

## 5.04. REQUEST FOR PERMISSIBLE CHANGE - PUBLIC UTILITIES AND FACILITIES (BUNK HOUSE AND ANCILLARY RESTAURANT)

**REPORT AUTHOR(S):** Simon Clarke, Planning Officer  
**GENERAL MANAGER:** Paul Hoye, General Manager Operations  
**DEPARTMENT:** Development Assessment and Coordination

**PROPOSAL** Request for Permissible Change – Public Utilities and Facilities (Bunk House and ancillary Restaurant)

**APPLICANT** Port Douglas Surf Life Saving Club  
c/o Bolt Burchill Tranter Lawyers  
PO Box 616  
Port Douglas QLD 4877

**LOCATION OF SITE** Esplanade, Port Douglas

**PROPERTY** Lot 2 on SR886

### LOCALITY PLAN



**LOCALITY** Port Douglas and Environs

<b>PLANNING AREA</b>	Community and Recreational Facilities
<b>PLANNING SCHEME</b>	Douglas Shire Planning Scheme 2006
<b>REFERRAL AGENCIES</b>	Not Applicable
<b>NUMBER OF SUBMITTERS</b>	Not Applicable
<b>STATUTORY ASSESSMENT DEADLINE</b>	Not Applicable
<b>APPLICATION DATE</b>	18 February 2016

#### **RECOMMENDATION**

A. That Council approves the request for permissible change, in part, to the development permit for Public Utilities and Facilities (Bunk House and ancillary Restaurant) over land described as Lot 2 on SR886, located at the Esplanade, Port Douglas, in accordance with the following:

1. Condition 25 (Management) be deleted;

~~25. The management agreement between the Port Douglas Surf Club and any third party operating the proposed bistro/restaurant is to be forwarded to Council's Corporate Services Department for approval prior to the signature of either party to the agreement and prior to the use commencing. The Agreement is to ensure that the proposed bistro/restaurant is to operate as part of the Surf Club and is not a sub-lease arrangement with a third party.~~

B. The request for a permissible change to delete condition 9 (Road works) and condition 13 (Car parking) be refused. However, the conditions are to be amended as follows:

9. In the event that the use of the existing access to Lot 2 increases significantly and/or the existing track is causing an amenity nuisance (for example, dust, ponding of water), The developer is to construct 6m wide sealed road in the location of the existing access in accordance with the requirements of the FNQROC Development manual. Kerbing and channelling is not required to be provided.

13. The existing informal on site car parking arrangement is to be maintained to a standard that does not cause an amenity nuisance.

In the event that the use of the existing access to Lot 2 increases significantly and/or the existing track is causing an amenity nuisance (for example, dust, ponding of water), A formal car parking area on-site is to be provided on site with a minimum of seven (7) spaces including a space for disable parking, one (1) motor cycle and five (5) bicycle spaces shall be constructed, sealed, drained and line marked in accordance with the relevant Australian Standard, and the approved plan of development and maintained thereafter.

C. All other conditions contained in Council's Amended Negotiated Decision Notice dated 9 October 2007 remain unchanged.

## EXECUTIVE SUMMARY

Council is in receipt of a request for a permissible change for a number of conditions contained within a development permit for Public Utilities and Facilities (Bunk House and ancillary Restaurant) for the Surf Life Saving Club at Port Douglas. The conditions relate to the construction standard of the driveway, on-site car parking and to a management agreement with respect to sub-leasing the restaurant.

The conditions relating to the driveway and on-site car parking are not recommended to be deleted, but recommended for modification to defer the sealing of the car park if the informal car parking arrangement causes an amenity nuisance in the future. The management condition is recommended to be deleted as this is not a matter of planning concern and is better managed through other processes involving Council's Property Unit and the Department of Natural Resources and Mines.

## TOWN PLANNING CONSIDERATIONS

### Background

The site is located on the corner of the Esplanade and Mowbray Street, Port Douglas and is described as Lot 2 on SR886. The land is developed as the Port Douglas Surf Life Saving Club which consists of club facilities and a restaurant. The latest development permit for the site was granted on 30 August 2007 to permit the use of the land for Public Utilities and Facilities (Bunk House and ancillary Restaurant) as additional uses to the Surf Life Saving activities conducted on the land. Council subsequently approved a request for a Negotiated Decision on 9 October 2007, and further amended conditions on 30 October 2007, via an amended Negotiated Decision Request dated 9 October 2007 (see Attachment 1).

### Proposal and comments

The current application is a request for a permissible change to amend conditions contained in Council's approval dated 30 August 2007. However, given that amended conditions were issued at a later date, the request is in fact a change to the amended Negotiated Decision Notice approved by Council on 30 October 2007.

The applicant is seeking to amend three conditions of approval as follows:

#### Condition 9 (Road works)

Condition 9 states:

*'The developer is to construct 6m wide sealed road in the location of the existing access in accordance with the requirements of the FNQROC Development manual. Kerbing and channelling is not required to be provided.'*

#### Applicant's representation

The club has limited funding and is unable to bear the financial burden of carrying out the road works which are tentatively assessed at between \$30 000 - \$40 000.

Council will note that the development application was issued in 2007 and we are now in 2016. The construction of the road from Mowbray Street in accordance with condition 9 is problematic given that the road will traverse through Jalumbu Park and will require a road opening.

The informal access that has been adopted over the past 30 years has proved serviceable.

Further the area of Jalumbu Park around the toilet block and access to the Surf Club is currently used by the public as a car park and will be continued to be utilised as such only to a greater extent if there is a road off Mowbray Street making it apparent to motorists that parking is available. The additional usage of the car parking area and the additional usage of the road will place an added maintenance burden on the Council.

At present the area is graded from time to time and access is available to the Club and to the public without significant cost to either the Council or the Club.

In addition, the Club is operational from Easter to the end of November, a period of only 8 months and on those occasions generally only on a Sunday. Consequently, the use of the road and car park is predominantly, and will be predominantly, public orientated.

### **Condition 13 (Car park)**

Condition 13 states:

*'A car parking area on site is to be provided with a minimum of seven (7) spaces including a space for disable parking, one (1) motor cycle and five (5) bicycle spaces shall be constructed, sealed, drained and line marked in accordance with the relevant Australian Standard, and the approved plan of development and maintained thereafter.'*

### **Applicant's representation**

When the premises were renovated in 2007 into the bistro as it currently exists, substantial road works were carried out in accordance with condition 14 with the provision of ten (10) on-street, lined and sealed car parking spaces.

The sealed car parking spaces were placed in an area on Mowbray Street which was previously unsealed and ungraded. The cost of such works was approximately \$30 000.

When the Esplanade was redeveloped under the Cairns Regional Council, the car parking constructed in accordance with condition 14 was removed without any compensation to the Club.

The proposal to provide formal on-site car parking has been addressed by the Club Committee and Council has responded to the request via correspondence dated 27 October 2015 (see Attachment 2). Attached to that letter is a copy of a plan which will provide a piecemeal sealing of the current car park and access area. This will produce a hotchpotch effect to that designated area which currently looks relatively uniform and as with the access is graded by the Club from time to time and is serviceable.

The quote obtained by the Club associated with the plans submitted to Council is \$18 000 and this is not affordable to the Club.

### **Comments on Condition 9 and 13**

It can be seen from the history of the current development permit, that the car parking arrangements for the Surf Life Saving Club bistro has been poorly managed from Council's (Cairns Regional Council) perspective. The Surf Life Saving Club has expended its resources to construct car park spaces for the bistro and fulfilled its obligations with respect to condition 14 of the development approval (see below).



**Figure 1: Car parking (Condition 14) as constructed in 2008**

These car parking spaces were subsequently removed for landscaping works during the period of amalgamation with Cairns Regional Council without any recompense for the lost car parking spaces to the Club.

In addition, the condition requiring the road access works to the car park (condition 9) and the internal car park itself (condition 13) relate to existing access and car parking arrangements that existed prior to the development approval for the Public Utilities and Facilities (Bunk House and ancillary Restaurant). The access driveway also traverses and adjoining allotment and which was never part of the application for the Public Utilities and Facilities (Bunk House and ancillary Restaurant).

The on-site car park at the rear of the club has functioned without any known operational problems for approximately 30 years. A recent site inspection reveals that this car park has low-level usage (inspected Friday, midday) and although showing some wear to turf areas, remains serviceable for its current use levels.

It is not proposed to remove the condition as this would set an undesirable precedent. However, the condition could be modified to defer works until such time that the use of the car park and its access warrants sealing, either due to increased usage and/or the car parking is causing an amenity nuisance (for example, due to dust or ponding of water). In this way, the onus of ensuring that the informal on-site car is adequately maintained will remain with the Club. It is noted that two formal disabled car parking spaces are located outside the public toilets adjacent to the Surf Club that provide wheel-chair access to the Club.

### **Condition 25 (Management)**

Condition 25 states:

*'The management agreement between the Port Douglas Surf Club and any third party operating the proposed bistro/restaurant is to be forwarded to Council's Corporate Services Department for approval prior to the signature of either party to the agreement and prior to the use commencing. The Agreement is to ensure that the proposed bistro/restaurant is to operate as part of the Surf Club and is not a sub-lease arrangement with a third party.'*

### **Applicant's representation**

The reasons for the request to remove this condition are set out in the letter to Council dated 11 September 2014 (see Attachment 3).

In short, if this clause can be deleted and the Club allowed to sub-lease the bistro, the Supporters Club can be abolished which would be a financial relief to the Club and an administrative relief to the Committee members who are small in number and also play a dual role as the Committee of the Surf Life Saving Club.

### **Comment**

There is no valid town planning reason to continue to include condition 25 in the development permit. The management of property matters is better dealt with via Council's Property Unit. Decisions regarding sub-leasing are then a matter for subsequent Ministerial and Council approvals. Council's letter dated 16 January 2015 foreshadows the need to remove condition 25 from the development permit prior to Council determining any application to sub-lease the restaurant (see Attachment 4).

It should also be noted that the restaurant is approved as an ancillary use to the Surf Life Savers Club (i.e. it cannot operate as a sole restaurant land use on the site: the Surf Life Savers Club must be the dominant land use).

### **Additional representations from the Club**

The Surf Life Saving Club is an important element of the Douglas Shire Community and it provides a valuable service to the region. We have previously explained how other organisations benefit from the use of the Club premises and this is more relevant now with completion of the amenities block.

Such events that utilise the Club amenities are:

- Coral Coast Triathlon – 600 competitors;
- Reef to Rainforest mountain bike ride – 500 competitors;
- Keely Outrigger Challenge – 200 competitors;
- Cairns Triathlon – 300 competitors;
- Crocodile Trophy – 120 competitors, plus support crew and international television coverage;
- Reef Marathon – 1 200 to 1 500 competitors.

The newly completed Club amenities block was heavily utilised by the Reef Marathon competitors and supporters and provides a facility that would not have otherwise been able to cope with the high usage required on the day of the marathon.

In addition, the Club is available to other groups by request.

## **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:** Meeting the responsibilities associated with regulating activities through legislation or local law.

Under the *Sustainable Planning Act 2009* and the *Sustainable Planning Regulation 2009*, Council is the assessment manager for the application.

## **CONSULTATION**

**Internal:** Property Unit

**External:** Not applicable

## **ATTACHMENTS**

- Attachment 1 – Amended Negotiated Decision approved by Council 30 October 2007
- Attachment 2 – Council's letter 27 October 2015
- Attachment 3 – Surf Life Saving Letter to Council 11 September 2014
- Attachment 4 – Council's letter 16 January 2015



ENQUIRIES: Nicole Hall – Planning Officer  
DEPARTMENT: Planning Services Section - ☎ (07) 4099 9456  
EMAIL: [planning@dsc.qld.gov.au](mailto:planning@dsc.qld.gov.au)

OUR REF: MCUI 004/07  
YOUR REF:

Port Douglas Surf Life Saving Club  
Best Overend and Associates  
4/25 Langley Road,  
PORT DOUGLAS QLD 4877

9 October 2007

## INTEGRATED PLANNING ACT AMENDED NEGOTIATED DECISION NOTICE DEVELOPMENT APPLICATION

**Applicant's Name** : Port Douglas Surf Life Saving Club

**Owner's Name** : Department of Natural Resources, Mines and Water

**Proposal** : Material Change of Use – Impact Assessment for the purpose of Public Utilities and Facilities (bunk house and ancillary Restaurant)

**Application Number** : MCUI 004/07

**Site Address** : “Surf Club Park”, The Esplanade (corner of The Esplanade and Mowbray Street), Port Douglas

**Property Description** : Lot 2 on SR886, Parish of Salisbury, County of Solander

**This Amended Negotiated Decision Notice replaces the Negotiated Decision Notice dated 11 October 2007. Condition 13 has been amended. All other conditions remain unchanged.**

<b>A. Decision:</b>	Approved subject to Conditions	<b>Decision Date:</b> 30 October 2007
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<b>B. Type of Development Approval:</b>	Material Change of Use	Development Permit
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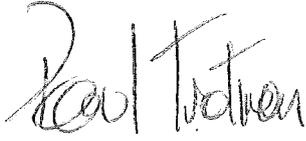




**E. Further Development Approvals Required:**

Building Work  
Plumbing & Drainage Permit

Development Permit  
Development Permit

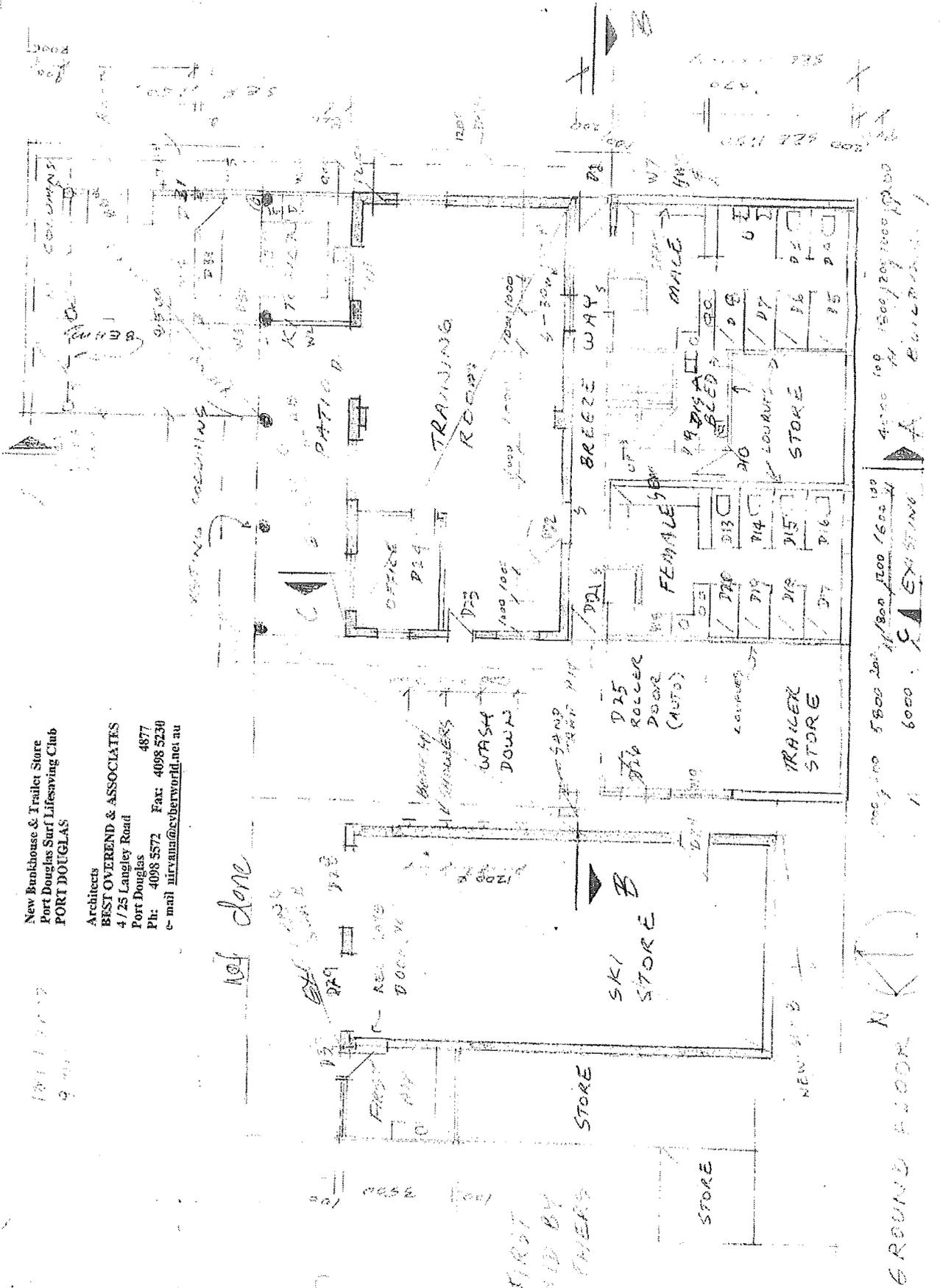


Paul Trotman  
General Manager – Development & Environment

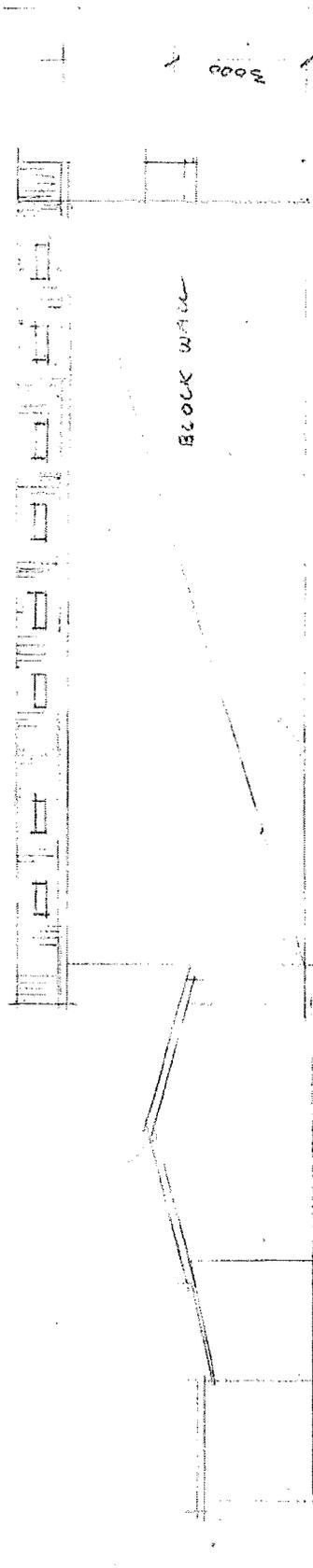


New Bunkhouse & Trailer Store  
Port Douglas Surf Lifesaving Club  
PORT DOUGLAS

Architects  
BEST OVEREND & ASSOCIATES  
4/25 Langley Road  
Port Douglas  
Ph: 4098 5572 Fax: 4098 5230  
e-mail: [info@bestoverend.com.au](mailto:info@bestoverend.com.au)







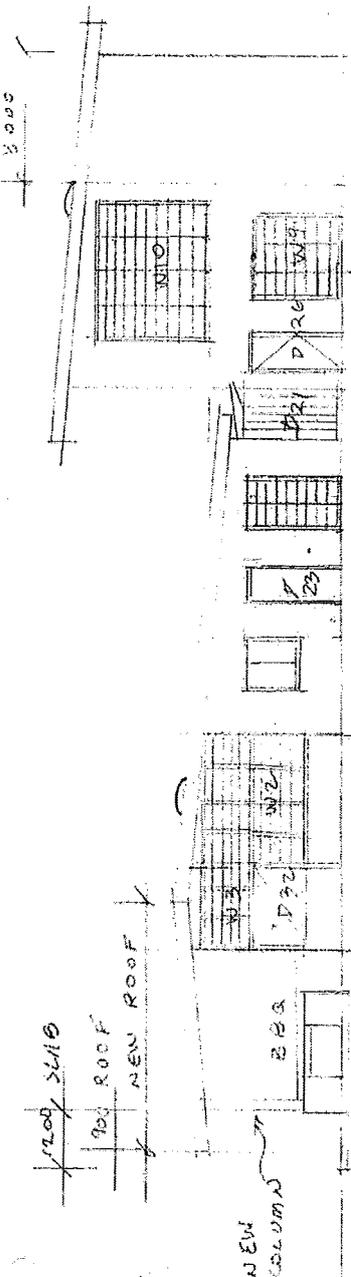
DOUGLAS ARCHITECTS REGISTERED ARCHITECTS
FILE NAME: MOUNT COAST
DOCUMENT NO.: 12 JUL 2007
ATTENTION: ALA HAS OCCUPANTS INFORMATION

25/5/07  
2/5/07  
SCALE 1/100

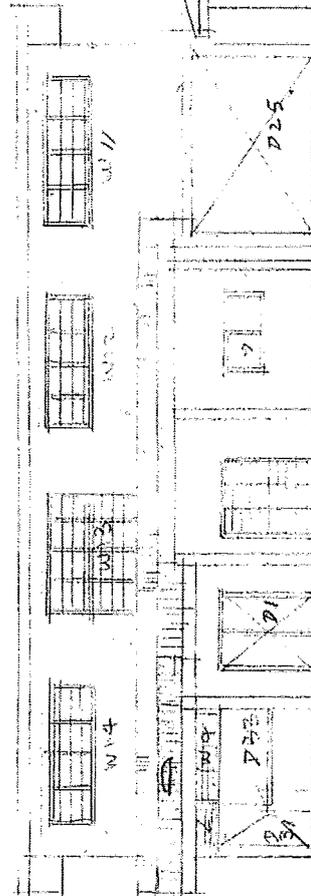
New Bunkhouse & Trailer Store  
Port Douglas Surf Lifesaving Club  
PORT DOUGLAS

Architects  
BEST OVEREND & ASSOCIATES  
4/25 Langley Road  
Port Douglas 4877  
Ph: 4098 5572 Fax: 4098 5230  
e-mail: nirvana@bestoverend.net.au

WEST ELEVATION

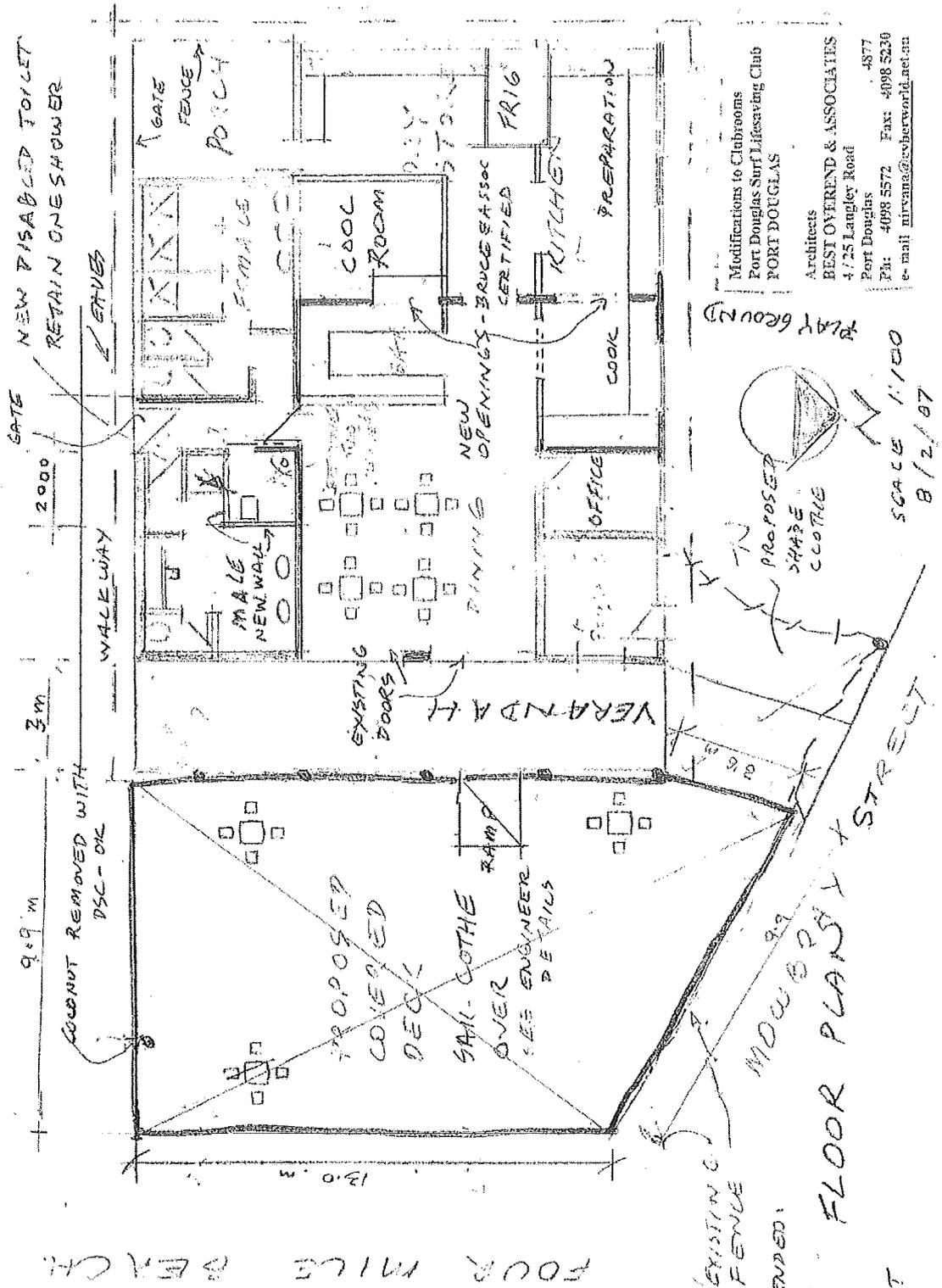


NORTH ELEVATION



EAST ELEVATION

2/0



Modifications to Clubrooms  
 Port Douglas Surf Lifesaving Club  
 PORT DOUGLAS  
 Architects  
 BEST OVEREND & ASSOCIATES  
 4/25 Langley Road  
 Port Douglas  
 Ph: 4098 5572 Fax: 4098 5230  
 e-mail nirvana@bestoverend.net.au

FOUR MILE BEACH

- 10/8/07 SITE MEASURE DECK
- 6/7/07 FENCE
- DRAWING AMENDED:
- INCREASE DECK
- SHADE CLOTHE @ ENTRY
- KITCHEN LAYOUT











11 September 2014

Chief Executive Officer  
Douglas Shire Council  
MOSSMAN QLD 4873

Dear Madam

**Re: Lease of Port Douglas Surf Life Saving Club, Esplanade, Port Douglas**

We act on pro bono basis for the Port Douglas Surf Life Saving Club (the Surf Club).

The Surf Club holds tenure over the land at the esplanade pursuant to a lease from the Douglas Shire Council. A copy of the lease and Registration Confirmation Statement is attached noting a commencement date of 1 January 2006 and an expiry date of 31 December 2025.

The Surf Club desires to sublease the bistro area of the property to Fasingo Pty Ltd (Fasingo), a company operated by Jason Fasano, a current life member of the Surf Club and former active member.

Fasingo has been managing the bistro on the premises since 2007 on behalf of the Supporters Club which holds a liquor licence over the premises.

Historically the Supporters Club is the fund raising arm of the Surf Club and as such holds the liquor licence. The Surf Club attends to the patrolling of beaches, training of nippers and bronze medallion holders, awards and the like.

In small clubs in Queensland and particularly with the Port Douglas Club the committees for the 2 clubs are often the same people. This has meant a doubling of the work load in order to operate the Surf Club.

In recent times the Mackay Surf Life Saving Club, the Sarina Surf Life Saving Club and the Perigian Surf Life Saving Club have leased part of their club premises out to 3<sup>rd</sup> party operators and have been able to wind down and close their Supporters Clubs.

This is the course of action that the Port Douglas Club seeks to take and to do this we require the consent of the Council as trustee and the State Government to sublease part of the land to the third party operator, Fasingo.

The benefits to the Surf Club in closing down the Supports Club are:

1. Administration requirements will be reduced by approximately 40%
2. We will not be required to lodge annual audits for the Supporters Club which generally cost around \$3,000.00.

3. The liquor licence will no longer be held by the Supporters Club consequently any breaches of the liquor licence will not be the responsibility of the Supporters Club and will not reflect upon the Surf Life Saving Club.

At present Fasingo pays to the Surf Club a donation on an annual basis of approximately \$37,000.00 by monthly instalments for the management rights and it contributes to the payment of rates and insurance which helps with the functioning of the Surf Club as insurance costs are approximately \$20,000.00 per year and rates and water charges are approximately \$10,000.00 per year.

It is intended that a sublease to Fasingo would provide for a rental amount similar to that above as with the obligations as to outgoings.

The sublease would also provide for a market review of rent and CPI increases of rent in the non-market review years.

The change of structure to enable a sublease will greatly benefit the Surf Club which will be able to save money as noted above and direct resources more effectively to much needed training, equipment and general maintenance.

Would you please provide us with a response from Council as to Council's attitude as to this proposal. We will then submit a draft sublease to council for consideration.

Yours faithfully  
Bolt Burchill Tranter Lawyers



Michael Bolt  
mbolt@bbtranter.com.au

Our ref: MB:TF:140000  
Contact: Teneal Fabiani  
Email: reception.mossman@bbtranter.com.au

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Administration Office  
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**YOUR REF:** Michael Bolt  
**OUR REF:** 428759

16 January 2015

Mr. Michael Bolt  
Bolt Burchill Tranter Lawyers  
PO Box 353  
Mossman QLD 4873

Dear Mr Bolt

**RE: Proposed Sub-lease Of Existing Trustee Lease - Port Douglas Surf Life Saving Club**

I refer to your letter dated 11 September 2014 expressing the Port Douglas Surf Life Saving Club's desire to sub-lease the bistro area of the property to a third party.

Under the amended negotiated decision notice of the Development Application dated 9 October 2007 (copy enclosed) clause 25 of the Development Application states;

*"The Management Agreement between the Port Douglas Surf Club and any third party operating the proposed bistro/restaurant to be forwarded to the Council's Corporate Services Department for approval prior to the signature of either party to the agreement and prior to the use commencing. The Agreement is to ensure that the proposed bistro/restaurant is to operate as part of the surf Club and is not a sublease arrangement with a third party".*

As the current Development Application approval, does not allow for a third party lease of the bistro/restaurant area, Council at this point in time cannot consider this request.

Notwithstanding this the Port Douglas Surf Life Saving Club can submit a Development Application to Council requesting that Clause 25 be removed or amended so as the Club can pursue the sub-lease of the bistro/restaurant area.

Should you have any more queries regarding this matter please contact Robert Donovan, Councils Property Officer on (07) 4099 9478

Yours faithfully



Darryl Crees  
**GENERAL MANAGER CORPORATE SERVICES**