

28 March 2019

Enquiries: Daniel Lamond
Our Ref: MCUI2454/2017 (896208)
Your Ref: 34073-001-02

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

Paynter Dixon Qld
C/- Brazier Motti Pty Ltd
PO Box 1185
CAIRNS QLD 4870

Dear Sir/Madam

Decision Notice

Material Change of Use for Extension to Existing Premises (Restaurant) 7 Ashford Avenue, Port Douglas

Land Described as LOT: 126 PT: E TYP: SR PLN: 868, LOT: 5 PT: E SP: 288958

Please find attached the Decision Notice for the above-mentioned development application.

Please quote Council's application number: MCUI2454/2017 in all subsequent correspondence relating to this development application. Should you require any clarification regarding this, please contact Daniel Lamond on telephone 07 4099 9456.

Yours faithfully

PAUL HOYE
Manager Environment and Planning

encl.

- Decision Notice
- Approved Plans
- Adopted Infrastructure Charges Notice

DECISION NOTICE
APPROVAL (WITH CONDITIONS)
(GIVEN UNDER SECTION 63 OF THE PLANNING ACT 2016)

Thank you for your development application detailed below which was properly made on 22 December 2017. Please be aware that Douglas Shire Council has assessed your application and decided it as follows:

1. Applicant's details

Name: Paynter Dixon Qld
Postal Address: C/- Brazier Motti Pty Ltd
PO Box 1185
CAIRNS QLD 4870

2. Location details

Street Address: 7 Ashford Avenue PORT DOUGLAS
Real Property Description: LOT: 126 PT: E TYP: SR PLN: 868, LOT: 5 PT: E SP: 288958
Local Government Area: Douglas Shire Council

3. Details of proposed development

Material Change of Use- Extension to Existing Premises (Restaurant)

4. Decision

Date of decision: 26 March 2019

Decision details: Approved in full with conditions. These conditions are set out in Schedule 1 and are clearly identified to indicate whether the assessment manager or a concurrence agency imposed them.

5. Approved plans and specifications

Copies of the following plans, specifications and/or drawings are enclosed.

Drawing or Document	Reference	Date
Cover Sheet	PDCC0103. Drawing No. 00-00, Revision A.	19 December 2017
Ground Floor Plan	PDCC0103. Drawing No. 02-01, Revision A.	19 December 2017
Elevations	PDCC0103. Drawing No. 04-01, Revision A.	19 December 2017
First Floor Plan	PDCC0103. Drawing No. 02-02, Revision C.	19 December 2017

6. Conditions

This approval is subject to the conditions in Schedule 1. These conditions are clearly identified to indicate whether the assessment manager or concurrence agency imposed them.

7. Further development permits

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

- All Building Work
- All Plumbing and Drainage Work

8. Properly made submissions

There were no properly made submissions for this application.

9. Currency period for the approval

This development approval will lapse at the end of the period set out in section 85 of *Planning Act 2016*. This is a six (6) year period from the date the approval takes effect.

10. Rights of appeal

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 are included in Schedule 2.

SCHEDULE 1 – CONDITIONS AND ADVICE

A—CONDITIONS IMPOSED BY THE ASSESSMENT MANAGER

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. The following conditions of approval and the requirements of Council's Planning Scheme and the FNQROC Development Manual.

Except where modified by these conditions of approval

Timing of Effect

2. The conditions of the Development Permit must be effected prior to Commencement of Use, except where specified otherwise in these conditions of approval.

Air-Conditioning Screens

3. Air-conditioning units located above ground level and visible from external properties and the street must be screened with appropriate materials to improve the appearance of the building. Such screening must be completed prior to the Commencement of Use.

Damage to Council Infrastructure

4. In the event that any part of Council's existing sewer, water or road infrastructure is damaged as a result of construction activities occurring on the site, including but not limited to mobilisation of heavy construction equipment, the applicant/owner must notify Council immediately of the affected infrastructure and have it repaired or replaced at the Lessee's cost, prior to the Commencement of Use.

Construction Access Details

5. Provide a detailed submission demonstrating how practical access for the construction of the proposed works will be achieved, noting the proximity of the public boat ramp to the site. Note that public access to the boat ramp should not be inhibited by construction activities. The submission is to be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Building Works.

State Planning Assessment

6. Provide confirmation from the State Assessment and Referral Agency that the proposed works do not trigger tidal works or prescribed tidal works assessment prior to the issue of a Development Permit for Building Works.

Delivery Vehicles

7. Delivery vehicles must not be parked on land where they are to interfere with the function of the public boat ramp. Delivery vehicles must be parked entirely within Lease F on SR697.

Storage of Machinery and Plant

8. The storage of any machinery, material and vehicles must not cause a nuisance to surrounding properties, to the satisfaction of the Chief Executive Officer.

Lawful Point of Discharge

9. All stormwater from the property must be directed to a lawful point of discharge such that it does not adversely affect surrounding properties or properties downstream from the development, all to the requirements and satisfaction of the Chief Executive Officer.

ADVICE

1. This approval, granted under the provisions of the *Planning Act 2016*, shall lapse six (6) years from the day the approval takes effect in accordance with the *Planning Act 2016*.
2. 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 potential cyclone warning and that relevant emergency telephone contacts are provided to Council officers, prior to commencement of works.
3. This approval does not negate the requirement for compliance with all other relevant Local Laws and statutory requirements.
4. For information relating to the *Planning Act 2016* log on to www.dsdmip.qld.gov.au. To access the FNQROC Development Manual, Local Laws and other applicable Policies log on to www.dsc.qld.gov.au.

B. Reasons for Decision

The reasons for this decision are:

1. Sections 60, 62 and 63 of the *Planning Act 2016*:
 - a. the approved plan(s) and document(s) as per A above;
 - b. the Conditions and Advices as per B above;
 - c. the development is an extension of an existing lawfully established use;
 - d. to ensure compliance with the *Planning Act 2016*.
2. Findings on material questions of fact:
 - a. the development application was properly lodged to the Douglas Shire Council on 22 December 2017 under section 51 of the *Planning Act 2016* and Part 1 of the Development Assessment Rules;
 - b. the application was properly publicly notified;
 - c. the development application contained information from the applicant which Council reviewed together with Council's own investigation of assessment against the State Planning Policy and the 2006 Douglas Shire Planning Scheme in making its assessment manager decision. Consideration was given to the 2018 Douglas Shire Planning Scheme.
3. Evidence or other material on which findings were based:
 - a. the development triggered assessable development under the Assessment Table associated with the Community and Recreation Facilities Zone Code;

- b. Council undertook an assessment in accordance with the provisions of sections 60, 62 and 63 of the *Planning Act 2016*; and
- c. the applicant's reasons have been considered and the following findings are made:
 - i. Subject to conditions the development satisfactorily meets the Councils intent for the land.

C. Reasons Development Application was approved despite non-compliance with the relevant benchmarks from the 2006 Douglas Shire Planning Scheme:

Assessment Benchmark

(1) The proposal conflicts with the Overall Outcomes of the Community and Recreational Facilities Planning Area Code, namely;

- *accommodate community facilities such as schools, churches, community centres, State and Local Government facilities and major public utility depots or operations which are important to a locality or to the Shire, in locations which are convenient and accessible to the communities which the facilities serve;*
- *ensure that any expansion or redevelopment of community facilities is in keeping with the purpose and character of the facility and reflect contemporary community needs;*
- *ensure that the use of recreational or club facilities does not affect the amenity of adjacent areas, particularly residential or environmental areas, through the sensitive design and siting of facilities and through buffering of facilities from sensitive land uses;*

Response

The development involves adding an additional floor to an existing building currently approved and operating as a Restaurant. The zoning of the land in the 2006 Planning Scheme does not align with the lawfully established use of the site.

Assessment Benchmark

(2) The proposal conflicts with the overall outcomes of the Vehicle Parking and Access Code, namely;

- *sufficient vehicle parking is provided on-Site to cater for all types of vehicular traffic accessing and parking on the Site, including staff, guests, patrons, residents and short term delivery vehicles;*
- *sufficient bicycle parking and end of trip facilities are provided on-Site to cater for customers and staff.*
- *the provision of on-Site parking, loading/unloading facilities and the provision of Access to the Site, do not impact on the efficient function of the street network or on the area in which the development is located;*

Response

The development is within walking distance of the commercial centre of Port Douglas. Visitors to the commercial centre of Port Douglas often park in one location then walk from premises to premises as part of what is considered to be the regular modal transport pattern.

Visitation to the Club is likely to be coupled with visitation to other premises in close proximity so the demand on parking supply is decreased. The townscape is walkable and sealed. The development is considered to be able to achieve a sound outcome where the efficient function of the surrounding street network and parking supply is not compromised.

In addition, Council is currently exploring a number of options to provide designated car parking area/s proximate to the Village of Port Douglas which in turn will assist all businesses and visitors to the village.

Assessment Benchmark

(3) The proposal conflicts with Performance Criteria P1 of the Vehicle Parking and Access Code.

P1- Sufficient parking spaces are provided on the Site to accommodate the amount and type of vehicle traffic expected to be generated by the use or uses of the Site, having particular regard to:

- *the desired character of the area in which the Site is located;*
- *the nature of the particular use and its specific characteristics and scale;*
- *the number of employees and the likely number of visitors to the Site;*
- *the level of local accessibility;*
- *the nature and frequency of any public transport serving the area;*
- *whether or not the use involves the retention of an existing Building and the previous requirements for car parking for the Building;*
- *whether or not the use involves an identified Valuable Conservation Feature and Valuable Site; and*
- *whether or not the use involves the retention of significant vegetation.*

Response

Vehicle traffic expected to be generated by the development is minimal as patrons will generally walk to the premises after centrally parking or arriving at the commercial centre of Port Douglas via numerous modes of transport.

A significant portion of the patronage would be from tourists who holiday in accommodation close to the commercial centre of Port Douglas alleviating pressure on parking spaces. The development is not considered to be to the detriment of the character or amenity of the area.

In addition, Council is currently exploring a number of options to provide designated car parking area/s proximate to the Village of Port Douglas which in turn will assist all businesses and visitors to the village.

D. Infrastructure Charges

That Council resolves to apply the infrastructure charges as detailed in Attachment 2- Infrastructure Charges Schedule.

SCHEDULE 2 – PLANNING ACT EXTRACT ON APPEAL RIGHTS

CHAPTER 6, PART 1 APPEAL RIGHTS

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states—
 - (a) matters that may be appealed to—
 - (i) either a tribunal or the P&E Court; or
 - (ii) only a tribunal; or
 - (iii) only the P&E Court; and
 - (b) the person—
 - (i) who may appeal a matter (the appellant); and
 - (ii) who is a respondent in an appeal of the matter; and
 - (iii) who is a co-respondent in an appeal of the matter; and
 - (iv) who may elect to be a co-respondent in an appeal of the matter.
- (2) An appellant may start an appeal within the appeal period.
- (3) The **appeal period** is—
 - (a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency; or
 - (b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
 - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or
 - (d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
 - (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or
 - (f) for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

Note — See the P&E Court Act for the court's power to extend the appeal period.

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—
 - (a) the adopted charge itself; or
 - (b) for a decision about an offset or refund—
 - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
 - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

230 Notice of appeal

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—
 - (a) is in the approved form; and
 - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.

- (3) The appellant or, for an appeal to a tribunal, the registrar must, within the service period, give a copy of the notice of appeal to—
 - (a) the respondent for the appeal; and
 - (b) each co-respondent for the appeal; and
 - (c) for an appeal about a development application under schedule 1, table 1, item 1—each principal submitter for the development application; and
 - (d) for an appeal about a change application under schedule 1, table 1, item 2—each principal submitter for the change application; and
 - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); and
 - (f) for an appeal to the P&E Court—the chief executive; and
 - (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The **service period** is—
 - (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
 - (b) otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

SCHEDULE 1 APPEALS

1 Appeal rights and parties to appeals

- (1) Table 1 states the matters that may be appealed to—
 - (a) the P&E court; or
 - (b) a tribunal.
- (2) However, table 1 applies to a tribunal only if the matter involves—
 - (a) the refusal, or deemed refusal of a development application, for—
 - (i) a material change of use for a classified building; or
 - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
 - (b) a provision of a development approval for—
 - (i) a material change of use for a classified building; or
 - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
 - (c) if a development permit was applied for—the decision to give a preliminary approval for—
 - (i) a material change of use for a classified building; or
 - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
 - (d) a development condition if—
 - (i) the development approval is only for a material change of use that involves the use of a building classified under the Building Code as a class 2 building; and
 - (ii) the building is, or is proposed to be, not more than 3 storeys; and
 - (iii) the proposed development is for not more than 60 sole-occupancy units; or
 - (e) a decision for, or a deemed refusal of, an extension application for a development approval that is only for a material change of use of a classified building; or
 - (f) a decision for, or a deemed refusal of, a change application for a development approval that is only for a material change of use of a classified building; or
 - (g) a matter under this Act, to the extent the matter relates to—

- (i) the Building Act, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission; or
 - (ii) the Plumbing and Drainage Act, part 4 or 5; or
 - (h) a decision to give an enforcement notice in relation to a matter under paragraphs (a) to (g); or
 - (i) a decision to give an infrastructure charges notice; or
 - (j) the refusal, or deemed refusal, of a conversion application; or
 - (k) a matter that, under another Act, may be appealed to the tribunal; or
 - (l) a matter prescribed by regulation.
- (3) Also, table 1 does not apply to a tribunal if the matter involves—
- (a) for a matter in subsection (2)(a) to (d)—
 - (i) a development approval for which the development application required impact assessment; and
 - (ii) a development approval in relation to which the assessment manager received a properly made submission for the development application; or
 - (b) a provision of a development approval about the identification or inclusion, under a variation approval, of a matter for the development.
- (4) Table 2 states the matters that may be appealed only to the P&E Court.
- (5) Table 3 states the matters that may be appealed only to the tribunal.
- (6) In each table—
- (a) column 1 states the appellant in the appeal; and
 - (b) column 2 states the respondent in the appeal; and
 - (c) column 3 states the co-respondent (if any) in the appeal; and
 - (d) column 4 states the co-respondents by election (if any) in the appeal.
- (7) If the chief executive receives a notice of appeal under section 230(3)(f), the chief executive may elect to be a co-respondent in the appeal.

Extract of Schedule 1 of the Planning Act 2016

Table 1			
Appeals to the P&E Court and, for certain matters, to a tribunal			
1. Development applications An appeal may be made against— <ul style="list-style-type: none"> (a) the refusal of all or part of the development application; or (b) the deemed refusal of the development application; or (c) a provision of the development approval; or (d) if a development permit was applied for—the decision to give a preliminary approval. 			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant	The assessment manager	If the appeal is about a concurrence agency's referral response—the concurrence agency	1 A concurrence agency that is not a co-respondent 2 If a chosen assessment manager is the respondent—the prescribed assessment manager 3 Any eligible advice agency for the application 4 Any eligible submitter for the application

Table 2
Appeals to the P&E Court only

2. Eligible submitter appeals

An appeal may be made against the decision to give a development approval, or an approval for a change application, to the extent that the decision relates to—

(a) any part of the development application for the development approval that required impact assessment; or

(b) a variation request.

Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 For a development application—an eligible submitter for the development application 2 For a change application—an eligible submitter for the change application	1 For a development application—the assessment manager 2 For a change application—the responsible entity	1 The applicant 2 If the appeal is about a concurrence agency's referral response—the concurrence agency	Another eligible submitter for the application

3. Eligible submitter and eligible advice agency appeals

An appeal may be made against a provision of a development approval, or failure to include a provision in the development approval, to the extent the matter relates to—

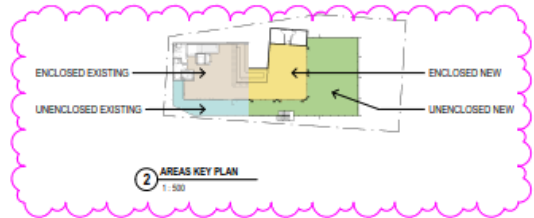
(a) any part of the development application or the change application, for the development approval, that required impact assessment; or

(b) a variation request.

Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 For a development application—an eligible submitter for the development application 2 For a change application—an eligible submitter for the change application 3 An eligible advice agency for the development application or change application	1 For a development application—the assessment manager 2 For a change application—the responsible entity	1 The applicant 2 If the appeal is about a concurrence agency's referral response—the concurrence agency	Another eligible submitter for the application

Note:

Attached is a Rights of Appeal Waiver form (Schedule 3). Please complete and return this form if you are satisfied with the approval and agree to the conditions contained therein and you wish to waive the 20 day appeal period available under the *Planning Act 2016*



SITE CALCULATION

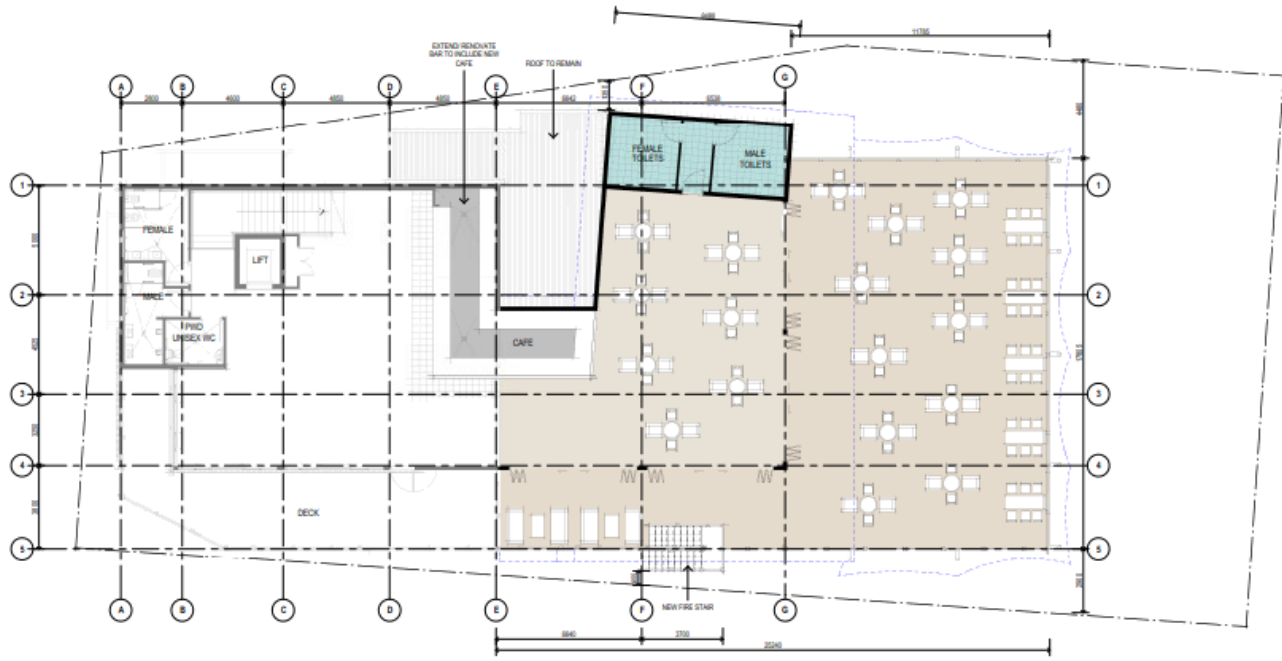
SITE AREA = 1225.6m²

GROUND FLOOR:
 ENCLOSED AREA = 495m²
 UNENCLOSED AREA = 254m²

FIRST FLOOR EXISTING:
 ENCLOSED AREA = 159m²
 UNENCLOSED AREA = 68m²

FIRST FLOOR NEW:
 ENCLOSED AREA = 143m²
 UNENCLOSED AREA = 259m²

SITE COVERAGE (EXISTING & PROPOSED) = 759m²



REV	DESCRIPTION	BY	DATE
A	ISSUE	GT	15/01/17
B	DPA CALCULATIONS REVIEWED	GT	22/01/17
C	ADDITIONAL DIMENSIONS	GT	18/02/17

ORIGINAL SHEET SIZE: A1 (594mm x 841mm)

DA ISSUE

COPYRIGHT - REPRODUCTION OF THESE DRAWINGS IN WHOLE OR PART IS STRICTLY PROHIBITED WITHOUT THE WRITTEN PERMISSION OF PAYNTER DIXON. ALL DIMENSIONS TO BE CONSIDERED AS GIVEN.

PAYNTER DIXON
 BUILDING YOUR BUSINESS

PAYNTER DIXON ARCHITECTS AND CITY PLANNERS
 1/11 M. 20 500 801 101 DUNDEE, DUNDEE N 10888
 LEVEL 3/300 CONCORDIA DRIVE, MILTON, QLD 4054
 P.O. BOX 508 MILTON, QLD 4054
 TELEPHONE: 07 3367 3300 FAX: 07 3367 4800
 EMAIL: info@paynter.com.au
 WEB: www.paynter.com.au

PROJECT: ROYAL DUNDAS AND DISTRICT COMBINED CLUBS FAC.

DECK EXTENSION TO FIRST FLOOR - OPTION 3

DATE: 15/01/17

PROJECT NO: PDC00103

PROJECT NAME: FIRST FLOOR PLAN

DATE	15/01/17	BY	GT
DATE	15/01/17	BY	GT
DATE	15/01/17	BY	GT

PDC00103 02-02 C

28 March 2019

Enquiries: Daniel Lamond
Our Ref: MCUI2454/2017 (896208)
Your Ref: 34073-001-02

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

Paynter Dixon Qld
C/- Brazier Motti Pty Ltd
PO Box 1185
CAIRNS QLD 4870

Dear Sir/Madam

Infrastructure Charges Notice
Material Change of Use for Extension to Existing Premises (Restaurant)
7 Ashford Avenue, Port Douglas
Land Described as LOT: 126 PT: E TYP: SR PLN: 868, LOT: 5 PT: E SP: 288958

Please find attached the infrastructure charges applied under Council's Local Government Infrastructure Plan (LGIP) for the provision of trunk infrastructure, amounting to \$51,606.66.

Please quote Council's application number: MCUI2454/2017 in all subsequent correspondence relating to this development application. Should you require any clarification regarding this, please contact Daniel Lamond on telephone 07 4099 9456.

Yours faithfully

PAUL HOYE
Manager Environment and Planning

encl.

- Infrastructure Charges Notice

ADOPTED INFRASTRUCTURE CHARGES NOTICE

Paynter Dixon Old Pty Ltd C/- Brazier Mottl Pty Ltd		0	0
DEVELOPERS NAME		ESTATE NAME	STAGE
7 Ashford Avenue	Port Douglas	L5 on SP288958 & L126 on SR868	2630, 157900
STREET No. & NAME	SUBURB	LOT & RP No.s	PARCEL No.
Material Change of Use- Extension to existing premises (Restaurant)		MCUI2454/2017	6
DEVELOPMENT TYPE		COUNCIL FILE NO.	VALIDITY PERIOD (year)
DR934514	1		
D&C Reference Doc. No.	VERSION No.		

Use	Charge per Use	Amount Due	Amount Paid	Receipt Code & GL Code
Port Douglas and Environs Proposed Demand- Extension to Commercial Floor Area	399	129.34	51,606.66	Code 895 GL 07500.0135.0825
	0	0.00	0.00	
	0	0.00	0.00	
	0	0.00	0.00	
Total		51,606.66		
TOTAL		\$51,606.66		

Prepared by	D Lamond	12-Mar-18	Amount Paid	
Checked by	N Beck	14-Mar-18	Date Paid	
Date Payable			Receipt No.	
Amendments		Date	Cashier	

Note:
The Infrastructure Charges in this Notice are payable in accordance with Sections 119 and 120 of the Planning Act 2016 as from Council's resolution from the Special meeting held on 5 June 2018.

Charge rates under the current Policy are not subject to indexing.

Charges are payable to: Douglas Shire Council. You can make payment at any of Council's Business Offices or by mail with your cheque or money order to Douglas Shire Council, PO Box 723, Mosman QLD 4873. Cheques must be made payable to Douglas Shire Council and marked 'Not Negotiable.' Acceptance of a cheque is subject to collection of the proceeds. Post dated cheques will not be accepted.

Any enquiries regarding Infrastructure Charges can be directed to the Development & Environment, Douglas Shire Council on 07 4099 9444 or by email on enquiries@douglas.qld.gov.au