000.

External noise shall be defined as being all open space including verandas, balconies, pool areas and gardens.

(iii) Noise Testing

The following parameters shall be used to determine the required noise amelioration works:

- External noise levels shall be those predicted to occur on the subject land in areas likely to be frequently occupied by people for significant periods.
- Internal noise levels shall be determined in accordance with AS2107-2000.
- Noise monitoring shall be carried out in accordance with AS2702-1984.
- Noise predictions shall be carried out in accordance with Calculation of Road Traffic Noise (CRTN88) United Kingdom Department of Transport.

(iv) Road Traffic Noise Report

The applicant/landowner shall prepare a road traffic noise report, which demonstrates how the development is to be designed to conform to the above requirements. The report shall:

- predict the road traffic noise levels,
- identify the ameliorative works required within the subject land and the relevant buildings, and
- contain all relevant information and calculations upon which the conclusions of the report are based.

The applicant/landowner shall submit the report to the Cairns Office of the Department of Main Roads, and if necessary, shall amend the report until the Department of Main Roads considers that the report reflects the requirements of this condition. The report and any subsequent amendments shall be completed prior to the applicant/landowner seeking Council (or private certifier) approval for a development permit for carrying out building works on the subject land.

(v) Incorporation of Works into the Development

All noise ameliorative works required external to the building on the subject land shall be completed prior to commencement of the approved use of the building.

All noise ameliorative works required within the relevant building(s) shall be:

- incorporated into the building design(s) prior to the applicant/landowner seeking Council (or private certifier) approval for a development permit for carrying out building works on the subject land, and
- incorporated into the building(s) prior to commencement of the approved use of the building.



**4. Advertising**

No advertising device for the proposed development is permitted within the State-controlled road reserve (i.e. Port Douglas Road).

**5. Parking**

When calculating carparking requirements associated with the proposed development no allowance shall be made for parking within the State-controlled road reserve (i.e. Port Douglas Road).

**Reasons**

The reasons and information used in the setting of conditions detailed above include:

- Department of Main Roads Access Policy;
- Department of Main Roads Involvement in Development Applications referrals and Assessment Guide; and
- Superseded Douglas Shire Planning Scheme.

**B. GENERAL DISCUSSION**

Council is requested to reflect the above conditions on its Rates Record, to ensure that the planning intentions of the conditions are secured.

This Department would appreciate a copy of Council's decision notice regarding the application.

A copy of this letter has been sent to the applicant.

Yours sincerely



• Peter McNamara

**A/MANAGER (CORRIDOR MANAGEMENT) PENINSULA**





Queensland  
Government

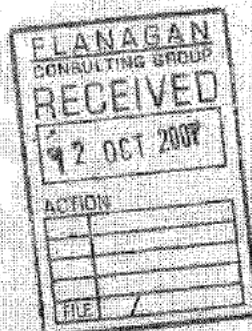
Your Reference: 166782  
Our Reference: 18056/C2850007  
Contact: Linda Whitley  
Directorate / Unit: Planning & Environment  
Phone: (07) 47 607453

Department of  
Natural Resources and Water

9<sup>th</sup> October 2007

Attn: Katrina Shoobridge

Flanagan Consulting Group  
PO Box 5820 Cairns  
Qld 4870



Dear Madam,

**Pre-lodgement Referral Agency Response for a Development Application for a Material Change of Use (Impact Assessment) on Lot 1 on SP150468 – 71-85 Port Douglas Road, Port Douglas**

I refer to your letter dated the 13<sup>th</sup> September 2007. Officers of the Department of Natural Resources and Water (NRW) have reviewed the proposed development application for the above Material Change of Use. It is noted that the site is below 20m AHD and located within an area which may contain Acid Sulphate Soils. As stated in the application excavation and filling are likely to occur as a result of the Material Change of Use. It is assumed this involves a volume in excess of 1,000 cubic metres which would trigger State Planning Policy 2/02. However, no soil testing has been undertaken for the identification of acid sulphate soil as required under state planning guidelines. Sampling and testing methodologies and remedial actions for acid sulfate soil are outlined in guidelines for State Planning Policy 2/02.

Accordingly, NRW requests that soil testing be undertaken, and should action criteria be triggered by acid generating potential, that an acid sulfate soil management plan be prepared in accordance with *State Planning Policy 2/02 Planning and Managing Development Involving Acid Sulfate Soils* (SPP 2/02) and its accompanying Guideline *SPP Guideline 2/02*.

Outcome 1 of State Planning Policy 2/02 states that:

- When undertaking development to which this SPP applies, the release of acid and associated metal contaminants into the environment is avoided by:
- not disturbing acid sulfate soils when excavating or otherwise removing soil or sediment, extracting groundwater or filling land; or

Natural Resources & Water  
P O Box 5318  
Townsville Queensland 4810  
Australia  
Telephone + 61 7 4760 7453  
Facsimile + 61 7 4799 7541  
Website www.nrw.qld.gov.au

treating and, if required, undertaking ongoing management of any disturbed acid sulfate soils and drainage waters.

The *SPP Guideline 2/02* requires that the information in an ASS investigation report and proposed management strategy be sufficiently detailed for the assessment manager and NRW to be satisfied that the development outcomes required by SPP 2/02 will be met. The information should be provided in accordance with the relevant parts of the SPP Guideline and the associated appendices.

In order to provide advice to the Cairns Council, NRW considers that an ASS investigation should be carried out by a suitably qualified person over the area subject to this application, commencing with preliminary testing.

Should you have any questions about the above, please contact Linda Whiteley on telephone number (07) 47 607 453, quoting the above reference number.

Yours sincerely



Linda Whiteley  
Natural Resource Officer

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*Division 8 – Appeals to court relating to development applications***Appeals by applicants**

- 4.1.27.** (1) An applicant for a development application may appeal to the court against any of the following:-
- (a) the refusal, or the refusal in part, of a development application;
  - (b) a matter stated in a development approval, including any condition applying to the development, and the identification of a code under Section 3.1.6;66
  - (c) the decision to give a preliminary approval when a development permit was applied for;
  - (d) the length of a currency period;
  - (e) a deemed refusal.
- (2) An appeal under subsection (1)(a) to (d) must be started within twenty (20) business days (the “**applicant’s appeal period**”) after the day the decision notice or negotiated decision notice is given to the applicant.
- (3) An appeal under subsection (1)(e) may be started at any time after the last day a decision on the matter should have been made.

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***Division 10 – Making an appeal to court***

How appeals to the court are started

- 4.1.39**
- (1) An appeal is started by lodging written notice of appeal with the registrar of the court.
  - (2) The notice of appeal must state the grounds of the appeal.
  - (3) The person starting the appeal must also comply with the rules of the court applying to the appeal.
  - (4) However, the court may hear and decide an appeal even if the person has not complied with subsection (3).

<b>ENQUIRIES:</b>	Mrs Jenny Elphinstone
<b>PHONE:</b>	(07) 4099 9482
<b>FAX:</b>	(07) 4044 3836
<b>YOUR REF:</b>	LEC1420
<b>OUR REF:</b>	8/37/57 (4054724)

29 July 2013

Oakstand Fund No 7 Pty Ltd (Tte)  
C/- Flanagan Consulting Group  
PO Box 5820  
**CAIRNS QLD 4870**

Dear Sir/Madam

**RE: CORRECTED ADVICE REQUEST TO EXTEND PERIOD OF APPROVAL  
FOR DEVELOPMENT APPLICATION -  
71-85 PORT DOUGLAS ROAD PORT DOUGLAS**

Further to Council's previous advice issued 23 July 2013 please note the date of the original Decision Notice has been corrected below.

In accordance with Section 383 of the *Sustainable Planning Act 2009*, please be advised that Council has extended the Period of Approval for four (4) years, up to and including 20 January 2018, subject to the conditions contained within the Decision Notice dated 30 January 2008 (copy attached).

Should you require any further information or assistance, please contact Jenny Elphinstone of Council's Development Assessment Team on telephone number (07) 4099 9482.

Yours faithfully

Graham Boyd  
Manager Development & Regulatory Services

Att:

**APPENDIX 1 APPROVAL**

Louise Stayte – Planning Officer  
 Planning Services Section - ☎ (07) 4099 9456  
 planning@dsc.qld.gov.au

MCUI 041/07

Oakstand Fund No.7 Pty Ltd  
 c/- Flanagans Consulting Group  
 PO Box 5820  
 CAIRNS QLD 4870

30 January 2008

**INTEGRATED PLANNING ACT  
 DECISION NOTICE  
 DEVELOPMENT APPLICATION**

**Applicant's Name** : Oakstand Fund No.7 Pty Ltd  
**Owner's Name** : Oakstand Fund No.7 Pty Ltd  
**Proposal** : Material Change of Use for 79 multiple dwellings (tourist) {of which 47 are able to be used as multiple dwellings (tourist) and accommodation premises (motel) in a dual-key arrangement and three (3) are able to be temporarily used as display homes (multiple dwelling)}; 127 accommodation premises (motel); and ancillary uses including gym, spa, relaxation lounge, retail, restaurant, café, bar, function centre, meeting rooms and administration facilities.  
**Application Number** : MCUI 041/07  
**Site Address** : 71 to 85 Port Douglas Road, Port Douglas  
**Property Description** : Lot 1 on SP150468, Parish of Salisbury, County of Solander

**A. Decision:** **Decision Date:** 22 January 2008

Approved subject to Conditions

**B. Type of Development Approval:**

Material Change of Use

Development Permit

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**C. Referral Agency:**

Concurrence  
 Department of Main Roads  
 Peninsular District  
 PO Box 6185  
 CAIRNS QLD 4870

Advice

Senior Resource Planning Officer  
 Catchment and Regional Planning  
 Department of Natural Resources, Mines &  
 Water  
 PO Box 210  
 ATHERTON QLD 4883

**D. Conditions**

1. The approved development and the conduct of the approved use, the carrying out of any works on the premises and the construction of any buildings on the premises associated with the development must be in accordance with the details of the application and the following approved plan/s of development:

Title	Plan No	Date
Building Bulk Analysis	DA 1.01 (Issue A)	August 2006
Roof and Site Plan	DA 1.02 (Issue A)	August 2006
Level B1 Plan	DA 2.00 (Issue B)	May 2007
Ground Floor Plan	DA 2.01 (Issue A)	August 2006
Level 01 Plan	DA 2.02 (Issue A)	August 2006
Level 02 Plan	DA 2.03 (Issue A)	October 2006
Typical Apartment Floor Plans	DA 2.04 (Issue A)	October 2006
East Elevation and Section AA	DA 3.01 (Issue A)	August 2006
Elevations	DA 3.02 (Issue A)	August 2006

Except where such plans are modified by the terms of this approval.

**Currency Period**

2. This development approval lapses four (4) years after the day that the development approval takes effect, unless extended under Section 3.5.22 of the Integrated Planning Act 1997.

### Display Homes

3. Units CG.01, CG.02 and CG.03 are permitted to be used as display houses (multiple dwelling) for a period of twelve (12) months and are to revert back to multiple dwellings (tourist) and accommodation premises (motel) at the end of this period.

### Landscaping

4. A detailed Landscaping Plan in accordance with Douglas Shire Superseded Planning Scheme and Superseded Planning Policy No 4 – Landscaping is to be submitted to Council for approval prior to obtaining a building permit/operational works permit. The plan is to incorporate the following:
    - a) the location of underground services; and
    - b) vegetation bonuses identified in Section 3.5 of the Douglas Shire Superseded Planning Scheme including:
      - Dense Tropical Vegetation – 0.10 bonus necessary;
      - Shade Trees – 0.045 bonus necessary;
      - Vegetation Retention - 0.06 bonus necessary; and
      - Street Landscaping – 0.04 bonus necessary.
  5. (A) The owner/developer shall be responsible for all maintenance work on-street landscaping for a period of twenty-four (24) months. Council will not accept the on-street landscaping off maintenance or the associated transfer of irrigation to Council's reticulated water system until it meets the requirements of Council's Engineering Services;
- OR
- (B) The owner/developer shall enter into an agreement with Council for the owner/developer to maintain the on-street landscaping to a standard specified by Council.
  6. All vegetation adjacent to any pool fencing is to be maintained to comply with AS1926-1993 that requires a 1.2 m setback to climbable vegetation.
  7. No trees are to be planted within two (2) m of the sewer manholes near the south western and north eastern corners of the property.

### Sewerage

8. Developer to construct and maintain internal sewerage pump station and pressure main to Council's existing pressure main located on the eastern side of Port Douglas Road. Plans and design drawings to be submitted for approval at time of application for operational works.



9. All damage to the road and/or road reserve adjacent to the site as a result of, or in connection with this development must be repaired by the developer, at their expense, prior to completion of works associated with the development.

#### **Electricity and Telephone Services**

10. All electrical lines along the full frontages of the subject site (Port Douglas Road) are to be placed underground. These works are to be undertaken by Ergon Energy at the developer's/owner's expense and are to be completed prior to commencement of the approved use.

#### **Stormwater**

11. All stormwater run-off from non-permeable surfaces and roof areas occurring on the site must be collected within the premises and discharged to a legal and practical point of discharge which has been nominated as either:

(A) Port Douglas Road;

AND/OR

- (B) The adjoining property at the rear boundary (Lot 132 on SP160477) in accordance with a legal agreement between the developer and the adjoining landowner to the effect that the adjoining landowner will accept the discharge of stormwater onto their property. A copy of this legal agreement is to be submitted to Council prior to Operational Works or Building Approval, whichever comes first.

The approved use must not:

- a) Interfere with the natural flow of stormwater;
  - b) Cause ponding of stormwater on adjoining properties, except where in compliance with Council's Condition 11(B).
12. A stormwater drainage plan for the development is to be prepared in accordance with the Far North Queensland Regional Organisation of Council's Development Manual and submitted to Council prior to obtaining Operational Works approval.

#### **Water Supply**

13. Developer to pay to Council the cost of connection to Council's existing water main on Port Douglas Road.

Details of the water supply connection are to be provided to Council prior to Operational Works approval.

#### **Acid Sulfate Soils**

14. The developer is to submit with the application for approval of Operational Works, an Acid Sulfate Soil (ASS) management plan in accordance with QASSIT Guidelines. This ASS management plan must detail the controls to be utilised to ensure that no environmental harm or nuisance is caused from the proposed use of the land and construction of the works.

#### **Contributions**

15. The developer/owner shall pay to the Council headworks contributions for water supply and sewerage in accordance with Council's Planning Scheme Policy No 11 – Water Supply and Sewerage Headworks and Works External Contributions (the policy). The contribution shall be calculated at the rate per Equivalent Domestic Connection (EDC) applicable at the time of payment in accordance with the policy.

The current number of EDC's for the approved use are:

Water Supply	97.2
Sewerage	133.4

#### **Car parking**

16. A car parking area on site with a minimum of 159 vehicle spaces (no tandem space), two (2) motorcycle spaces and twenty-six (26) bicycle spaces shall be constructed, sealed, drained and line marked in accordance with the relevant Australian Standard, and maintained thereafter. An amended plan of development in accordance with these requirements is to be submitted to Council and approved prior to work commencing on site prior to operational works approval.

#### **Ancillary Uses**

17. The ancillary uses are to be for the exclusive use of internal guests only and not to open to the general public.

#### **Refuse**

18. There is to be provided within the development an area for the storage and washing of all refuse containers. Such area is to be:
  - (a) sufficient in size to be able to house all mobile garbage (wheelie) bins including recycling bins;
  - (b) situated so as not to cause an odour nuisance to any adjacent properties;
  - (c) imperviously paved and drained to a suitable silt trap;
  - (d) discharged to sewer to the satisfaction of the General Manager Engineering Services;
  - (e) provided with a suitable hose cock with backflow prevention device and hose; and
  - (f) roofed or provided with a suitable automatic diversion valve (or other approved method) designed to prevent the ingress of stormwater to sewer.

19. The applicant shall ensure that all areas where fuels, oils and automotive products are used or may accumulate shall be drained to a gross pollutant trap to prevent material/pollutants entering the stormwater drainage system.

#### **Construction Stage/Site Management**

20. The applicant is to prepare with the submission for either Building or Operational Works approval (which ever comes first), an environmental management plan (EMP) detailing the controls to be utilised to ensure that no environmental harm or nuisance is caused from the proposed use of the land and construction of the works. In particular, this plan should address such issues as dust suppression, waste disposal, noise management and stormwater management (to minimise discharges of sediment, wastes and other substances). This EMP is required to meet the approval of the manager of Environmental Services.
21. At all times, the applicant is to ensure dust suppression measures are undertaken for the site and adjoining road reserves to ensure that all materials are appropriately stored and any unsealed areas do not create a dust nuisance to surrounding areas to the satisfaction of the Council.
22. All vehicles associated with the development of the site shall be legally parked and in a manner so as to not adversely impact on the immediate locality.
23. No building materials associated with the development of the site shall be stored or stacked on Council-owned land (including road pavement, road reserve and/or parklands) at any time.
24. All refuse and packing materials or similar associated with the development of the site shall be stored on the subject site in a neat and tidy manner and screened from public view.
25. Erosion and sediment control measures must be installed prior to works commencing on the site and these measures will be maintained in good working order during the construction.
26. The building site shall be maintained in good condition at all times to the satisfaction of the Council.

#### **Fencing**

27. Any fencing to be provided at the Port Douglas Road frontage of the site shall have a setback of 2 m and maximum height of 1.2 m, and at the side and rear boundaries with a maximum height of 1.8 m.

#### **Traffic Management**

28. The ingress/egress to the site shall be provided with a physical means of speed control. Such speed control device/s shall be shown on any plans submitted for approval for building works and shall be constructed and maintained at all times.

The developer shall provide bollard lighting at the property boundary to indicate access to the car parking area at the time of applying for a Building Permit.

#### **Amenity**

29. The approved use must not be conducted so as to cause a nuisance or annoyance to persons not associated with the business and so as not to adversely affect any other property.
30. All service equipment, machinery, vehicles, outdoor lighting and air conditioning equipment must be located so as not to cause a nuisance to the occupants of adjoining units or neighbouring premises. The noise levels shall be maintained in accordance with the requirements of the Environmental Protection Act 1994.
31. All external lighting installed upon the premises shall conform to the relevant Australian Standards and be located so as not to cause a nuisance to the occupants of adjoining units or neighbouring properties.
32. Roofs of buildings are light coloured and non-reflective, and white and shining metallic finish are avoided on external surfaces in prominent view, in accordance the Planning Scheme Policy 2 – Building Design and Architectural Elements.
33. Access for pedestrians and cyclists to the building entry, from the parking area and from the street are to be in accordance with the provisions of the Australian Standards.

#### **Swimming Pool Waste**

34. Swimming pool and spa filters shall not backwash the filter discharge or pool waste into the Council's sewerage system or stormwater drainage system or a waterway. Council approval shall be obtained for residential and commercial pool and spa filter backwash systems to a legal point of discharge prior to installation. This approval is to be via a plumbing and drainage application process.

#### **Advertising**

35. Any proposed advertising devices are to be approved by Council and in accordance with the Codes of Localities, Codes for Planning Areas and Design and Siting of Advertising Devices Code within the Douglas Shire Planning Scheme.

#### **Compliance**

36. All conditions shall be complied with prior to the occupancy of the building for the approved use or commencement of the approved use on the land. Any developer security, associated with this approval will not be released until all conditions of approval are complied with.

#### **Miscellaneous**

37. No covered verandas, balconies or carports shall be enclosed without the consent of Council.

### **Security**

38. To guarantee the satisfactory completion of the landscaping and to ensure payment of headworks contributions, the developer shall lodge with the Council a cash bond or bank guarantee to the value of \$1 200 000. Such guarantee shall be lodged prior to the issue of a Building Work Permit. The Council may call up this guarantee to complete all or any part of the works mentioned herein in accordance with the conditions of this approval, should the developer fail to do so prior to issuing a permit for Building Work.

### **Advice**

#### Vegetation Removal

A current Permit to Damage Protected Vegetation issued by Council is required for the removal of any vegetation on the site with a trunk circumference of 80 cm at chest height.

#### Public Safety and Visibility

Trees located near pathways, driveways, access points, parking areas and street corners are to be maintained to ensure that at maturity the vegetation has minimum of three (3) m of clear trunk.

#### Reserves and Easements

Drainage easements and/or reserves as reasonably required following review of Operational Works drawings are to be burdened to Council, at no cost to Council.

#### Environmental Health Permits

As application has been made for multiple dwellings (tourist) and accommodation premises (motel) with ancillary restaurant/bar and cafes, further licenses will be required from Council's Environmental Health Section.

#### Water Meters

In accordance with the Queensland Plumbing and Wastewater Code, commencing state-wide on 1 January 2008, any building development applications lodged for new premises drawing a water supply from a water service provider will be required to include sub-meters for separate lots in any type of building under a community title scheme and sole occupancy units in new buildings under a single title.

Developments shall comply with the Queensland Plumbing and Wastewater Code at Part Four (4) – Water Meters for New Premises.

For all classes of building built after 1 January 2008, sub-meters will be owned by Council. The water supply system from the Council Service or the Master Meter to the sub-meter shall be owned by the Community Title Scheme Body Corporate and the water supply from the sub-meter to the point of use will be owned either by the individual metered premises or by the Community Title Scheme Body Corporate as appropriate.

The installation of sub-meters shall be based on the following performance requirements:

- Accessibility within a common area due to regulatory restrictions on installation and access to 'residential places',
- Accessibility for reading and maintenance repair or replacement,
- The provision of supporting plumbing components that are part of Council's meter installation eg ball valve, meter tails/unions and disassembly coupling,
- Suitable drainage for maintenance and management of leakage water,
- Consistency of installed formats to assist asset management and communication goals.

The design of plumbing installations shall be set out so that common facilities are sub-metered as individual sub-systems as follows:

- each hot water system that serves a floor will be sub-metered,
- all recreation facilities on land that is common property will be on a common sub-meter eg: the pool and the recreation room and the BBQ facility will be off the same sub-meter,
- external taps shall be connected through a common facilities sub-meter.

These common facilities sub-meters are to be owned by Council.

Where Community Title Scheme developments propose to have security systems where the public is restricted from access to the development or to buildings within the development then an Automatic Meter Reading (AMR) system shall be installed to the requirements of Council.

It is to be noted for developments that provide no security system at the time of development and later change to a development where security is to be provided, then these developments shall provide an AMR system as a part of the security upgrade.

The AMR system shall be installed by the developer and following commissioning, the AMR system shall be handed over to the Council for ownership.

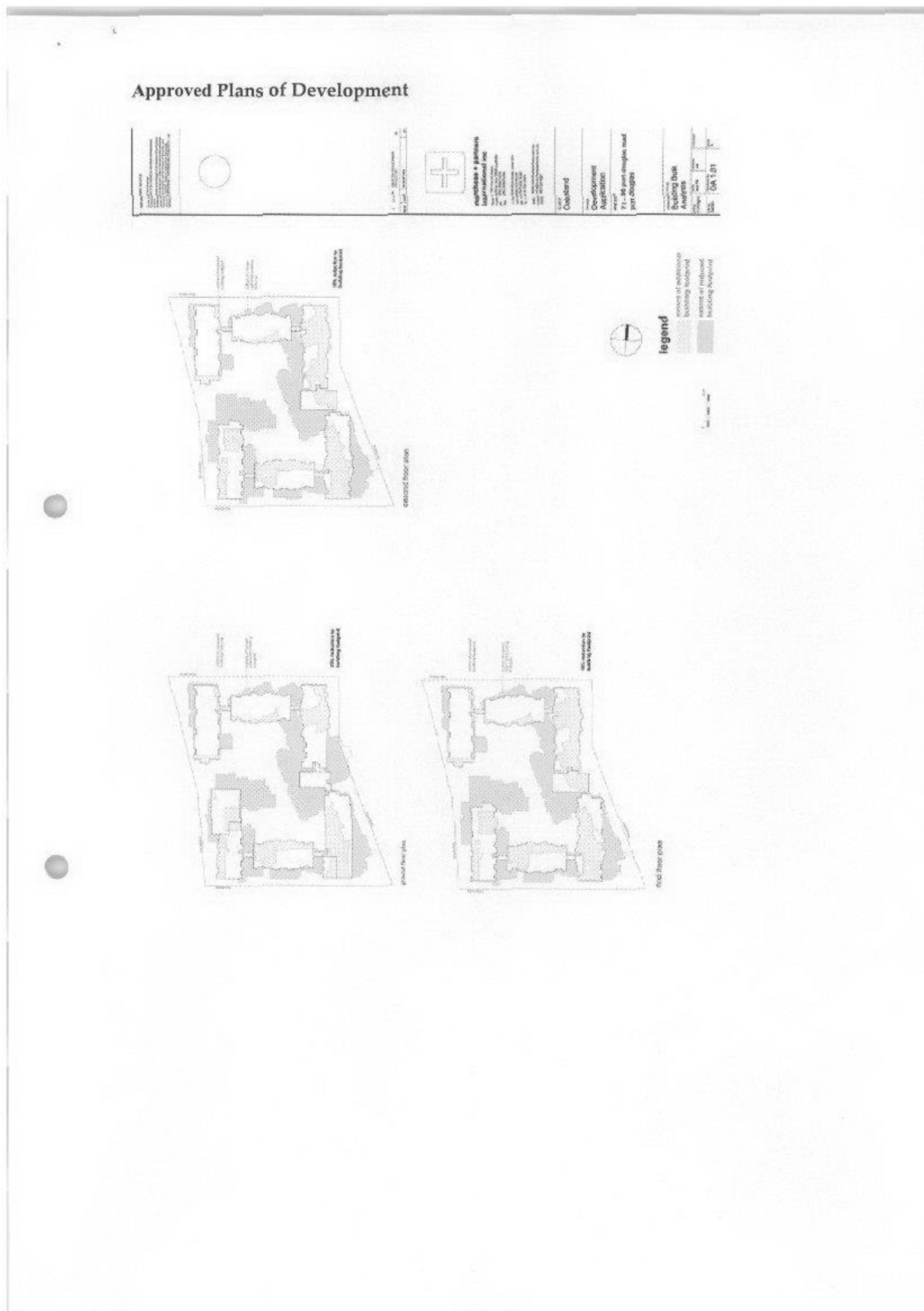
The type and format of meters and AMR technologies shall comply with Council's standards and specifications.

#### **E. Further Development Approvals Required:**

Operational Work	Development Permit
Building Permit	Development Permit
Plumbing & Drainage Permit	Development Permit

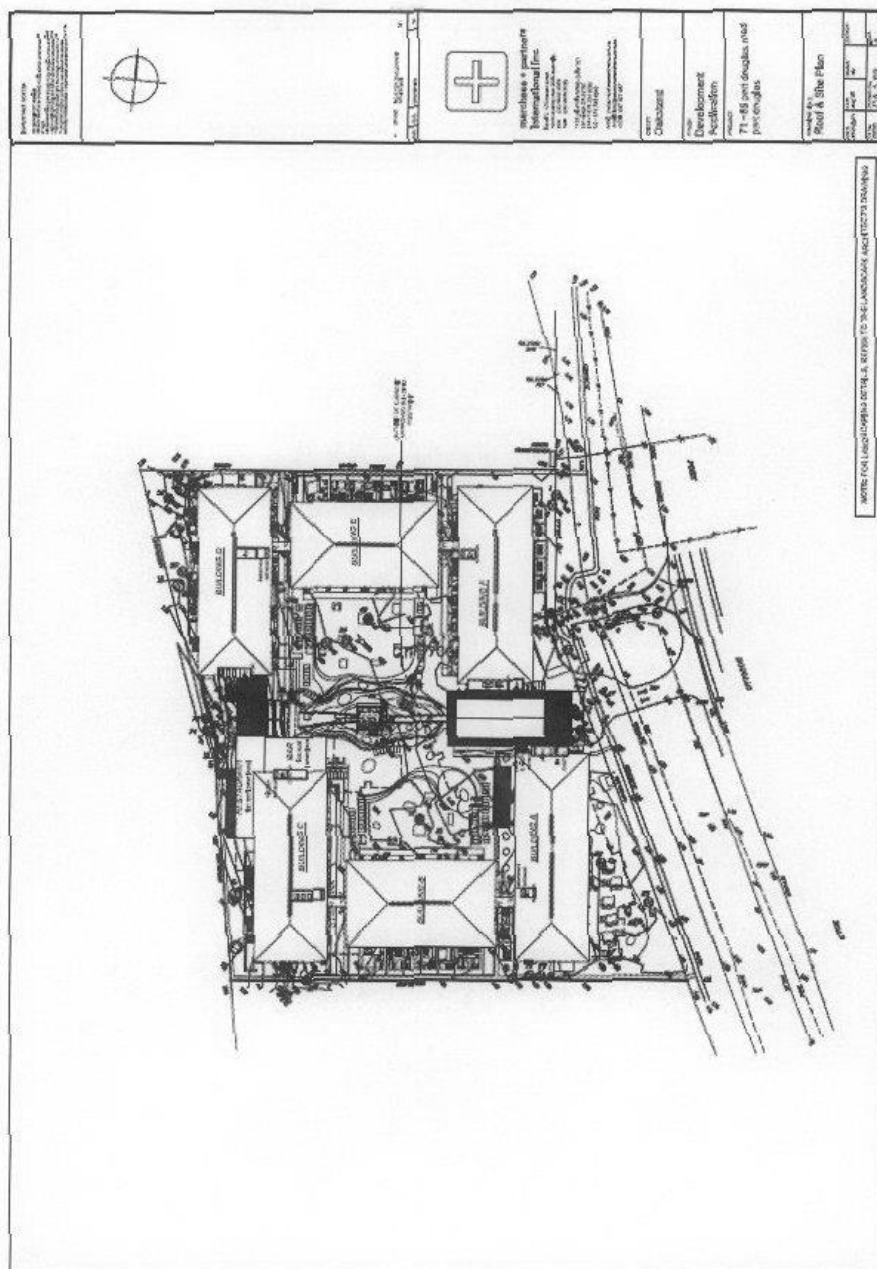
Paul Hoyer  
A/General Manager – Development & Environment



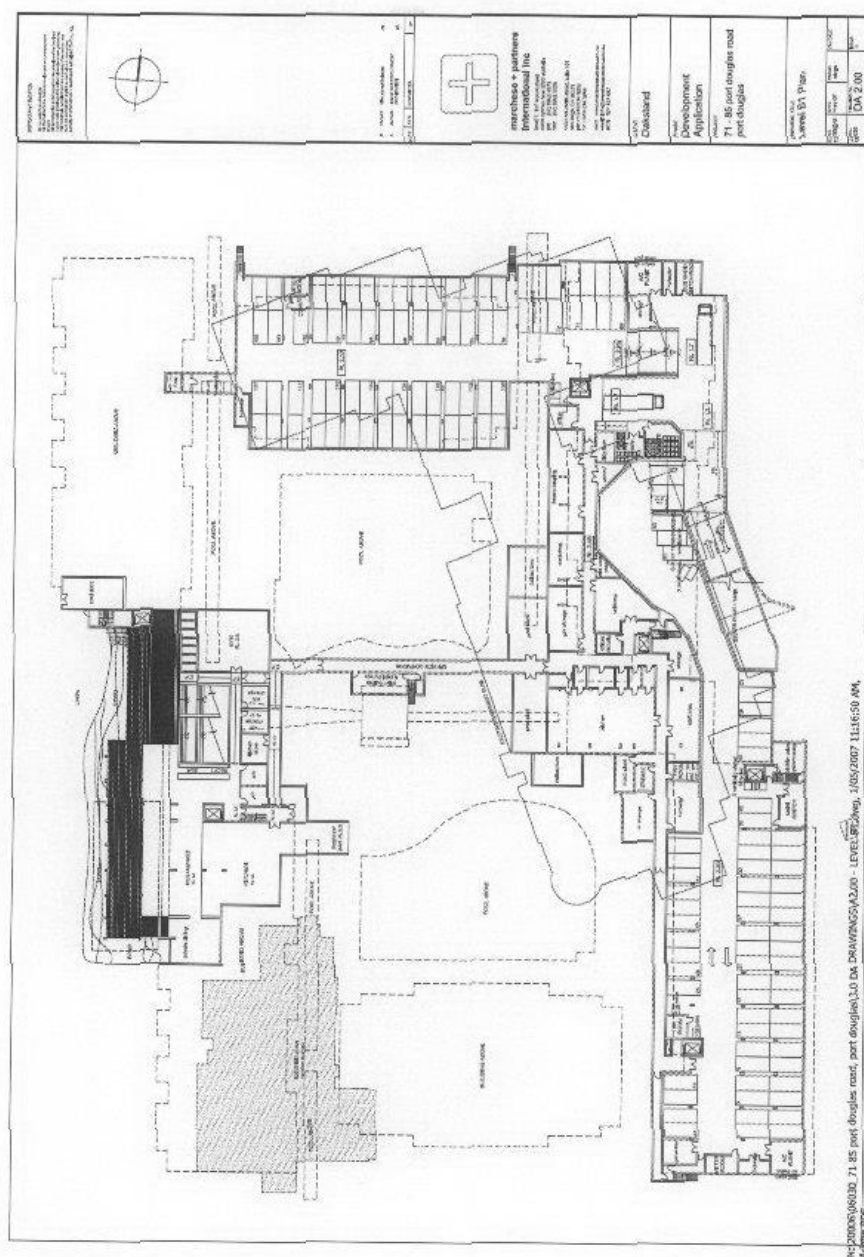


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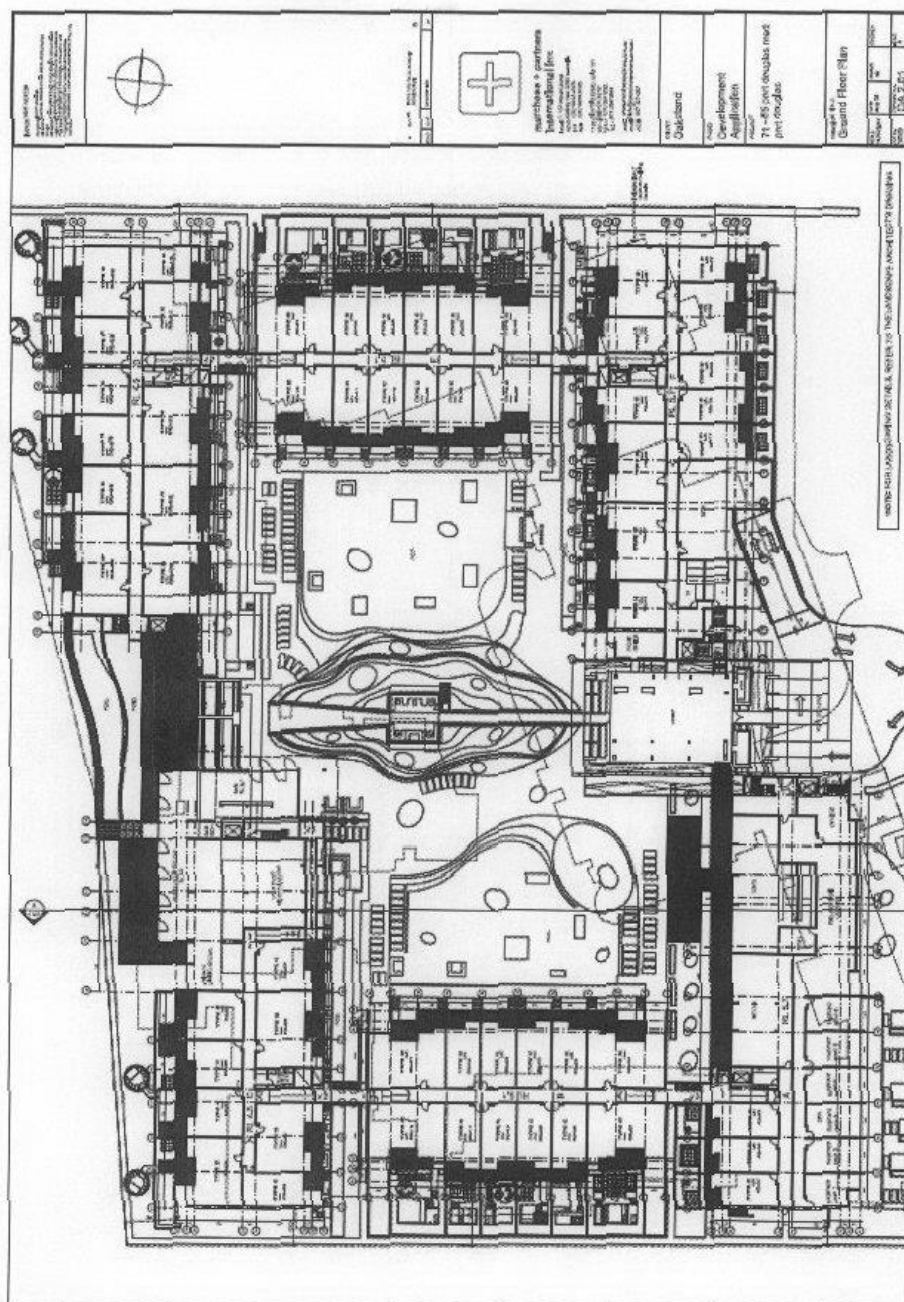


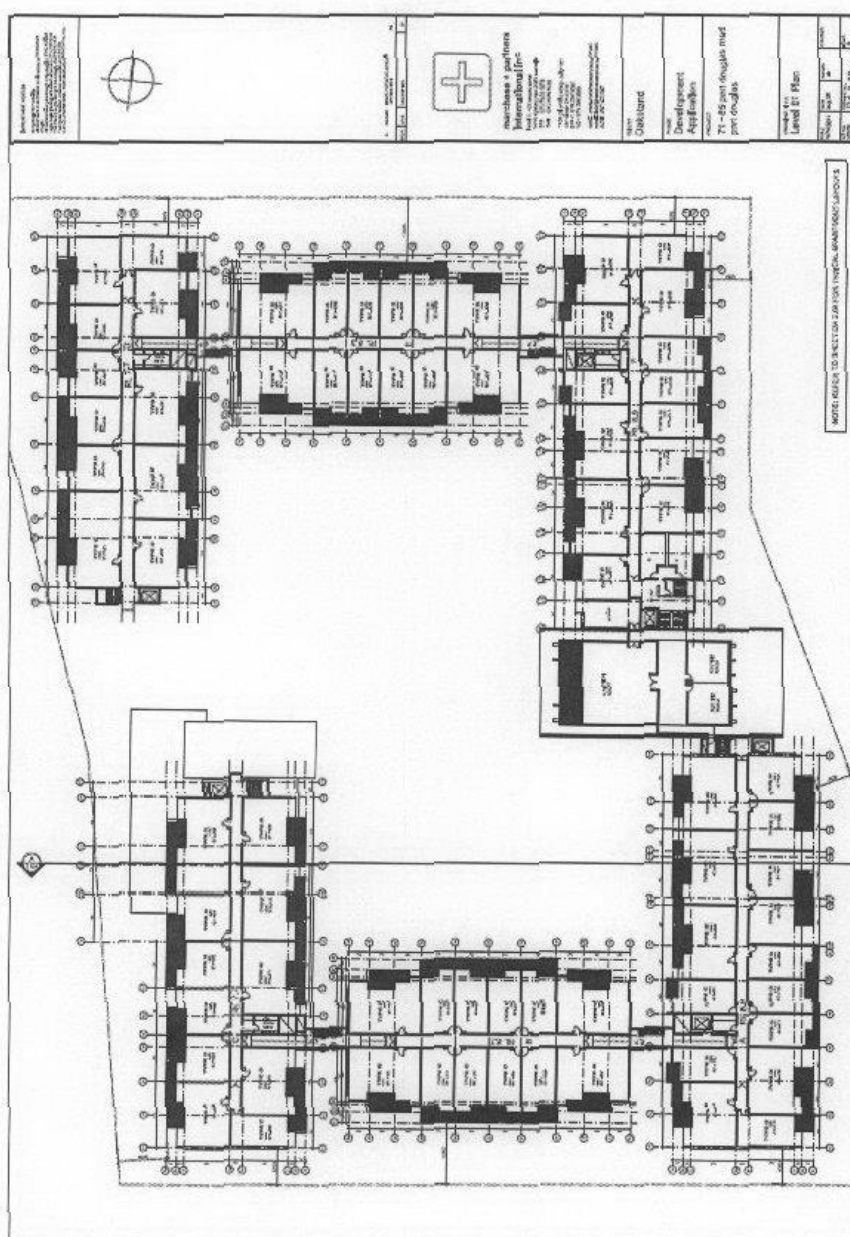


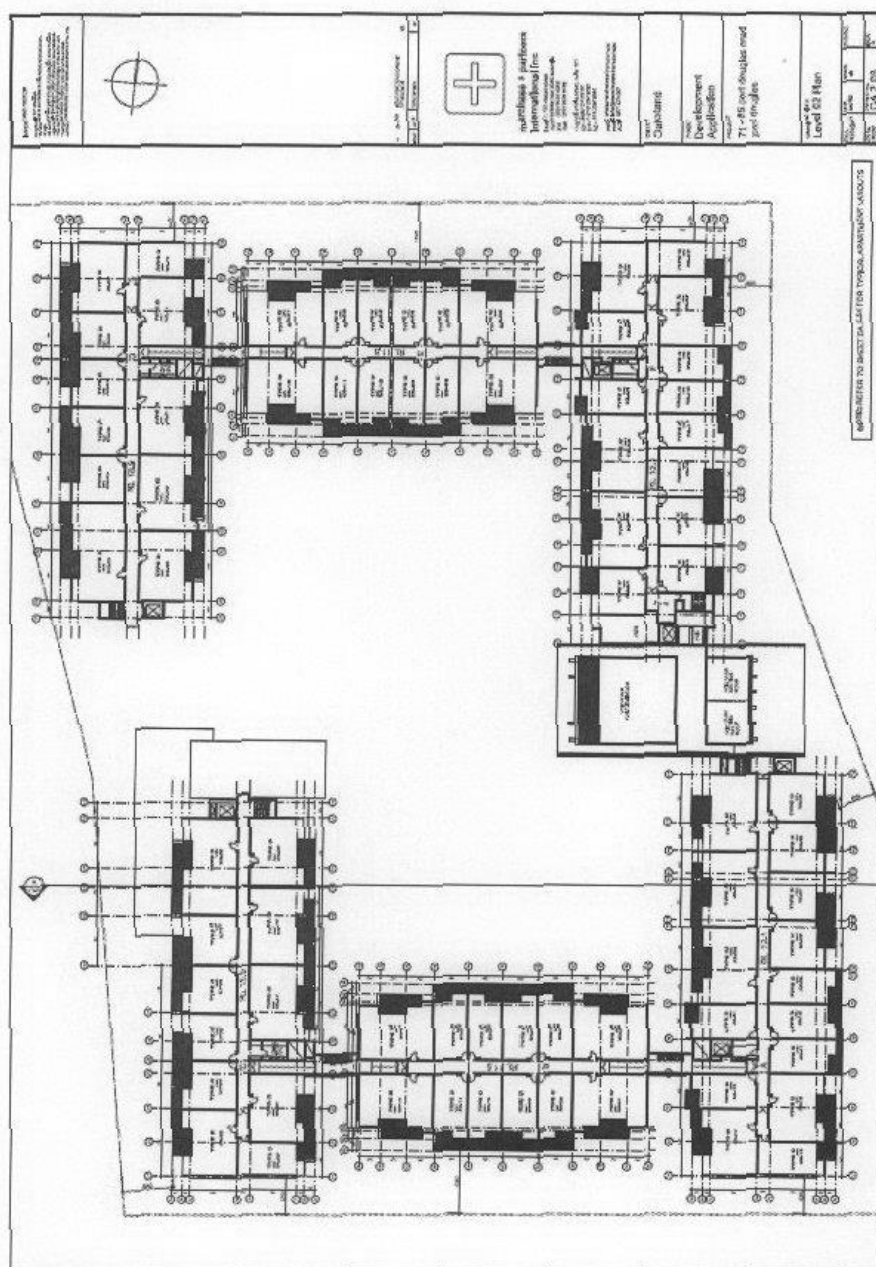


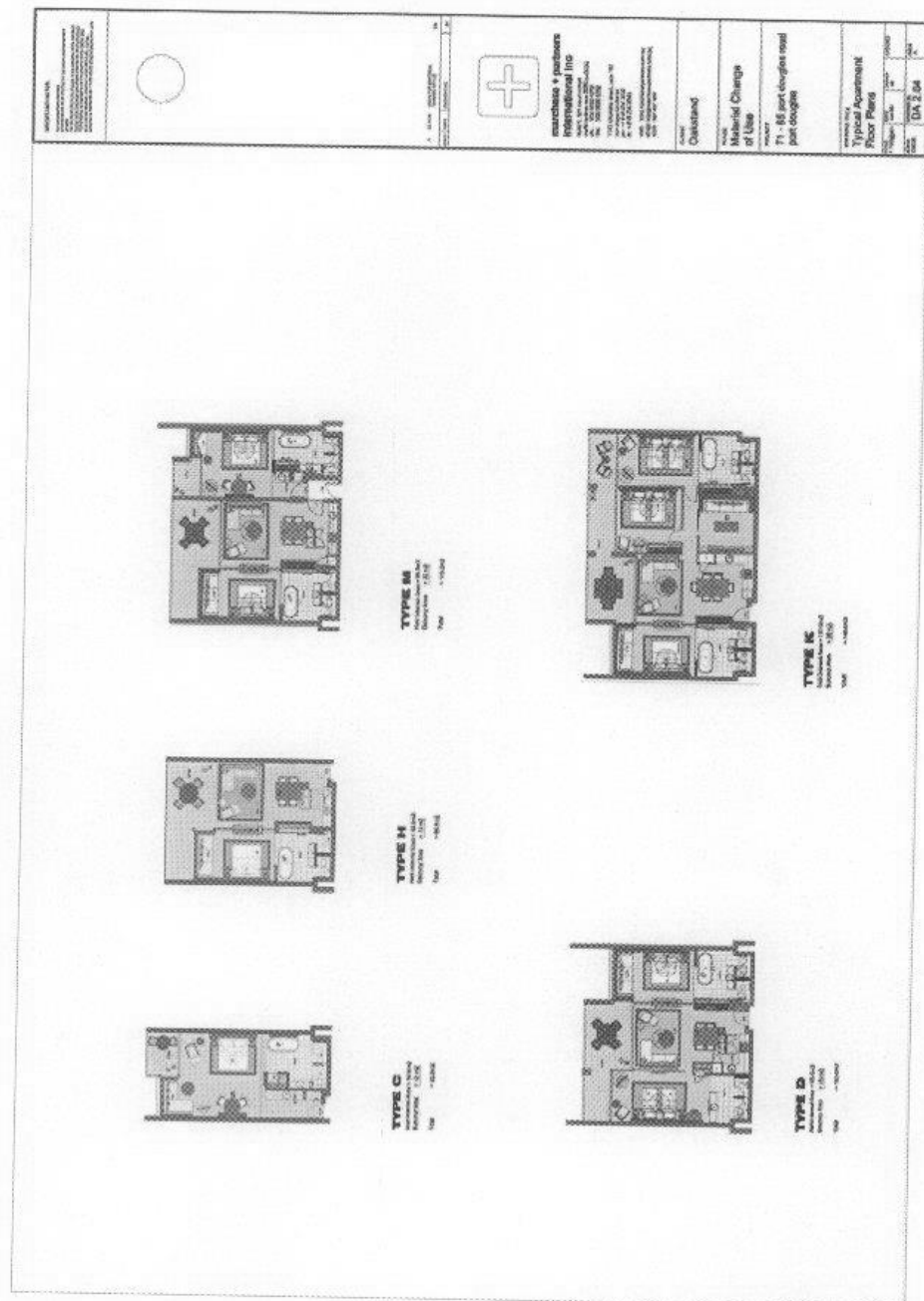
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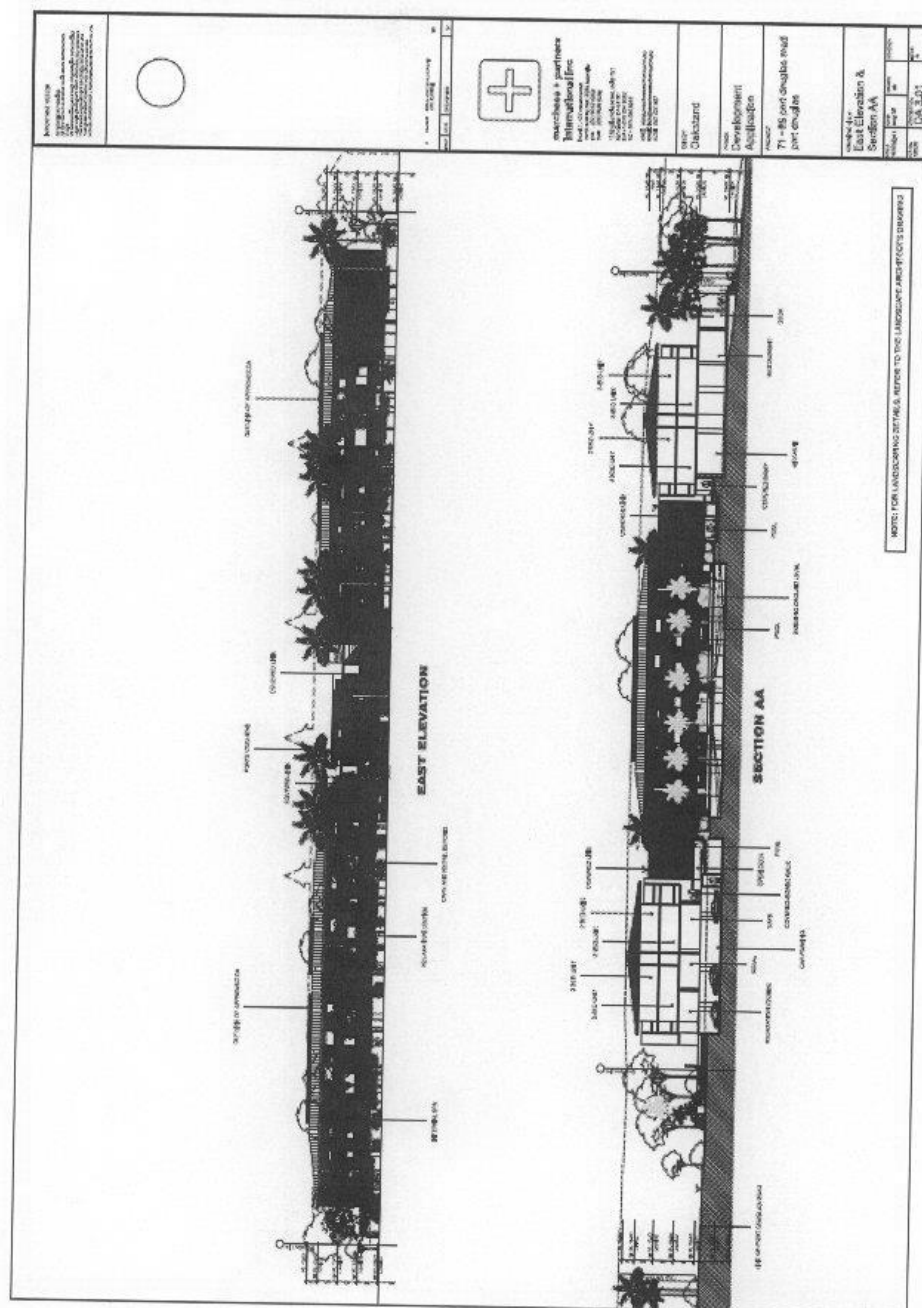
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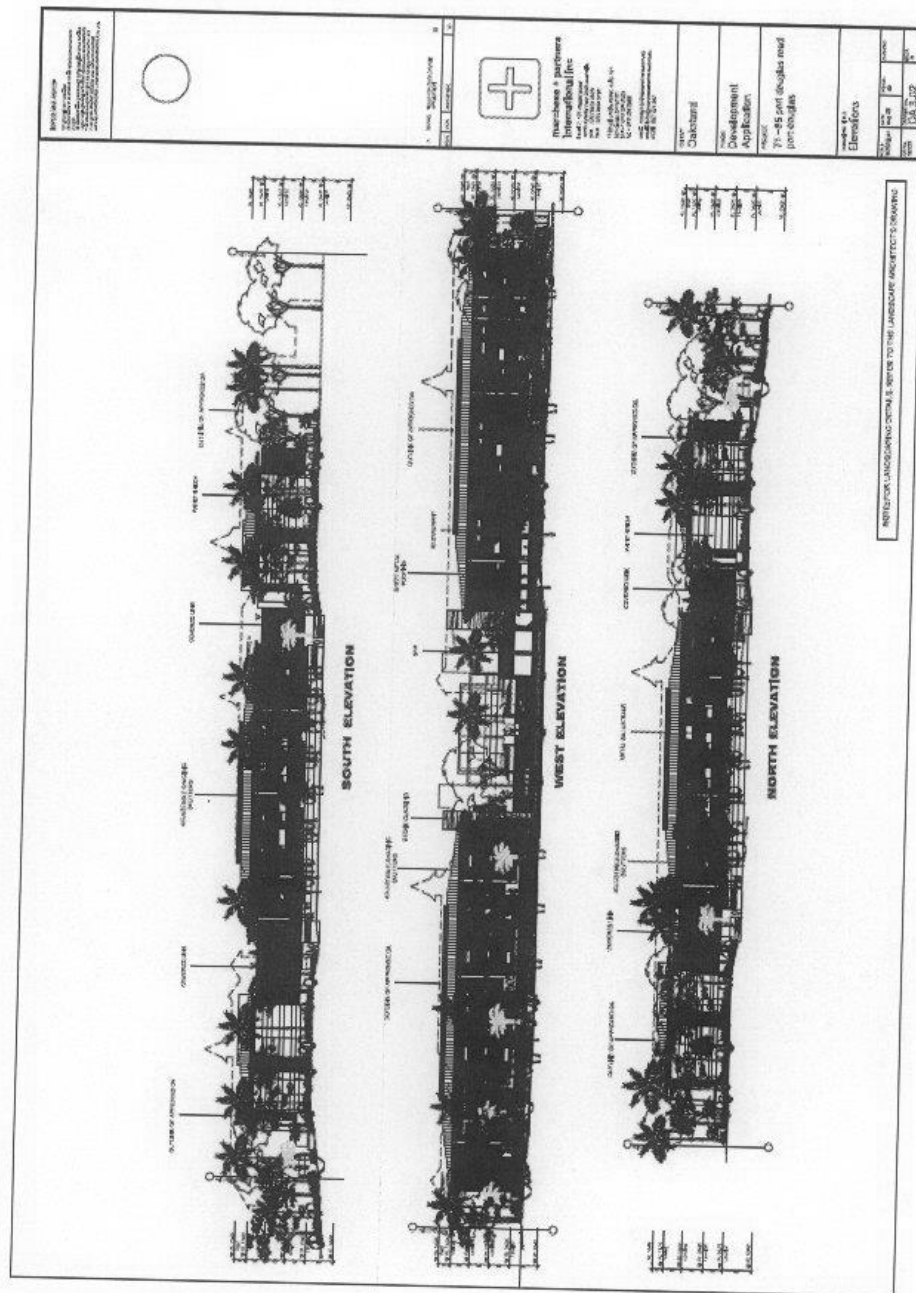


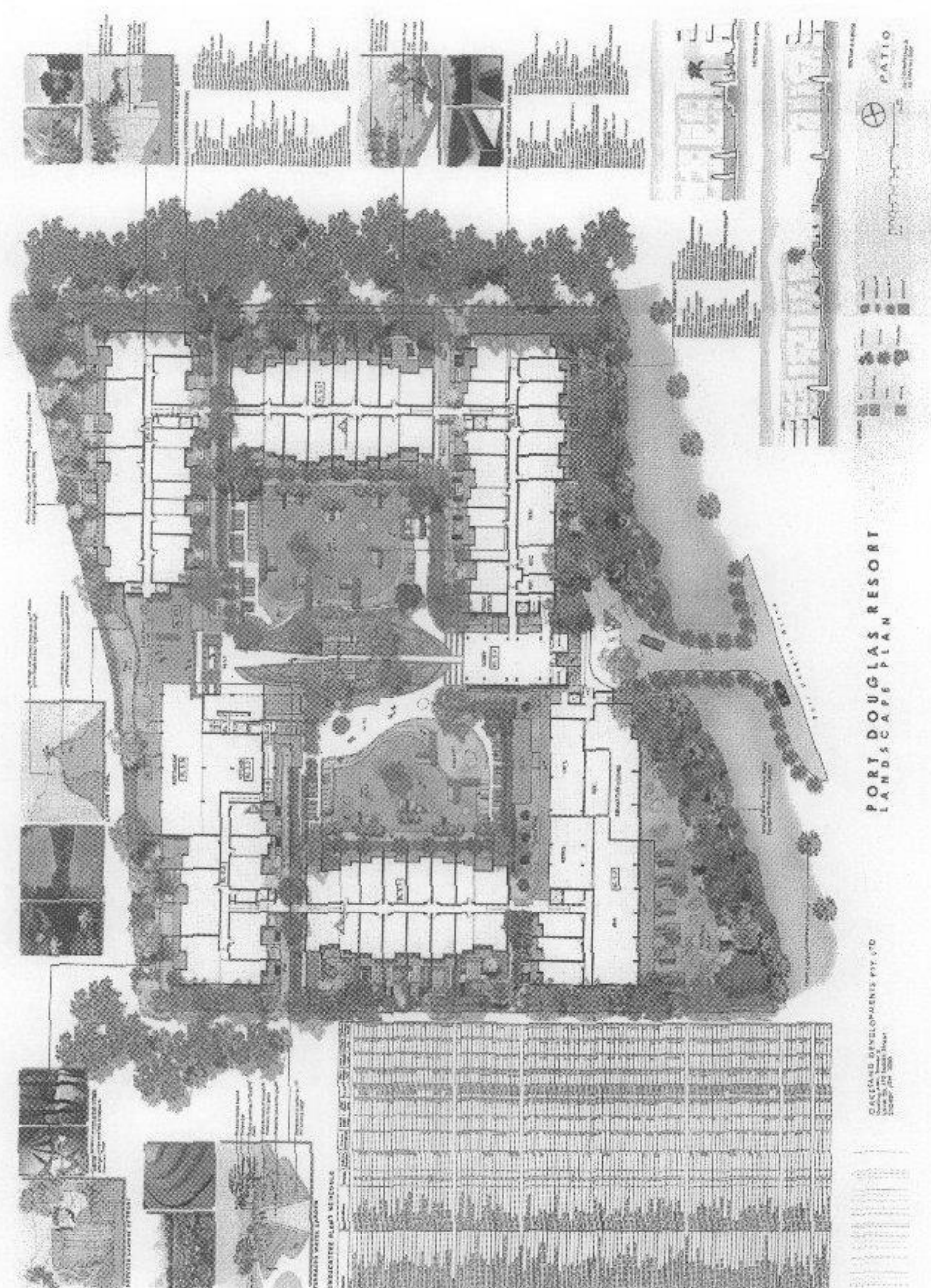
















## Referral Agencies Conditions



Department of Main Roads

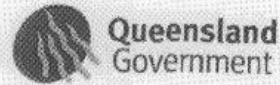
B/c

Oakland Developments Pty Ltd  
C/- Flanagan Consulting Group  
PO Box 5820  
Cairns Qld 4870

For your information.

A handwritten signature in dark ink, appearing to read "Peter McNamara".

Peter McNamara  
A/MANAGER (CORRIDOR MANAGEMENT) PENINSULA



Department of Main Roads

24 September 2007

Ms Julia Leu  
 A/ Chief Executive Officer  
 Douglas Shire Council  
 PO Box 357  
 Mossman, Qld 4873

Dear Ms Leu

Douglas Shire : Port Douglas Road  
 Situated at 71-85 Port Douglas Road, Port Douglas  
 Lot 1 on SP 150468, Parish of Salisbury  
 Oakstand Developments Pty Ltd  
 Proposed Material Change of Use (Holiday Accommodation (206 units) & ancillary uses)  
 Application  
 Referral Agency's Response (conditions apply)

I refer to the above application received at the Department 18 September 2007 requesting consideration of the above development.

#### A. CONDITIONS OF DEVELOPMENT

Pursuant to the *Integrated Planning Act 1997*, the Queensland Department of Main Roads, as a Concurrence Agency, has assessed the impact of the proposed development on the State-controlled road network and requires that Council include the following conditions of development for the subject application:

##### 1. Permitted Road Access Location

- (i) Access between the State-controlled road (i.e. Port Douglas Road) and the subject land shall be via the proposed access driveway located about 80 metres from the northern side boundary of the subject land, only. The existing access driveway shall be permanently closed.
- (ii) No additional direct access between the State-controlled road reserve (i.e. Port Douglas Road) and the subject land is permitted.

##### 2. Road Access Works

- (i) Road access works at the permitted road access location for the subject land are required and shall be constructed in accordance with:

North Queensland Region  
 Peninsula District  
 PO Box 6145  
 CAIRNS Queensland 4870  
 ABN 57 836 727 711

Our ref: 45/8504/102/2051 01A)  
 Your ref: MCUL 04107  
 Enquiries MALCOLM HARDY  
 Telephone +61 7 4050 5511  
 Facsimile +61 7 4050 5435

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- Department of Main Roads *Roads Planning and Design Manual (RP&DM)*, and
- current Department of Main Roads standards,

and to the Department's satisfaction.

A recent site inspection indicates the requirement for the provision of the following works within the State-controlled road reserve (i.e. Port Douglas Road):

- an auxiliary left turn treatment (AUL) from the south and a channelised right turn lane (CHRL) into the development from the north as per Figures 13.82 and 13.60 of *RP&DM*, and
- with geometry configured to accommodate a possible future additional 3.5 metre wide traffic lane in Port Douglas Road on the western side.

(ii) Design aspects that include or address the following:

- No port cochere structure extending forward of property boundary onto road reserve,
  - Port cochere vehicle turnaround designed to accommodate 12.5 metre long bus vehicle path i.e. no vehicles to reverse out of the access,
  - Removal of existing access driveway and regrassing,
  - 3.5 metre wide traffic lanes & turn lanes and 1.5 metre wide shoulders shall be provided on Port Douglas Road,
  - 1.5 metre bicycle lane to be provided between the through lane north and the auxiliary left turn lane,
  - Fill batter slopes to be 1:4 (Vert:Horiz),
  - Painted traffic islands shall be used between the traffic lanes, and these islands shall have raised reflective pavement markers (RRPM's) installed in accordance with the *Manual of Uniform Traffic Control Devices (MUTCD)*,
  - Semi-mountable kerbs, set back 1.5 metres from edge line, to be installed both sides of access,
  - Asphalt surfacing to be provided to entire area of new works,
  - Lighting shall be provided to V3 standard to ensure new works are appropriately lit. The completed lighting installation will need to comply with:
    - The Electrical Act,
    - Australian Standards (AS1158, 3000), and
    - Chapter 17 of the *RP&DM*.
- All works are to be certified by Registered Professional Engineer Queensland (RPEQ) (Electrical).
- All associated works are to be completed to the Department's satisfaction (eg services relocation, drainage (including extension of culverts), line marking (including RRPM's), and signage in accordance with the *MUTCD*).
  - Any necessary relocation of Council water mains, Telstra and electrical services are to be undertaken at no cost to DMR and works completed to the service provider's satisfaction. No existing water mains within 3.0 metres of the new sealed shoulder edge shall be permitted.
  - DMR will also require an environmental management plan (including MRS 11.51) to be submitted.

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- (iii) The applicant shall submit design drawings prepared by a suitably qualified RPEQ for approval to the Cairns office of the Department of Main Roads prior to works commencing within the State-controlled road reserve (i.e. Port Douglas Road).
- (iv) All required works shall be completed to the satisfaction of the Director-General of the Department of Main Roads prior to the commencement of the use on the subject land.

### 3. Road Traffic Noise & Visual Treatments

#### (a) Visual Amenity Works

The applicant/landowner shall provide landscaping along the frontage of the State-controlled road (i.e. Port Douglas Road/ Davidson Street).

The landscaping shall be designed installed and maintained such that existing State-controlled road infrastructure, noise ameliorative works, and on-site buildings and facilities, are screened as much as practicable from each other.

The species of plants used in the landscaping works shall be in accordance with Council's standards. If Council doesn't have standards, then the requirement is that they are native, low maintenance species which are effective at providing the necessary screening specified above and do not create a safety risk (i.e. no thorns or poisonous fruits or berries).

All landscaping shall be completed prior to the commencement of the approved use.

#### (b) Road Traffic Noise Ameliorative Works

##### (i) Location of Works

Road traffic noise ameliorative works shall be incorporated into the design of the development and the applicant/landowner shall have regard to the design criteria specified within AS3671. A noise barrier fence shall be located on the subject land and suitably screened from the State-controlled road (i.e. Port Douglas Road/ Davidson Street) with landscaping on the subject land. An acceptable alternative would be a noise barrier fence on the boundary of the subject land, with every second panel of the fence indented a minimum of one metre with landscaping of the indented areas. The fence would need to be suitably designed and painted to create a visually pleasing appearance to users of the State-controlled road reserve.

##### (ii) Maximum Noise Levels and Time Horizons

The following maximum road traffic noise free-field level must not be exceeded within 10 years of completion of the full development.

- External noise levels must not exceed 60 dB(A)  $L_{10}$  (18 hour), where existing levels measured at the local government deemed-to-comply dwelling setback distance are greater than 40 dB(A)  $L_{90}$  (8 hour) between 10pm and 6am; or
- External noise levels must not exceed 57 dB(A)  $L_{10}$  (18 hour), where existing levels measured at the local government deemed-to-comply



-4-

dwelling setback distance are less than or equal to 40 dB(A)  $L_{eq}$  (8 hour) between 10pm and 6am;

- Internal noise levels (i.e., within buildings above the ground floor level only) must not exceed the maximum noise levels specified in AS2107-2000.

External noise shall be defined as being all open space including verandas, balconies, pool areas and gardens.

(iii) Noise Testing

The following parameters shall be used to determine the required noise amelioration works:

- External noise levels shall be those predicted to occur on the subject land in areas likely to be frequently occupied by people for significant periods.
- Internal noise levels shall be determined in accordance with AS2107-2000.
- Noise monitoring shall be carried out in accordance with AS2702-1984.
- Noise predictions shall be carried out in accordance with Calculation of Road Traffic Noise (CRTN88) United Kingdom Department of Transport.

(iv) Road Traffic Noise Report

The applicant/landowner shall prepare a road traffic noise report, which demonstrates how the development is to be designed to conform to the above requirements. The report shall:

- predict the road traffic noise levels,
- identify the ameliorative works required within the subject land and the relevant buildings, and
- contain all relevant information and calculations upon which the conclusions of the report are based.

The applicant/landowner shall submit the report to the Cairns Office of the Department of Main Roads, and if necessary, shall amend the report until the Department of Main Roads considers that the report reflects the requirements of this condition. The report and any subsequent amendments shall be completed prior to the applicant/landowner seeking Council (or private certifier) approval for a development permit for carrying out building works on the subject land.

(v) Incorporation of Works into the Development

All noise ameliorative works required external to the building on the subject land shall be completed prior to commencement of the approved use of the building.

All noise ameliorative works required within the relevant building(s) shall be:

- incorporated into the building design(s) prior to the applicant/landowner seeking Council (or private certifier) approval for a development permit for carrying out building works on the subject land, and
- incorporated into the building(s) prior to commencement of the approved use of the building.

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**4. Advertising**

No advertising device for the proposed development is permitted within the State-controlled road reserve (i.e. Port Douglas Road).

**5. Parking**

When calculating carparking requirements associated with the proposed development no allowance shall be made for parking within the State-controlled road reserve (i.e. Port Douglas Road).

**Reasons**

The reasons and information used in the setting of conditions detailed above include:

- Department of Main Roads Access Policy;
- Department of Main Roads Involvement in Development Applications referrals and Assessment Guide; and
- Superseded Douglas Shire Planning Scheme.

**B. GENERAL DISCUSSION**

Council is requested to reflect the above conditions on its Rates Record, to ensure that the planning intentions of the conditions are secured.

This Department would appreciate a copy of Council's decision notice regarding the application.

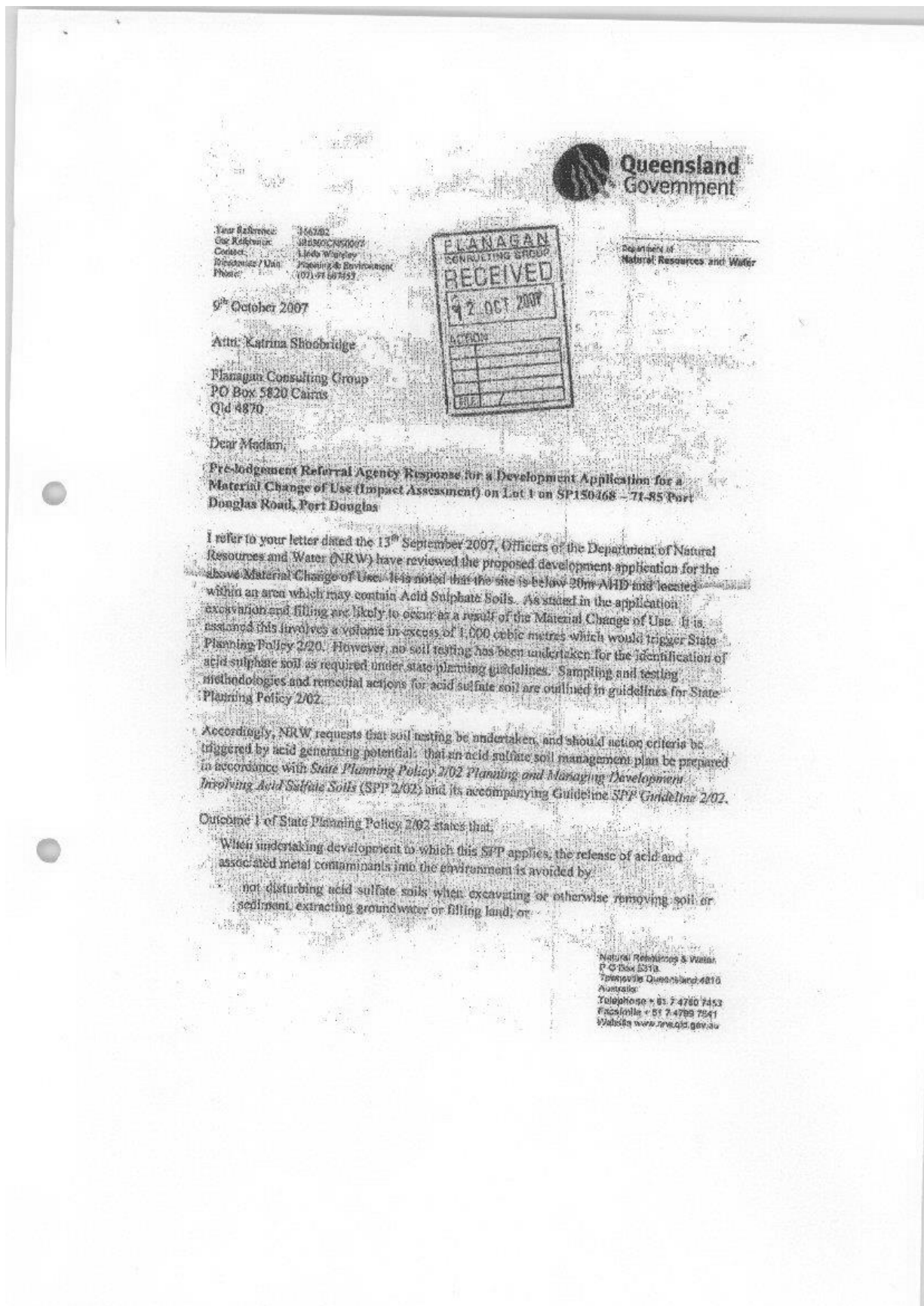
A copy of this letter has been sent to the applicant.

Yours sincerely



✓ Peter McNamara

A/MANAGER (CORRIDOR MANAGEMENT) PENINSULA





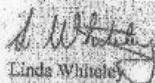
treating and, if required, undertaking ongoing management of any disturbed acid sulfate soils and drainage waters.

The *SPP Guideline 2002* requires that the information in an ASS investigation report and proposed management strategy be sufficiently detailed for the assessment manager and NRW to be satisfied that the development outcomes required by SPP 2002 will be met. The information should be provided in accordance with the relevant parts of the SPP Guideline and the associated appendices.

In order to provide advice to the Cairns Council, NRW considers that an ASS investigation should be carried out by a suitably qualified person over the area subject to this application, commencing with preliminary testing.

Should you have any questions about the above, please contact Linda Whiteley on telephone number (07) 47 607 453, quoting the above reference number.

Yours sincerely



Linda Whiteley  
Natural Resource Officer

22 August 2017

Enquiries: Jenny Elphinstone  
Phone: (07) 4099 9482  
Reference: MCUC 5148/2013 D#824722

Administration Office  
64 - 66 Front St Mossman  
P 07 4099 9444  
F 07 4098 2902

Oakstand Fund No 7 Pty Ltd (Tte)  
C/- Flanagan Consulting Group  
PO Box 5820  
**CAIRNS QLD 4870**

Attention Ms Erin Campbell

Dear Madam

**NOTICE OF DECISION – MATERIAL CHANGE OF USE  
FOR 71-85 PORT DOUGLAS ROAD PORT DOUGLAS LOT 1 ON SP150468  
(GIVEN UNDER SECTIONS 83 & 87 *PLANNING ACT 2016*)**

Douglas Shire Council advises that the development applications described below have been approved at Council's Ordinary Meeting held on 22 August 2017.

**1. Applicant details**

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Applicant name: Oakstand Fund No 7 Pty Ltd (Tte)

**2. Site details**

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Lot on plan: Lot 1 on SP150468

Local government area: Douglas Shire Council

**3. Application descriptions**

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Applications: A. Minor change to the development approval to the Development Permit for a Material Change of Use for 79 Multiple Dwellings (Tourist) {of which, 47 were able to be used as Multiple Dwelling (Tourist) and Accommodation Premises (Motel) in a dual key arrangement and 3 are able to be temporarily used as a Display Home (Multiple Dwelling)}, 127 Accommodation Premises (Motel) and ancillary uses including Gym, Spa, Relaxation Lounge, Retail, Restaurant, Café, Bar, Function Centre, Meeting

Rooms and Administration Facilities, for the inclusion of the following condition,

39. Minimum Fill and Floor Levels For Climate Change

All habitable floor levels must be located above 3.87m AHD as identified in the BMT-WBM Cairns Region Storm Tide Inundation Study, Final Report and Mapping January 2013 which identified the 1% AEP storm tide event as 3.87m AHD having regard to a 0.8m sea level rise and intensity of cyclonic action.

AND

- B. Extend the approval period for a further four years for the Development Permit for a Material Change of Use for 79 Multiple Dwellings (Tourist) {of which, 47 were able to be used as Multiple Dwelling (Tourist) and Accommodation Premises (Motel) in a dual key arrangement and 3 are able to be temporarily used as a Display Home (Multiple Dwelling)}, 127 Accommodation Premises (Motel) and ancillary uses including Gym, Spa, Relaxation Lounge, Retail, Restaurant, Café, Bar, Function Centre, Meeting Rooms and Administration Facilities.

**4. Description of assessment benchmarks – for application description Part A only**

Benchmarks Applying for the Minor Change	Benchmark Reference	Compliance
State Planning Policy	Consideration of 0.8m sea level rise	Addressed through proposed condition
Current Douglas Shire Planning Scheme	None Applicable	
Proposed Douglas Shire Planning Scheme	Storm Tide and Flooding Overlay <ul style="list-style-type: none"> <li>Consideration of Storm tide inundation</li> </ul>	Addressed through proposed condition

Note - no change to referral agency conditions, minor change only.

**5. Extent change application required impact assessment – for application description Part A only**

None.

**6. Submissions**

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There were no submissions received against the original application. The development is code assessable against the current and proposed planning schemes.

**7. Reasons for decision – for application description Part A only**

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- a. The minor change required an approval under the Planning Act 2016.
- b. The application for a minor change was properly made.
- c. The application contained a report which Council reviewed together with Council's own investigation in making the assessment.
- d. The proposed additional Condition 39 ensures the development satisfies the State Planning requirement for development to meet a minimum standard of 0.8m sea level rise.

**8. Reasons for approval of change application despite the development not complying with any or all of the benchmarks - – for application description Part A only**

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Not applicable.

**9. Matters prescribed by a regulation - – for application description Part A only**

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Not applicable.

A Decision Notice for the applications is attached.

Please quote Council's application number MCUI 5148/2013 in all subsequent correspondence relating to this development application. Should you require any clarification regarding this please contact Jenny Elphinstone on telephone 07 4099 9444.

Yours faithfully



TRACEY COUCH  
A/Manager Sustainable Communities

cc. Department of Infrastructure, Local Government and Planning, PO Box 2358, Cairns Q 4870

encl:      Decision Notice  
              Schedule 1 – Original Approval  
              Schedule 2 – *Planning Act 2016* appeal provisions

**DOUGLAS SHIRE COUNCIL**  
**DECISION NOTICE — APPROVAL TO CHANGE THE DEVELOPMENT PERMIT AND TO**  
**EXTEND THE APPROVAL PERIOD**  
**(GIVEN UNDER SECTIONS 81, 83 & 87 PLANNING ACT 2016)**

**1. Applicant's details**

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Name: Oakstand Fund No 7 Pty Ltd (Tte)

Postal Address: C/- Flanagan Consulting Group  
PO Box 5820  
CAIRNS QLD 4870  
  
Attention Ms Erin Campbell

Email: erin@flanaganconsulting.com.au

Phone No: (07) 4724 5737

**2. Location details**

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Street Address: 71-85 Port Douglas Road, Port Douglas

Real Property Description: Lot 1 on SP150468

Local Government Area: Douglas Shire Council

**3. Details of proposed development**

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For the development approval dated 30 January 2008 for the Material Change of Use (Impact) for 79 Multiple Dwellings (Tourist) {of which, 47 were able to be used as Multiple Dwelling (Tourist) and Accommodation Premises (Motel) in a dual key arrangement and 3 are able to be temporarily used as a Display Home (Multiple Dwelling)}, 127 Accommodation Premises (Motel) and ancillary uses including Gym, Spa, Relaxation Lounge, Retail, Restaurant, Café, Bar, Function Centre, Meeting Rooms and Administration Facilities:

- A. an application for a minor change to the development approval lodged on 9 August 2017; and
- B. an application to extend the period of approval lodged on 25 July 2017.

**4. Decisions**

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Date of decisions: 22 August 2017.

Decision details: A. The following condition is included in the Amended Negotiated Decision Notice, for the Development Permit for a Material Change of Use for 79 Multiple Dwellings (Tourist) {of which, 47 were able to be used as Multiple Dwelling (Tourist) and Accommodation Premises (Motel) in a dual key arrangement and 3 are able to be temporarily used as a Display Home (Multiple Dwelling)}, 127 Accommodation Premises (Motel) and ancillary uses including Gym, Spa, Relaxation Lounge, Retail, Restaurant, Café, Bar, Function Centre, Meeting Rooms and Administration Facilities over land described as Lot 1 on SP150468, located at 71-85 Port Douglas whereby:

1. the following condition is included in the Amended Negotiated Decision Notice, Assessment Manager Conditions:

39. Minimum Fill and Floor Levels For Climate Change

All habitable floor levels must be located above 3.87m AHD as identified in the BMT-WBM Cairns Region Storm Tide Inundation Study, Final Report and Mapping January 2013 which identified the 1% AEP storm tide event as 3.87m AHD having regard to a 0.8m sea level rise and intensity of cyclonic action;

AND

2. all other requirements of the Decision Notice dated 30 January 2008 remain unchanged;

- B. The request for an extension approval to the Development Permit for a Material Change of use for 79 Multiple Dwellings (Tourist) {of which 47 were able to be used as Multiple Dwelling (Tourist) and Accommodation Premises (Motel) in a dual key arrangement and 3 are able to be temporarily used as Display Home (Multiple Dwelling)}, 127 Accommodation Premises (Motel) and ancillary uses including Gym, Spa, Relaxation Lounge, Retail, Restaurant, Café, Bar, Function Centre, Meeting Rooms and Administration Facilities over land described as Lot 1 on SP150468, located at 71-85 Port Douglas for a further four years up to and including 30 January 2022.

## 5. Original Development Permit

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A copy of the original Development Permit is included in Schedule 1.

## 6. Further Development Permits and other Approvals

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

- All Building Work
- All Operational Work

Separate permits are required for the following:

- All Plumbing and Drainage Work

## 7. Properly made submissions

None to the original application. Development is now code assessable development – submissions not applicable.

## 8. Currency period for the approval

The period of approval for this development permit is extended up to and including 30 January 2022 unless the use is commenced before this date. Where lawfully commenced on or before the 30 January 2020 the approval has effect.

## 9. Concurrence and Referral Agencies

**Development application - Part A only** – no requirement to refer application for a minor change to the referral agency.

**Development application - Part B only** – no requirement to refer application to extend approval period. A copy of decision notice to be issued to the referral agency.

For an application involving	Name of referral agency	Advice or concurrence agency	Agency Address
Material change of use of a premises within 25m of a State Transport Corridor, Schedule 10, Table 4, <i>Planning Regulation 2017</i> .	Chief Executive Officer	Concurrence	Department of Infrastructure, Local Government and Planning PO Box 2358 Cairns QLD 4870

## 10. Rights of appeal

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The rights of applicants to appeal to a tribunal or the Planning and Environment Court against decisions 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*).

A copy of the relevant appeal provisions is included in Schedule 2.

**END OF DECISION NOTICE**



**ENQUIRIES:** Leon Doutre  
**PHONE:** (07) 4044 3243  
**FAX:** (07) 4044 3836  
**YOUR REF:** L-KS0643  
**OUR REF:** 8/37/57 (2452347)

20 January 2010

Oakstand Fund No 7 Pty Ltd (Tte)  
C/- Flanagan Consulting Group  
PO Box 5820  
**CAIRNS QLD 4870**

Dear Sir/Madam

**DECISION NOTICE UNDER S802 SUSTAINABLE PLANNING ACT 2009:**  
**DEVELOPMENT APPLICATION FOR**  
**71-85 PORT DOUGLAS ROAD, PORT DOUGLAS**

With reference to the abovementioned Development Application, please find attached the relevant Decision Notice which was determined by Council at the Ordinary Meeting held on 20 January 2010.

The notice includes extracts from the Act with respect to making representations about conditions, negotiated decisions, suspension of the appeal period, and lodging an Appeal.

Should you have any enquires in relation to this Decision Notice, please contact Leon Doutre of Council's Development Assessment team on telephone number (07) 4044 3243.

Yours faithfully

Simon Clarke  
**Manager Development Assessment**

**Att**

**APPLICANT DETAILS**

Oakstand Fund No 7 Pty Ltd (Tte)  
C/-Flanagan Consulting Group  
PO Box 5820  
CAIRNS QLD 4870

**ADDRESS**

71-85 Port Douglas Road, Port Douglas

**REAL PROPERTY DESCRIPTION**

Lot 1 on SP150468

**PROPOSAL**

Advertising Device

**DECISION**

Approved subject to conditions (refer to approval package below).  
This Decision was not made under Section 331 Sustainable Planning Act 2009  
(Deemed Approval).

**DECISION DATE**

20 January 2010

**TYPE**

Operational Work (Development Permit)

**REFERRAL AGENCIES**

None Applicable

**SUBMISSIONS**

There were no submissions for this application.

**FURTHER DEVELOPMENT PERMITS REQUIRED**

There are no further Development Permits required.

**CODES TO COMPLY WITH FOR SELF-ASSESSABLE DEVELOPMENT**

None

**DOES THE ASSESSMENT MANAGER CONSIDER THE APPLICATION TO BE IN CONFLICT WITH APPLICABLE CODES, PLANNING SCHEME, STATE PLANNING POLICIES OR PRIORITY INFRASTRUCTURE PLAN (IF YES, INCLUDE STATEMENT OF REASONS)**

Not in conflict

**APPROVED DRAWING(S) AND/OR DOCUMENT(S)**

The term 'approved drawing(s) and/or document(s)' or other similar expressions means:

Drawing or Document	Reference	Date
Site Plan	Flanagan 1667-SK01	13 October 2009
Advertising Content	Not Referenced	Not Dated

**Assessment Manager Conditions**

1. Carry out the approved development generally in accordance with the approved drawing(s) and/or document(s), and in accordance with:-
  - a. The specifications, facts and circumstances as set out in the application submitted to Council;
  - b. To ensure 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

Except where modified by these conditions of approval

2. That the sign shall be placed on the existing fence and shall be no higher than the existing fence.

**Timing of Effect**

3. This approval shall lapse and cease to have effect in two (2) years (i.e. up to and including 20 January 2012), unless otherwise extended by Council. At, or prior to this time, the applicant is responsible for the complete removal of all the components of the advertising sign.

**Illumination**

4. The sign is not to be illuminated at night.

**Landscaping**

5. Any landscaping damaged as a consequence of establishing the sign shall be reinstated. Landscaping should seek to complement and enhance the character of the streetscape.

**ADVICE**

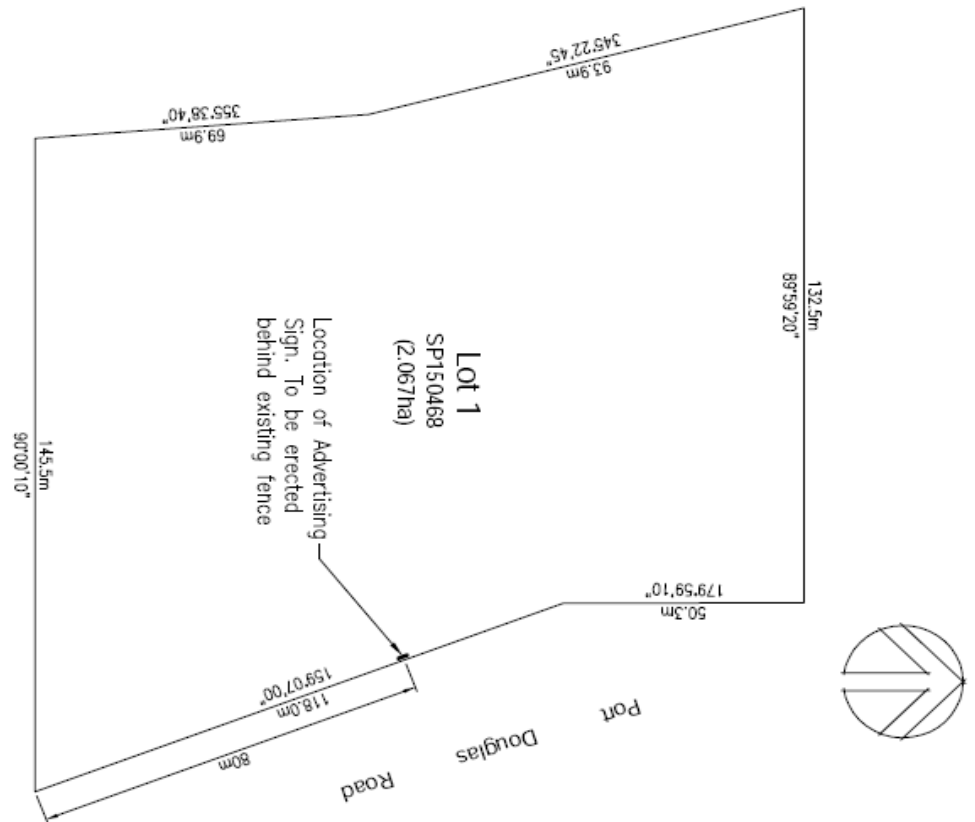
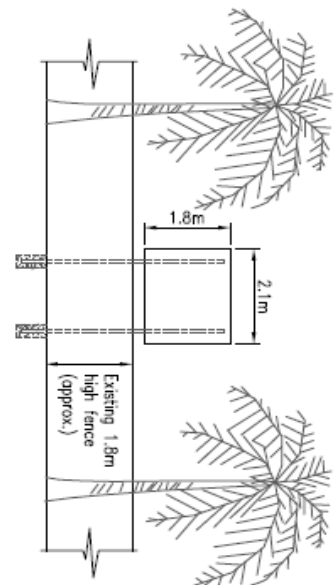
1. This approval, granted under the provisions of the *Sustainable Planning Act 2009*, shall lapse two (2) years from the day the approval takes effect in accordance with the provisions of Section 802 of the *Sustainable Planning Act 2009* and 3.5.21 of the *Integrated Planning Act 1997*.
2. The applicant/owner is advised that this approval does not approve the construction of the building works. The applicant will be required to obtain a Development Permit for Building Work in order for construction to commence.
3. All building site managers must take all action necessary to ensure building materials and / or machinery on construction sites are secured immediately following the first cyclone watch and that relevant emergency telephone contacts are provided to Council Officers, prior to commencement of works.
4. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.
5. For information relating to the *Sustainable Planning Act 2009* and the *Integrated Planning Act 1997* log on to [www.dip.qld.gov.au](http://www.dip.qld.gov.au). To access Council's Development Manual, Local Laws and other applicable Policies log on to [www.cairns.qld.gov.au](http://www.cairns.qld.gov.au).

**RIGHTS OF APPEAL**

Attached

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**End of Decision Notice**

**APPENDIX 1 APPROVED PLAN(S) & DOCUMENT(S)****PLAN  
1:1000****ELEVATION  
1:100**

 <b>FLANNAGAN</b> CONSULTING GROUP	Oakland Property Group	
	71-85 Port Douglas Road	
	Lot 1 on SP150468 Proposed	
	Location of Advertising Sign	
<b>1667-SK01</b>		As Shown At Full Size
Acadric, 1667-SK01		13 October 2009





