

5.1. MATERIAL CHANGE OF USE FOR SHOP 11 WARNER STREET

REPORT AUTHOR	Daniel Lamond, Planning Officer
MANAGER	Paul Hoyer, Manager Environment and Planning
DEPARTMENT	Environment and Planning
APPLICATION NO	MCUC 2020_3679/1
PROPOSAL	Material Change of Use (Shop)
APPLICANT	G Armstrong PO Box 1069 PORT DOUGLAS QLD 4877
LOCATION	11 Warner Street PORT DOUGLAS
PROPERTY	LOT: 37 TYP: PTD PLN: 2091
PLANNING SCHEME	2018 Douglas Shire Council Planning Scheme Version 1.0
ZONING	Centre Zone
LEVEL OF ASSESSMENT	Code
PROPERLY MADE DATE	28 August 2020
STATUTORY ASSESSMENT DEADLINE	16 October 2020
REFERRAL AGENCIES	N/A

LOCALITY



Figure 1 – Locality Plan

RECOMMENDATION

That Council approves the development application for Material Change of Use (Shop) over land described as Lot 37 on PTD2091, subject to the following:
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	DSC base site plan with proposed seafood van location mark-up by applicant. Sheet 5	Not nominated
Site Plan	DSC base site plan with proposed seafood van location mark-up by applicant. Sheet 4	Not nominated

ASSESSMENT MANAGER CONDITIONS & ADVICES

Assessment Manager Conditions & Advices

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; and
 - 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.

Limitation of Approval

3. This development permit shall lapse one (1) year from the date the approval takes effect.

Car Parking Spaces

4. The car parking spaces at the rear of the site must remain accessible to the public.

Advertising devices

5. Additional advertising devices on the site other than the van itself are not permitted.

Cyclone damage prevention

6. Upon public notice that a tropical cyclone poses a risk to the locality (Cyclone Warning issued by the Bureau of Meteorology), the trailer must be removed from the premises and taken to a secure storage location.

REASONS FOR DECISION

The reasons for this decision are:

Sections 60, 62 and 63 of the *Planning Act 2016*:

- to ensure the development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme Version 1.0; and
- to ensure compliance with the *Planning Act 2016*.

Findings on material questions of fact:

- a) the development application was properly lodged to the Douglas Shire Council on 28 August 2020 under section 51 of the *Planning Act 2016* and Part 1 of the *Development Assessment Rules*;
- b) the development application contained information from the applicant which Council reviewed together with Council's own assessment against the 2017 State Planning Policy and the 2018 Douglas Shire Planning Scheme Version 1.0 in making its assessment manager decision.

Evidence or other material on which findings were based:

- a) the development triggered assessable development under the Assessment Table associated with the Centre 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:

Subject to conditions, the development satisfactorily meets the Planning Scheme benchmarks.

EXECUTIVE SUMMARY

Council is in receipt of a development application for material change of use of premises for a shop (seafood van) over land located at 11 Warner Street, Port Douglas.

The site is within the Centre zone of the 2018 Douglas Shire Planning Scheme version 1.0 and is also within the Waterfront North sub precinct of the Port Douglas precinct local plan. Shop 1/11 Warner Street, being the premises the shop operation is proposed to operate from, was previously lawfully established as a shop and the site was developed with three shop tenancies and associated infrastructure under the 1981 Planning Scheme.

The site includes ten car parking spaces at the rear via a battle axe access arrangement. All urban services and infrastructure currently service the allotment.

The retail component of the seafood business will operate from the van sited on the land outside the tenancy of shop 1/11 Warner Street. This constitutes the 'Shop' land use in accordance with the land use definitions from the Planning Scheme and triggers code assessment within the Centre zone. The proposed land use is consistent with the planning intent for the area, however the proposed configuration and operation from a van style trailer is inconsistent with the aesthetic requirements and built form intentions for the area. The application is recommended for approval subject to conditions.

A condition limiting the approval to one year has been imposed due to the conflicts with the planning intent for the area.

TOWN PLANNING CONSIDERATIONS

Proposal

Proposed is a development application for a material change of use for a shop land use at 11 Warner Street, Port Douglas. The proposal is to site a large van in the form of a closed in trailer to retail seafood to the public outside shop 1/11 Warner Street. The applicant proposes to use shop 1 to store additional equipment such as freezers for seafood storage and retail the seafood to the public from the trailer parked at the front of the site, in between the shop and the footpath. The trailer is proposed to be placed on the land and not on the road reserve.

There are no advertising devices proposed other than the sign writing on the trailer. The seafood van can be seen in Figure 2 below.



Figure 2 – Seafood van

State Planning Requirements

There are no State Planning requirements for this application.

DOUGLAS SHIRE PLANNING SCHEME ASSESSMENT

The following benchmarks are applicable to the proposed development:

Table 1.

Douglas Shire Planning Locality	Comment
Planning Zone	
Centre Zone	See comment below
Local Plan Code	
Port Douglas/Craiglie	See comment below

Douglas Shire Planning Locality	Comment
Overlay Codes	
Flood and storm tide hazard overlay	complies
Other Development Codes	
Access, parking and servicing code	complies
Advertising devices code	See comment below
Infrastructure works code	complies
Landscaping code	See comment below

Compliance Issues

Centre Zone Code

AO2.4 of the Centre Zone Code requires that a two (2) metre landscaping strip is implemented in the setback area between the building façade and the road frontage boundary. This area is proposed to be taken up by the placement of the trailer at front of the site. The corresponding performance criteria PO2 requires that the siting of buildings contributes to the use of the land, desired amenity and character of the area and protects the amenity of other land uses. The siting of the trailer is not consistent with the performance criteria, however it could be argued that it is consistent with the purpose of the Centre Zone code as it provides a range of retail development and is serviced by infrastructure and services given the balance of the allotment has shop infrastructure, car parking and some landscaped areas. This reasoning is the basis for imposing a condition limiting the life of the approval to one year.

Port Douglas and Craigie Local Plan Code

The site is within Precinct 1- Port Douglas Precinct and Waterfront North Sub-precinct 1b. PO30 requires that buildings address street frontages. The siting of the trailer in front of the existing building façade stifles the existing buildings ability to do this. PO33 requires that development enhances the distinctive tropical resort town and identity of Port Douglas and encourages pedestrian activity at ground level including shade protection at ground level across the foot path and open space areas. PO35 requires that detailed building design enhances the visual amenity of the street scape, includes legible and attractive built form and enhances the seaside tourist town character. The proposal is also largely inconsistent with Performance outcomes 36, 37, 38 and 39 which generally lend themselves to requirements for high quality building design features and quality street front façade objectives.

The proposal to expand the shop land use beyond the existing building and into a trailer located at the frontage of the land is not consistent with the local plan performance outcomes. This is the primary reason for imposing a limited one (1) year approval life on the development permit.

Advertising Devices Code

The proposal does not include additional advertising devices other than the graphics sign written on the exterior of the seafood van. As an advertising device, this would be in conflict with the advertising devices code for overall design and size, however it is considered that if there are no additional advertising devices used then the visual amenity of the immediate area will not be significantly impacted beyond what is reasonable. A condition has been imposed to disallow additional advertising devices.

Landscaping Code

The proposal is over land already lawfully developed with a hardstand concrete pad from the building façade to the road frontage boundary. This leaves no room to landscape a deep two metre setback in accordance with the code and the centre zone code unless part of the pad was removed. Landscaping at the frontage would be beneficial to improve the aesthetics of the site and partly screen the van, however the limited one (1) year approval lends itself to a reasonable dispensation for landscaping to be required.

Public Notification / Submissions

The development application is code assessable therefore no public notification is necessary. No submissions were received in relation to the application.

Internal Referrals

Nil. Referrals not necessary due to the minor nature of the proposal.

ADOPTED INFRASTRUCTURE CHARGES

The development did not trigger Infrastructure Charges.

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.

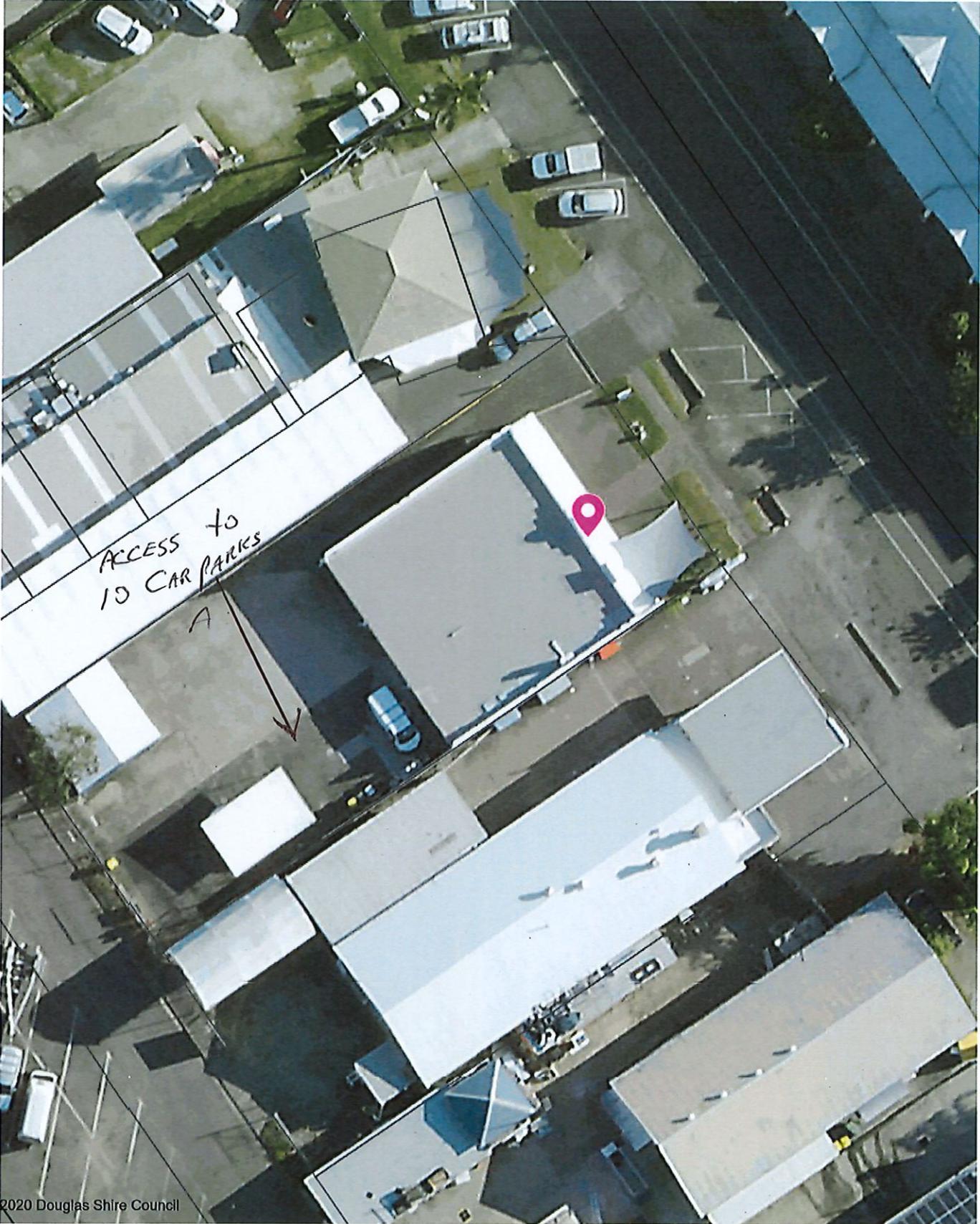
The following area outlines where Council has a clear responsibility to act:

Regulator Meeting the responsibilities associated with regulating activities through legislation or local law.

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

ATTACHMENTS

1. Attachment 1- Approved Plans [5.1.1 - 2 pages]



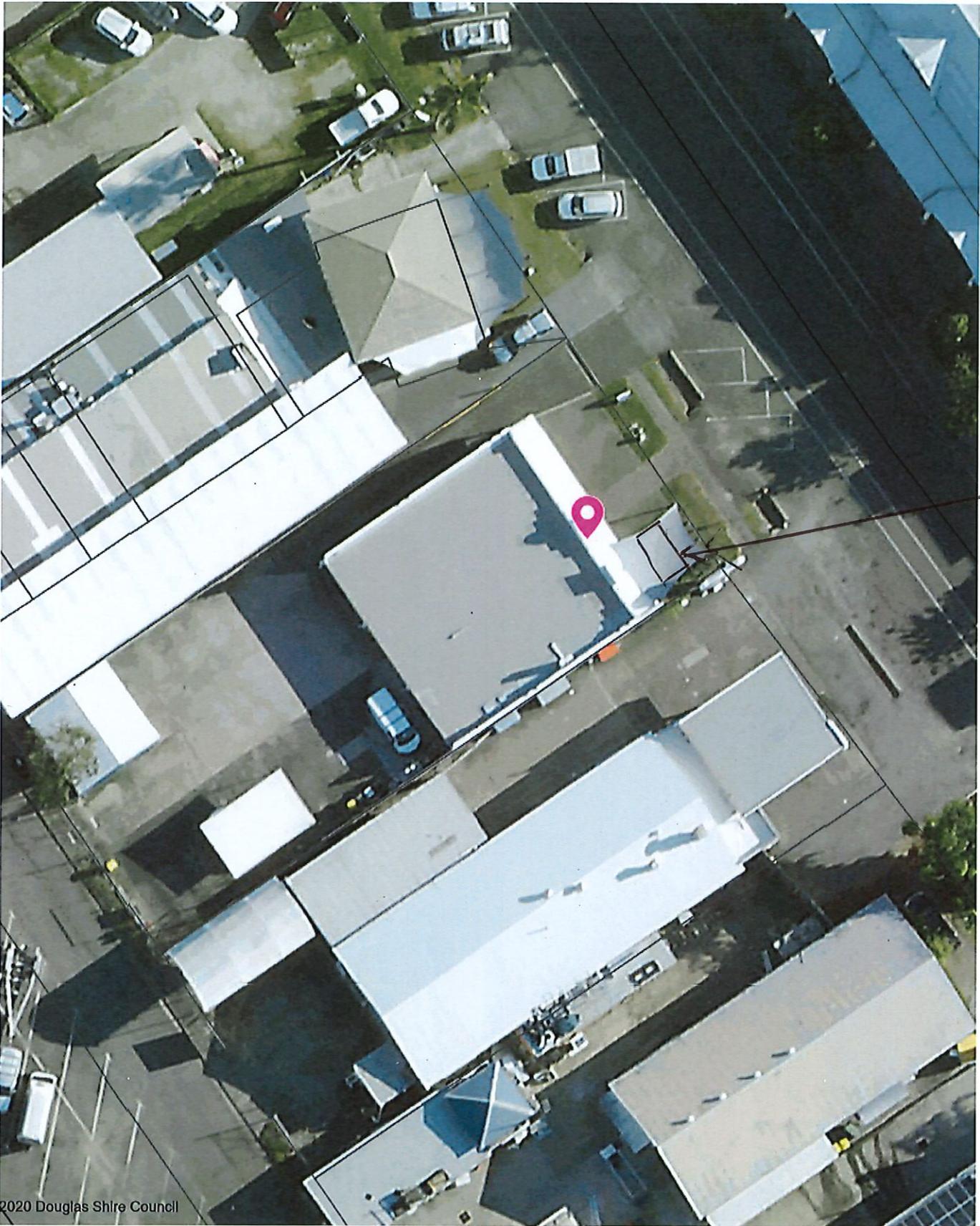
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PROPOSED.
SEAFOOD JAW

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