

ORDINARY COUNCIL MEETING 24 JUNE 2014	5.1
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REQUEST TO EXTEND RELEVANT PERIOD – TRANSITIONAL SCHEME APPROVAL – MATERIAL CHANGE OF USE FOR THREE (3) MULTIPLE DWELLINGS (RESIDENTIAL) – 23 CORAL DRIVE, PORT DOUGLAS

Jenny Elphinstone: MCUI 227/2014: 422478

<u>PROPOSAL:</u>	REQUEST TO EXTEND RELEVANT PERIOD – TRANSITIONAL SCHEME APPROVAL – MATERIAL CHANGE OF USE FOR THREE (3) MULTIPLE DWELLINGS (RESIDENTIAL)
<u>APPLICANT:</u>	CHARLES O'NEILL SURVEYORS AND PLANNERS PO BOX 5246 CAIRNS QLD 4870
<u>LOCATION:</u>	23 CORAL DRIVE PORT DOUGLAS QLD 4877
<u>PROPERTY:</u>	LOT 31 ON RP734536
<u>PLANNING SCHEME:</u>	DOUGLAS SHIRE PLANNING SCHEME 1996
<u>STRATEGIC PLAN:</u>	URBAN AREA
<u>DCP:</u>	DCP 2 PORT DOUGLAS, MEDIUM DENSITY RESIDENTIAL AREA
<u>ZONE:</u>	RESIDENTIAL B
<u>CURRENT PLANNING SCHEME:</u>	DOUGLAS SHIRE PLANNING SCHEME 2008
<u>LOCALITY:</u>	PORT DOUGLAS AND ENVIRONS
<u>PLANNING AREA:</u>	RESIDENTIAL 1
<u>PLOT RATIO:</u>	LOW SCALE
<u>REFERRAL AGENCIES:</u>	NONE APPLICABLE
<u>NUMBER OF SUBMITTERS:</u>	NONE TO THE ORIGINAL APPLICATION
<u>STATUTORY ASSESSMENT DEADLINE:</u>	16 JULY 2014

APPLICATION DATE:

30 JUNE 2005 (ORIGINAL APPLICATION)
3 JUNE 2014 (REQUEST TO EXTEND)

APPENDIX:

1. CURRENT DEVELOPMENT PERMIT
2. APPLICANT'S SUPPORTING REASONS

LOCALITY PLANRECOMMENDATION:

A. That Council refuses the request to extend the relevant period of approval for the Development Permit for Material Change of Use for Three (3) Multiple Dwellings (Residential), over land described as Lot 31 on RP734536, located at 23 Coral Drive, Port Douglas, on the following grounds:

1. **Since the issue of the Development Permit the 1996 Douglas Shire Planning Scheme has been superseded by new planning controls. The development approved under the Development Permit is inconsistent with the current Planning Scheme and planning controls;**
2. **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 388 of the *Sustainable Planning Act 2009*, to support an extension to the relevant period. Having regard to the *Sustainable Planning Act 2009* it is inappropriate for Council to extend the period of approval;**

3. **The extension to the Development Permit is contrary to the expected outcomes for the land held by the community; and**
 4. **The development, if applied for under the current Scheme, would require public notification, and may give rise to submissions against it.**
- B. In respect of the development of Multiple Dwellings on the land, Council advises 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 *Sustainable Planning Act 2009* and that any application would be considered on its merits.**

EXECUTIVE SUMMARY:

An application was lodged in 2005 under the 2006 Douglas Shire Planning Scheme, the Transitional Scheme under the *Integrated Planning Act 1997*, for a Material Change of Use for three Multiple Dwellings (Residential). The former Douglas Shire Council approved the development subject to conditions on 6 June 2006 with the approval issuing on 22 June 2006. Cairns Regional Council (CRC) agreed to a four-year extension under delegate authority on 5 July 2010 subject to changed conditions referring to infrastructure charging.

The Development Permit has a period of approval for four years and is due to expire if the use is not commenced prior to 6 June 2014. The land owners have requested a four-year extension to the approval period.

The Transitional Scheme, under which the current Permit was assessed, came into effect in 1996, nearly 20 years ago. The current Scheme was adopted by the former Douglas Shire Council on 21 August 2006 and came into effect on 4 September 2006. The Scheme was amended by the Cairns Regional Council in 2008 and remains in effect superseding all previous schemes. The current scheme defines the use as Multi-Unit Housing.

The *Sustainable Planning Act 2009* (SPA) sets out the specific, limited matters that Council must as Assessment Manager apply to determine the request. These are:

- '(a) the consistency of the approval, including its conditions, with the current laws and policies applying to the development; and*
- (b) the community's current awareness of the Development Permit; and*
- (c) whether, if the request were refused –*
 - (i) further rights to make a submission may be available for a further development application; and*
 - (ii) the likely extent to which those rights may be exercised; and*
- (d) the views of any concurrence agency for the approval.'* s 388 SPA

The Applicant's individual economic circumstances or the downturn of economies are generally not matters which the Act permits Council to consider.

The current Scheme seeks a much lower density of development than previous planning schemes. The current Scheme includes the land in the Residential 1 Planning Area with a low scale plot ratio designation. Essentially the Scheme seeks Multi-Unit Housing be developed at a yield of one unit per 500 m² site area which would support two (2) units not three (3) units on

the land.

The Applicant claims that as the land has supported three (3) units on the land it has been established that it can continue to support three (3) units. This consideration does not result in the development being compliant with the current planning scheme requirements.

When assessed against the current Scheme the approval is an overdevelopment of the land. The approval does not meet the Acceptable Solutions or the Performance Criteria of the current Scheme. There is a community expectation that the current scheme would apply.

Should the request be refused and a new application be lodged this application would require public notification and may result in submissions being lodged.

The test by which the SPA requires Council to determine the request has not been met. Accordingly, this report recommends the request be refused. Should an Appeal be lodged against the refusal then these same tests will be considered by the Planning and Environment Court.

The Act does not prohibit the Applicant lodging new applications for the development under the current Scheme.

TOWN PLANNING CONSIDERATIONS:

Background

The original development of a duplex was constructed in February 1983 with planning approval under the 1981 Douglas Shire Planning Scheme. This development consisted of two (2), small, one (1) bedroom units and these units remain on the land. A separate application (No 353) was lodged under the 1981 Planning Scheme for a Dwelling to be constructed on the land, bringing the total number of units to three. Council at the General Committee Meeting held on 23 June 1987 Meeting approved the development noting the Council would have to give a dispensation for the 1000 m² requirement as the land was only 929 m². Under the 1981 Scheme the DCP required minimum site and open spaces areas, depending on the unit size, and stated maximum population density based on the number of bedrooms per unit. A condition of the approval required compliance with the Development Control Plan 2, which included population density provisions regarding the size of dwellings and number of persons per hectare. The land was in a Medium Density area and the development met the DCP requirements. The development was accompanied by three car parking spaces, meeting the then Scheme requirement.

In December 1996 a new Planning Scheme came into effect and this became the 'Transitional Planning Scheme' under the *Integrated Planning Act* 1997. The land was designated a Medium Density Residential Area in the Development Control Plan and was zoned Residential B. Development was assessed against plot ratio and with design bonuses the plot ratio for Multiple Dwellings on this land could be a maximum of 0.45:1. There was no minimum size of a lot for unit development and the Scheme provisions nominated minimum open space and car parking requirements. Under the 1996 Scheme Multiple Dwellings were not supported in the Residential A zone.

An application was lodged on 30 June 2005 under the 'Transitional' 1996 Planning Scheme to remove all existing units and to construct three new, three bedroom Multiple Dwellings

(Residential). The development met all the 1996 Planning Scheme provisions including plot ratio, site coverage and car parking (five car parking spaces). A Development Permit issued on 22 June 2006.

In 2006 the current Planning Scheme came into effect. The Scheme was later amended in 2008 and this remains the current Scheme. The 1996 Planning Scheme has been superseded and is no longer in effect. The current Scheme includes the land in the Residential 1 Planning Area with a low scale plot ratio. The use is defined as Multi-Unit Housing under the current Scheme.

A four-year extension of the approval period was issued by Cairns Regional Council on 5 July 2010. The existing approval is valid up until 6 June 2014. The planning assessment at the time was brief and aspects are incorrect. The assessment did not give sufficient consideration to all aspects of the Scheme Acceptable Solutions or Performance Criteria.

Since the issue of the approval in 2006 no further application has been lodged for a Development Permit for Building Work or Plumbing Work. There has been no demonstration of the construction for the development being initiated.

Approved Development

The development is for the construction of three (3), double-storey units with a shared common driveway adjacent to the southern boundary. One unit has a single car garage. The other units each have a double car garage. Two (2) visitor parking spaces are sited immediately to the southern boundary with no landscaped separation to the boundary. Each unit has a swimming pool and private yards. Living areas are detailed on the ground floor with three bedrooms at the first floor level.

A copy of the approval is included in Appendix 1.

Applicant's Request

Under the SPA the approval has a four-year currency period. The land owners have requested Council extend the period of approval for a further four years. The Applicant nominated reasons by which Council should support this request which are included in Appendix 2. These are summarised as follows:

1. The economic climate being the Global Financial Crisis (GFC) has prevented the development being completed within the relevant period. As a result of the GFC, residential development in Far North Queensland as a region, including Port Douglas, became a high risk venture to all lending institutions. The global downturn and the corporate banking attitude sustained futile attitude to financing such development programmes.
2. The approval is for the re-development of the site containing three (3) existing, Council approved dwellings. The redevelopment would not result in a net increase of dwellings on the land.
3. The development already attracts rate charges for three (3) dwellings.
4. The approved development is consistent with existing residential development in Coral Drive. This is evident when viewing the plot ratios of nearby residential developments located at 10-12, 13-15, 14 and 16 Coral Drive.

5. The redevelopment will provide modern, high-quality dwellings that will complement the streetscape of Coral Drive.
6. The development will stimulate the local building industry with flow on effects for the local economy.
7. The Applicant contends the approved development achieves significant compliance with the current planning scheme in that the current Scheme still permits the site to be developed for Multiple Dwellings (residential).
8. The conditions previously imposed would be appropriate to the development should it be approved today.
9. In 2005, when the Applicant undertook public notification, no submission lodged against the proposal. In receiving no submissions the Applicant suggests the development did not cause concerns for the community as:
 - i. The proposal was for redevelopment with no net increase in dwelling on site;
 - ii. The proposal was consistent with surrounding residential development on Coral Drive; and
 - iii. The proposal would result in a high quality development that compliments the streetscape of Coral Drive.

It is expected that granting the extension of currency period would be generally accepted by the community now.
10. It is expected that a development approval made today would not attract any submissions as per the original application made to Council.

Planning Assessment

Officer's Comment

In deciding a request made under s 383 of the SPA Council as assessment manager must only have regard to the following matters in deciding a request to extend the relevant period of an approval:

- (a) *the consistency of the approval, including its conditions, with the current laws and policies applying to the development; and*
 - (b) *the community's current awareness of the Development Permit; and*
 - (c) *whether, if the request were refused –*
 - (i) *further rights to make a submission may be available for a further development application; and*
 - (ii) *the likely extent to which those rights may be exercised; and*
 - (d) *the views of any concurrence agency for the approval.'* S 388 SPA
- a) Consistency of the approval with current requirements.

An assessment against the current Douglas Shire Planning Scheme is as follows.

Douglas Shire Planning Scheme Assessment

Douglas Shire		Code Applicability	Compliance
Locality	Port Douglas and Environs Locality Code	✓	Does not comply
Planning Area	Residential 1	✓	Does not comply
Defined Use	Multi-Unit Housing	✓	Does not comply
Overlay Codes	Acid Sulfate Soils Code	✗	-
	Cultural Heritage and Valuable Sites Code	✗	-
	Natural Hazards Code	✗	-
Douglas Shire		Code Applicability	Compliance
General Codes	Design and Siting of Advertising Devices Code	✗	-
	Filling and Excavation Code	✓	Requires further demonstration
	Landscaping Code	✓	Does not comply
	Natural Areas and Scenic Amenity Code	✗	-
	Reconfiguring a Lot Code	✗	-
	Vehicle Parking and Access Code	✓	Complies
	Sustainable Development Code	✓	Has not been sufficiently demonstrated

Compliance Issues

Port Douglas and Environs Locality Code and Residential 1 Planning Area Code

The Performance Criteria seek that existing residential estates are 'protected from incursion by higher density residential uses' and development in the Low-Scale Plot Ratio Area, 'has a maximum ratio of 0.35:1.' The development proposes a higher density than the Acceptable Solution of 1 unit per 500 m² for the Residential 1 Planning Area and has a Plot Ratio of 0.44:1.

Not all elevations are included in the approved plans and it is not demonstrated that the development will provide appropriate privacy to neighbouring buildings.

The site plan and the landscape plan conflict in respect to the streetscape. The site plan details a setback for the front fence of two (2) metres with a swimming pool immediately behind the fence. The landscape plan has a zero setback for the front fence and the pool possible zero to one (1) metre behind the street boundary fence. The tall front fence on the landscape plan does not achieve the Acceptable Solution of a maximum height of 1.2 metres and presents a black façade to the street. The landscaping setback to the street and side and rear boundaries does not meet the Acceptable Solution for minimum distance measurements.

Multi-Unit Housing

The land size being less than 1000 m² does not meet the Acceptable Solution. The continuous wall plane for the west elevation of 20 metres exceeds the Acceptable Solution of 15 metres length. The perimeter fencing to the front street does not meet the Planning Area requirement. The lack of inclusion of the western and southern elevations in the approved plans inhibits the ability to sufficiently determine the impact of overlooking to neighbouring properties. Vehicle parking at the front of the property is visually prominent

from the street and insufficiently setback and screened from the neighbouring boundary. The swimming pool is insufficiently setback from the street boundary.

Landscaping Code

The landscape plan layout differs from the site plan layout, in particular for the street and side setback area in proximity to the front unit. There is a lack of a shade tree to the visitor parking area and boundaries. The landscape plan does not meet the acceptable solutions for dense planting to the rear of the site and front street setback, in respect to shade trees and concern is raised with the very narrow width of landscape beds to the front, rear and side boundaries.

b & c) Community awareness – Further submissions

The original application was impact assessable development and the level of assessment has not changed. The original application complied with the Planning Scheme provisions at the time of public notification.

The community is not aware of the request for the extension of the period of approval other than the reporting of this matter to Council for determination.

Should the application be refused and a new application be lodged then the community will be able to lodge submissions and these submitters would hold third party appeal rights. The approval does not comply with the Acceptable Measures or the Performance Criteria of the current scheme and it cannot be assumed that the community will be accepting of such a development in these circumstances or that no submission would result should an application be lodged under the current scheme.

d) Concurrence agency views

There are no current Concurrence agencies.

Planning Conclusions

The assessment of whether approval should be extended essentially rests on whether the approval together with the conditions, complies with the current Scheme requirements. The consideration of an extension of time cannot impose further conditions. The approval must stand alone on its merits when being assessed against the current Scheme requirements. The current Scheme clearly seeks a lower density of Multi-Unit Housing in the Residential 1 Planning Areas. The approved development and the conditions of that approval do not meet the requirements of the current Scheme. The approval is an overdevelopment of the land when assessed against the current Scheme requirements.

The notification of an application under the current Scheme is likely to give rise to further submissions. The grounds of these submissions can have regard to conflict and inconsistencies of the development with the current Planning Scheme.

By adopting the 2006 Scheme and the amendments in 2008 the community has identified the future desired outcomes for the land. There has been no demonstrated need for development that is contrary to the Planning Scheme Acceptable Solutions and Performance Criteria. Given the current Scheme seeks a significantly different outcome for Multi-Unit Housing development

on the land to that of the Multiple Dwellings (Residential) under the 1996 Scheme it is not considered appropriate that the request be supported.

Infrastructure Charges

These remain applicable for the life of the approval. Council's Policy has not varied the amount due, except indexing, since the issue of the approval.

APPENDIX 1: DEVELOPMENT PERMIT

ENQUIRIES: Leon Doutre
PHONE: (07) 4044 3243
FAX: (07) 4044 3836
YOUR REF: As Below
OUR REF: 8/38/2 (2649553)

8 July 2010

S & J Kane Enterprises Pty Ltd
 162 National Avenue
 LOFTUS NSW 2232

ATTN: Mr Steve Kane

Dear Sir,

EXTENSION OF CURRENCY PERIOD –
CHANGE TO CONDITIONS OF APPROVAL FOR
DEVELOPMENT APPLICATION AT
23 CORAL DRIVE, PORT DOUGLAS

In accordance with Section 809 of the *Sustainable Planning Act 2009*, please be advised that the General Manager, Planning & Environment under Instrument of Delegation has extended the Currency Period for Material Change of Use, up to and including 6 June 2014, subject to the conditions contained within the Decision Notice dated 6 June 2006 (copy attached).

Condition 4.22 has been amended as follows:

- 4.22 ~~The applicant shall pay to Council headworks contributions for water supply and sewerage in accordance with Council's Local Planning Policy: 'Determination of Contributions for Water Supply and Sewerage Headworks and External Works' (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. Headworks are to be paid prior to the issuing of a Development Permit for Building Work.~~

~~For information purposes only:~~

~~(a) The current number of EDC's for the approved use are:~~

Water supply	2.4
Sewerage	2.4

Water Supply

Pay a monetary contribution to Council in accordance with the Planning Scheme Policy towards the provision of water supply infrastructure.

Contributions must be paid at the rates applicable at time of payment. On the present method of calculation, the contributions are \$7,262.48 (1.1 EDUs).

Payment is required prior to issue of a Development Permit for Building Work.

Wastewater Contributions

Pay a monetary contribution to Council in accordance with the Planning Scheme Policy towards the provision of sewerage infrastructure.

Contributions must be paid at the rates applicable at time of payment. On the present method of calculation, the contributions are \$3,158.08 (0.7 EDUs).

Payment is required prior to issue of a Development Permit for Building Work.

All other conditions of the original Decision Notice remain unchanged.

Should you require any further information or assistance, please contact Leon Doure of Council's Development Assessment Team on telephone number (07) 4044 3243.

Yours faithfully



Simon Clarke
Manager Development Assessment

Ms Tracey Pascoe – Assistant Planning Officer
 Planning Services Section - ☎ (07) 4099 9456
 planning@dsc.qld.gov.au

TPC 1215

Indetail Design
 PO Box 353
 TRINITY BEACH QLD 4879

22nd June 2006

**INTEGRATED PLANNING ACT
 DECISION NOTICE
 DEVELOPMENT APPLICATION**

Applicant's Name : Indetail Design
Owner's Name : S & J Kane Enterprises Pty Ltd
Proposal : Council approves the application for a Development Permit for Material Change of Use to permit the development of 3 x 3 bedroom Multiple Dwellings (Residential) on land situated at 23 Coral Drive, Port Douglas and described as Lot 31 on RP734536
Application Number : TPC 1215
Site Address : 23 Coral Drive, Port Douglas
Property Description : Lot 31 on RP734536, Parish of Salisbury, County of Solander

1. **Decision:** **Decision Date:** 6th June 2006

Approved subject to Conditions

2. **Type of Development Approval:**

Material Change of Use

Development Permit

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3. Referral Agency:

Nil

4. Conditions**Plan of Development**

4.1 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 generally be in accordance with:

- (a) The approved plans of development No. 01-Rev A, 02-Rev A, 03-Rev A, 04-Rev A prepared by InDetail Design and dated May 2005;
- (b) The plans and specifications submitted with the application to Council attached to this approval; and

Except where such plans and/or specifications are modified by the terms of this approval.

Currency Period

4.2 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*.

Traffic Management

- 4.3 The applicant shall provide bollard lighting at the property boundary to indicate access to the car parking area at the time of applying for carrying out building works.
- 4.4 The applicant is to provide to Council for approval a car-parking plan for construction workers vehicles prior to the issuing of a Development Permit for Building, Plumbing and Drainage Works.

Landscaping & Fencing

- 4.5 The landscaping plan submitted with the proposed development, referenced as plan No. 05-21-L01SP/05-354/1, prepared by Vic Preston is approved. The following amendments are to be made to the landscaping plan submitted with the proposed development:
 - (a) Landscape bed along the front boundary (north side) is required to be 2m.
 - (b) A minimum of a 1m-landscape bed is required for the total length of the eastern boundary.

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- (c) Native screening trees and shrubs are required to be planted along the front boundary at no more than 2m intervals.
- (d) Additional screening of native trees and shrubs are to be provided along the eastern side.

This amended landscape plan is to be submitted to Council and approved prior to the issue of a Development Permit for Building Work.

- 4.6 The landscaping shown on the approved plan shall be completed before the development is occupied and maintained thereafter.
- 4.7 The applicant shall provide a 1.8m high screen fence to the eastern and western side boundaries and the southern rear boundary to ensure the privacy and amenity of adjoining properties is maintained. A minimum standard for a fence of this type is a timber-paling fence that is lapped and has no gaps.

Waste Storage & Discharge

- 4.8 An area must provide for the storage and washing of all refuse containers in accordance with the *Environmental Protection (Interim Waste) Regulation 1996*. The area is to be:
 - (a) situated so as not to cause an odour nuisance to any adjacent properties and
 - (b) imperviously paved and drained to a suitable silt trap; and
 - (c) discharged to sewer to the satisfaction of the Director Engineering Services; and
 - (d) provided with a suitable hose cock and hose; and
 - (e) roofed or provided with a suitable automatic diversion valve (or other approved method) designed to prevent the ingress of stormwater to sewer.

Environmental Health Requirements

- 4.9 All construction works are to be carried out in compliance with the *Environmental Protection (Water Policy) Policy 1997* and the *Environmental Protection Regulation 1998*.
- 4.10 Adequate facilities must be provided during construction to contain all site refuse. Facilities should be designed to prevent loose items from refuse being displaced by wind forces or being washed off site.
- 4.11 All liquid wastes generated during construction of the premises should be managed so that they are not permitted to enter a roadside gutter, stormwater drain or a watercourse.

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