

5.2. APPLICANT REPRESENTATION FOR NEGOTIATED DECISION FOR INFRASTRUCTURE CHARGE FOR MCU (LIMITED FUNCTION FACILITY) AT 5146 CAPTAIN COOK HIGHWAY OAK BEACH

REPORT AUTHOR	Jenny Elphinstone, Senior Planning Officer
MANAGER	Paul Hoye, Manager Environment and Planning
DEPARTMENT	Environment and Planning
APPLICATION NO	MCUI 2020_3879/1
PROPOSAL	Applicant representation for negotiated decision for infrastructure charge for MCU (Limited Function facility)
APPLICANT	David & Jennifer Moodie, C/- Patrick Clifton, GMA Certification PO Box 831 Port Douglas Qld 4877
LOCATION	5146 Captain Cook Highway Oak Beach
PROPERTY	Lot 1 on RP742791
PLANNING SCHEME	2018 Douglas Shire Council Planning Scheme Version 1.0
ZONING	Rural Zone
LEVEL OF ASSESSMENT	Impact
PROPERLY MADE DATE	14 June 2021
STATUTORY ASSESSMENT DEADLINE	Not applicable.
REFERRAL AGENCIES	N/A in respect to adopted Infrastructure Charges
LOCALITY	



Figure 1 – Locality Plan

RECOMMENDATION

That Council does not support the applicant's representations for a Negotiated Infrastructure Charges Notice issued in association with the approval of the development application for Material Change of Use for a Function facility in addition to the continuing use of a Dwelling house over land described as Lot 1 on RP742791, being 5146 Captain Cook Highway Oak Beach.

REASONS FOR DECISION

1. The reasons for this decision are:
 - a. Section 125 of the *Planning Act 2016*:
 - b. to ensure compliance with Council's Infrastructure Charges Resolution (No.2) 2021; and
 - c. to ensure compliance with the *Planning Act 2016*.
2. Findings on material questions of fact:
 - a. the applicant's representations for a Negotiated Infrastructure Charges notice was properly lodged to the Douglas Shire Council on 14 June 2021 under section 125 of the *Planning Act 2016*;
 - b. the representations development application contained information from the applicant which Council reviewed together with Council's own assessment against the Council's Infrastructure Charges Resolution (No.2) 2021 in making its assessment manager decision.
3. Evidence or other material on which findings were based:
 - a. the development triggered assessable development under the Assessment Table associated with the Rural Zone Code;
 - b. Council undertook an assessment in accordance with the provisions of sections 60, 62 and 63 of the *Planning Act 2016* and issued a Decision Notice together with an Infrastructure Charges Notice; and
 - c. the applicant's reasons have been considered and the following findings are made:
 - i. the charges as stated in the notice are considered reasonable.

EXECUTIVE SUMMARY

Council has previously supported a development application for a material change of use for an additional land use on the premises being a Function facility. An Infrastructure Charges Notice was issued associated with the Decision Notice. The applicant has made representations in respect to the Infrastructure Charges Notice. The charges have been applied in a reasonable manner, reflecting the increase in demand. The report recommends the applicant's representations not be supported.

TOWN PLANNING CONSIDERATIONS

Background

Section 110 of the *Planning Act 2016* (PA 2016) authorises local governments, for development approvals in relation to trunk infrastructure, to adopt, by resolution, charges for development infrastructure and levy the charges. On 23 February 2021 Council adopted the Infrastructure Charges Resolution (No.2) 2021.

The Resolution applies to all land within the Shire, including those areas outside a Priority Infrastructure Area (PIA). As per the Resolution a charge can be applied to a gross floor area of a building or where an exterior area is used, the exterior area.

Under s114 an adopted charge may be made for development if the charge is prescribed by regulation for the development; and no more than the maximum adopted charge for providing trunk infrastructure for the development. An Infrastructure Charges Notice can be issued when a development approval has been given; and an adopted charge applies to providing trunk infrastructure for the development.

Under section 120 PA 2106 a levied charge may be only for extra demand placed on trunk infrastructure that the development will generate. The extra demand is not to include

- (a) *an existing use on the premises if the use is lawful and already taking place on the premises;*
- (b) *a previous use that is no longer taking place on the premises if the use was lawful at the time the use was carried out;*
- (c) *other development on the premises if the development may be lawfully carried out without the need for a further development permit.*

On the 25 May 2021 Council approved an application for a material change of use on the land for a Function facility in addition to the continuing use of a Dwelling house. The proposed Function facility use is not an ancillary use of the Dwelling house. The approval was subject to conditions and subject to the payment of infrastructure charges.

The application for the material change of use sought use of two alternative exterior areas (on which a marquee would be erected together with associated bar entertaining areas) for the Function facility – either the tennis court area or an open space area near the dwelling and foreshore. Having regard to the alternative onsite locations, the infrastructure charge was only applied to one area, the tennis court area. As per the Resolution, a credit (deduction of 65% of the charge) was applied given the land is outside the Council's water and sewer serviced areas. After applying the credit the charges amount to \$13,518.60 and are payable prior to the commencement of the land use. A copy of the Infrastructure Charges Notice is included in Attachment 1.

Like the conditions of a development permit, the charge is payable by the applicant and is attached to the premises. In this instance the landowners are also the applicants.

The Decision Notice for the MCU and the Adopted Charges Infrastructure Notice were issued to the applicant on the 25 May 2021. During the applicant's appeal period and under section 125 of the PA 2016 the applicant can make representations about an infrastructure charges notice. Where Council agrees with the representations a Negotiated Decision Notice is issued. Where Council does not agree, then a Decision Notice is issued and the applicant's appeal period restarts.

Section 125 enables the applicant to make representations to Council about the infrastructure charges notice. Under the PA 2016, representations about an infrastructure charges notice are separate to those for the development permit. To date the applicant has not requested a negotiated decision for the conditions or any other matter for the development application.

Beyond the consideration of a negotiated infrastructure Charges Notice, the PA states under section 229 that *“an appeal against an infrastructure charges notice must not be about the adopted charge itself.”*

Applicant Representations

The applicant purports that the charge of \$13,518.80 is unreasonable and that there is no justification for the imposition of an infrastructure charge in respect to the development. The applicant has requested that a nil charge apply.

The applicant notes that credit has been provided as the land has no water supply or waste water collection. This is then inferred that the charge is collected for the impact of the development on, *“the remaining two items of trunk infrastructure, being Council trunk roads and council open spaces.”*

The applicant’s consultant notes that to his knowledge Douglas Shire Council is the only known Council that applies an infrastructure charge of patronage whether enclosed in a building or not, whereas other Council’s only apply the charge where there is an increase in gross floor area.

The applicant contends that as the land is outside a Priority Infrastructure Area (PIA):

- a. the LGIP does not apply as the development in these areas “has not been considered as part of the LGIP;”
- b. consideration needs to be given on the impact the proposed development would have on Council trunk roads and Council parks; and
- c. the charge needs to be considered on a case by case basis.

In respect to the proposed use the applicant makes the following representations.

“In terms of impact on Trunk Roads, it is important to note that the site is accessed via the Captain Cook Highway, which is not a Council Trunk Road. For guests coming from outside of the Council area they would arrive at the facility by State Controlled Road only and would not have an impact on any Council Trunk Road. For guests that are staying within the Douglas Shire Area, they will be staying at Dwelling Houses and accommodation providers where those developments would have made an infrastructure charge for the impact that those developments have in the Council Trunk Roads. On that basis, the proposed development being a limited function facility for boutique events, limited to a maximum of 80 guests and a maximum of 12 events per year would not have an extra demand on any Council Trunk Road infrastructure and a charge relating to this trunk infrastructure is not applicable in this instance.

In terms of impact on Council Open Space, it is important to note that the development is for a function facility only it does not increase overnight accommodation or the number of full time residents within the Shire. In addition, the nearest trunk open space to the site is in Port Douglas. It is considered that the proposed development would not have an extra demand on any Council Trunk Open Space and on that basis a charge relating to this trunk infrastructure is not applicable.”

A full copy of the Applicant's submission is included in Attachment 2.

Officer Comment

Council has the ability under S119 to apply a charge as a development approval has issued and an adopted charge applies to providing trunk infrastructure for the development. The charge has only been applied to the additional approved use that being a Function facility.

It cannot be identified where attendees or employees are coming from in order to identify particular demand for the impact on trunk roads or parks. Such a requirement cannot be conditioned in the approval. The applicant has chosen to apply for a limited number of functions per year. Council's adopted charges resolution makes no consideration for limited time and days of land use.

The Resolution takes a "broad brush" approach to applying appropriate charges, based on reasonableness of land uses. The resolution takes into account development outside a PIA, noting that that whole of the Shire is affected. Consideration is given to significant reductions where development is outside the serviced water and sewer serviced areas.

The applicant has not contended that the extent of area of which the charge has been applied is unreasonable. The applicant has not contended that the rate of charge (that associated with a Function facility as opposed to another use) is inappropriate.

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. Adopted Infrastructure Charges [5.2.1 - 1 page]
2. Applicant Representations [5.2.2 - 3 pages]



ADOPTED INFRASTRUCTURE CHARGES NOTICE

David & Jennifer Moodie DEVELOPERS NAME		N/A ESTATE NAME	0 STAGE
5146 Captain Cook Highway STREET No. & NAME	Oak Beach SUBURB	L1 RP742791 LOT & RP No.s	4608 PARCEL No.
MCU Limited Function facility DEVELOPMENT TYPE		MCUI 2020_3879/1 COUNCIL FILE NO.	6 VALIDITY PERIOD (year)
1008303 DSC Reference Doc. No.	1 VERSION No.	Payment before the change occurs	

Infrastructre Charges as resolved by Council at the Ordinary Meeting held on 23 February 2021 (Came into effect on 1 March 2021)

	Charge per Use	rate	Floor area/No.	Amount	Amount Paid	Receipt Code & GL Code
0						
0						
Proposed Demand						
Places of assembly	Function facility	\$ per m ²	64.38	600	38,625.14	
	Total Demand				38,625.14	
Existing Credit						
Non-sewer & non-water area discount		-65%	0.00	0	0.00	
	Total Credit				25,106.34	Code 895 GL 7470.0135.0825

Required Payment or Credit **TOTAL** \$13,518.80

Prepared by	Jenny Elphinstone	28-Apr-21	Amount Paid	
Checked by	Daniel Lamond	7-May-21	Date Paid	
Date Payable	MCU - Before the change occurs		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 Ordinary Meeting held on 23 February 2021.

Charge rates under the Policy are subject to indexing.
Any Infrastructure Agreement for trunk works must be determined and agreed to prior to issue of Development Permit for Operational Work.

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, Mossman 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



PLANNING DIVISION

P: 0438 755 374 **E:** Patrick.c@gmacert.com.au
P.O. Box 2760, Nerang Qld 4211

Our Ref: 20204033

Date: 11 June 2021

Chief Executive Officer
Douglas Shire Council
PO Box 723
Mossman QLD 4873

Via Email: enquiries@douglas.qld.gov.au

Dear Sir,

RE: REPRESENTATIONS IN RESPECT OF INFRASTRUCTURE CHARGES - APPLICATION FOR MATERIAL CHANGE OF USE, FUNCTION FACILITY, ON LAND LOCATED AT 5146 CAPTAIN COOK HIGHWAY, OAK BEACH (LOT 1 RP742791)

COUNCIL REF: MCUI 2020_3879/1

Reference is made to the recent approval by council for the abovementioned development and the Infrastructure Charges Notice attached to that approval. The infrastructure Charges Notice identifies a payment of \$13,518.80 as being required prior to the commencement of the use.

The ability for Councils to levy Infrastructure Charges is provided by section 119 and section 120 of the *Planning Act 2016*.

Section 119 of the Act identifies that a charge may be levied if an approval has been given and an adopted charge applies to providing trunk infrastructure for the development. Section 119 (12) states that the levied charge under the infrastructure charges notice is subject to sections 120 of the Act. Section 120 (1) of the Act states that a levied charge may only be for extra demand placed on trunk infrastructure that the development will generate. The legislation therefore identifies a two stage test. First it is necessary to determine whether an adopted charge applies. If an adopted charge

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applies, then that charge can only be applied where it is demonstrated that the development would have an extra demand placed on council trunk infrastructure.

In the first instance, the Councils Adopted Infrastructure Charges Resolution (No. 2) of 2021 is noted. It identifies that a function facility attracts an infrastructure charge of \$64.38/m² of Gross Floor Area (GFA). Notes attached to this part of the resolution further identify that GFA, for the purpose of the Infrastructure Charges Resolution, also includes areas available for patronage, whether enclosed within a building or not, i.e., outdoor beer garden, terraced function area. It is interesting to note that Douglas Shire Council is the only Council known to adopt this approach to the calculation of GFA and other Councils simply apply the Planning Scheme Definition of GFA, which does not include external areas.

We are advised by Council Officers that the calculation of the applicable infrastructure charge, based on the Councils resolution, was based on an external area of 600m², which is understood to be the area determined for the existing tennis court, which was identified as an area where functions may be held. Based on this assumed external area a base infrastructure charge of \$38,625.14 was calculated. In accordance with the resolution discounts to the base infrastructure charge are applied where there is no water supply or waste water connection. In this instance a discount of 65% was applied to the base charge resulting in a final charge of \$13,518.80. This means that the charge is collected for the impact that the proposed development has on the remaining two items of Trunk Infrastructure, being Council trunk Roads and Council open space.

The second part of the test is to demonstrate that the proposed development would have an extra demand placed on Council trunk infrastructure. In considering this test it is important to identify whether the site is located within the identified Priority Infrastructure Area (PIA) or whether it is outside the PIA. Where the development is identified within the PIA this test is satisfied as the Council has prepared and adopted a Local Government Infrastructure Plan (LGIP). The LGIP uses assumed growth and determines the impact that each unit of growth would have on trunk infrastructure expressed as a dollar figure. For commercial purposes, this unit of growth is based on Gross Floor Area only and does not include a calculation for external areas that are not GFA. On that basis the LGIP assessment does not appear to support the inclusion of non GFA as identified in the Councils recent resolution. Notwithstanding, the LGIP generally demonstrates the impact that the development within the PIA would have on trunk infrastructure. Outside the PIA the LGIP does not apply as the development in these areas has not been considered as part of the LGIP. Therefore it is necessary to satisfy this second test in a case by case basis.

In this instance the subject site is located outside of the PIA and, in order to justify the charge, it is necessary to demonstrate the impact that the proposed development would have on Council trunk roads and Council Parks.

In terms of impact on Trunk Roads, it is important to note that the site is accessed via the Captain Cook Highway, which is not a Council Trunk Road. For guests coming from outside of the Council area they would arrive at the facility by State Controlled Road only and would not have an impact on any Council Trunk Road. For guests that are staying within the Douglas Shire Area, they will be staying at Dwelling Houses and accommodation providers where those developments would have made an infrastructure charge for the impact that those developments have in the Council Trunk Roads. On that basis, the proposed development being a limited function facility for boutique events, limited to a maximum of 80 guests and a maximum of 12 events per year would not have an extra demand on any Council Trunk Road infrastructure and a charge relating to this trunk infrastructure is not applicable in this instance.

In terms of impact on Council Open Space, it is important to note that the development is for a function facility only it does not increase overnight accommodation or the number of full time residents within the shire. In addition, the nearest trunk open space to the site is in Port Douglas. It is considered that the proposed development would not have an extra demand on any Council Trunk Open Space and on that basis a charge relating to this trunk infrastructure is not applicable.

In conclusion, there is no justification for the imposition of an Infrastructure Charge in respect of this development and Council are requested to issue a revised Infrastructure Charges Notice identifying a nil charge in this instance.

Should you have any queries regarding this matter please do not hesitate to contact the undersigned on 0438 755 374 or by email Patrick.c@macert.com.au

Kind Regards,

Patrick Clifton
PLANNING MANAGER
GMA CERTIFICATION GROUP