

APPENDIX 2. APPLICANT'S SUPPORTING REASONS



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Our Ref: 62857/OCK/AF/L73251
 Date: 25 February 2014

Attn: Ms Donna Graham
 Chief Executive Officer
 Douglas Shire Council
 PO Box 723
 MOSSMAN QLD 4873

Via: Mail / E-mail

Dear Madam

RE: FURTHER DETAILS IN SUPPORT OF REQUEST FOR EXTENSION OF RELEVANT PERIOD RELATING TO APPROVAL FOR FOUR MULTIPLE DWELLING UNITS AT 27 MURPHY STREET, PORT DOUGLAS

We act of behalf of Fred and Lola Langton (the land owners and Applicant for the original approval) in respect of the above described matter.

Further to Council's correspondence dated 30 January 2014 and 6 February 2014, we provide the following further detailed submission in support of the requested extension of time and note that Council agreed to receive the further detailed submission on or before 25 February 2014.

Background

The Development Approval for which an extension of time is sought to the relevant period relates to a Development Application (Superseded Planning Scheme) which sought approval under the Superseded Planning Scheme (the Douglas Shire Planning Scheme 1996) for four Multiple Dwelling Units (Tourist) at 27 Murphy Street, Port Douglas.

After responding to requests for further information, undertaking formal public notification and negotiating with Council to determine agreed conditions of approval, the Cairns Regional Council determined at its meeting on 10 February 2010 to recommend to the Douglas Iconic Places Panel that a Development Permit be issued for the proposed development subject to a recommended list of conditions (refer to a copy of Council's Minutes provided for reference in Attachment A).

Subsequent to Council's decision being forwarded to the Douglas Iconic Places Panel, the Panel forwarded a request for further information which was required to be responded to prior to formally determining the Development Application (refer to copy of the Panel's request in Attachment B). To respond to the information request, a meeting was undertaken on-site with the Panel and further detailed design drawings were provided that incorporated the additional design changes that were requested by the Panel. This response facilitated the Panel's final determination to approve the proposed four Multiple Dwelling Unit (Tourist) development (refer to copy of the Panel's Amended Decision Notice dated 18 June 2010).

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RPS Australia East Pty Ltd ABN 44 140 292 762 A member of the RPS Group Plc



Since approval of the proposed development, the economic climate in Port Douglas has not been conducive to proceeding with the proposed development. Our client seeks to maintain the approval in place to provide the opportunity to proceed with the development at a more favourable time and given that the approval lapses on or about 18 June 2014, an extension of time of 4 years to the approval's relevant period has been requested.

Matters to be Considered by Council

Section 388 (1) of the Sustainable Planning Act (SPA) states the matters to be considered by Council when deciding the request, as follows;

"In deciding a request under section 383, the assessment manager must only have regard to-

- (a) The consistency of the approval, including its conditions, with the current laws and policies applying to the development, including, for example, the amount and type of infrastructure contributions, or charges payable under chapter 8, part 1; and
- (b) The community's current awareness of the development approval; 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 given under section 385."

The matters to be considered by Council when deciding the request are addressed in further detail in the following sections of the submission.

The Consistency of the Proposal with Current Planning Laws and Policies

As indicated above, the Multiple Dwelling (Tourist) development was approved under the Superseded Planning Scheme (the Douglas Shire Planning Scheme 1996). The Development Approval provides for a use of land, building design and scale of development that is considered to be consistent with the type and form of development that has been established on the south-western side of Murphy Street which backs onto the Port Douglas commercial centre along Macrossan Street.

The subject land is one of four relatively small vacant parcels of land which adjoin the south-western side of Murphy Street and back onto the Port Douglas commercial centre along Macrossan Street (located between Owen Street and Wharf Street). Therefore, development established within the immediate locality on the south-western side of Murphy Street is characterised by the type and form of development that has been permitted pursuant to the Superseded Planning Scheme or the Planning Scheme that was in place prior to the commencement of the Superseded Scheme.

Some of the more notable developments that front onto the south-western side of Murphy Street between Owen and Warf Streets are as follows:

- The Point Villas – Holiday Units



- Far Pavillions – 3 x Unit Development
- Monsoon Villas – 2 x Holiday Units
- Nautilus Restaurant
- 4 x Unit Development
- Vacant site located adjacent to subject land which is advertised as being able to be purchased with (presumably) approval for 3 villa units.
- Pavillion Flagstaff Hill – 2 x Unit located adjacent to subject land.
- Latitude 16 – 10 x Unit Development
- Boat House Tropical Style Apartments – 18 x Holiday Apartments

The majority of accommodation developed along south-western side of Murphy Street appears to range from holiday/tourist accommodation with management facilities such as a reception and/or manager on-site to holiday/tourist accommodation which is managed off-site.

Under the current Planning Scheme, land adjoining either side of Murphy Street is included within the Residential 1 Planning Area, the Flagstaff Hill Special Management Area and Low Scale Plot Ratio.

The main Planning Scheme provisions applicable to the abovementioned designations and the approved development are considered to be as follows:

- Multiple Dwelling (Tourist) development appears to fall within the defined term Holiday Accommodation which is included as an Impact (Inconsistent) material change of use within the Residential 1 Planning Area.
- A maximum Plot Ratio of 0.35:1 within the Low Scale designation; and
- Only Houses on large allotments are developed in the Special Management Area 1 – Flagstaff Hill designation.

It is considered evident from the above that the approved Multiple Dwelling (Tourist) development lacks consistency with the current Planning Scheme provisions. However, in this instance where development on the south-western side of Murphy Street has largely been established under the Superseded Planning Scheme or an earlier Planning Scheme and the land backs onto the Port Douglas commercial centre along Macrossan Street, the lack of consistency is not considered to be grounds to justify refusal of the requested extension of time.

Given the type and form of development established in the locality and the proximity of the land to the Port Douglas commercial centre along Macrossan Street, there are considered to be grounds to support the requested extension of time. This is considered to be supported by the 'outcomes' sought in the Purpose of the Port Douglas and Environs Locality Code and the Residential 1 Planning Area Code, the Planning Scheme Code's directly linked to the abovementioned provisions.

The outcomes considered to be of most relevance to the proposed development in the Port Douglas and Environs Locality Code are as follows:

"...

- Consolidate Port Douglas as the major tourist accommodation and tourist service centre in the Shire;



- Ensure that tourist development and associated landscaping is of high quality which reflects and complements the image of Port Douglas as a tropical seaside resort town of international renown;
- Consolidate the area between Macrossan Street and Marina Mirage as the major tourist, retail, dining and entertainment centre of the Shire;
- Ensure that all forms of development complement the tropical image of the town by incorporating attractive design and architectural features;
- Encourage the expansion of residential areas that are pleasant, functional, distinctive and in visually well-defined areas;
- Protect existing and future residential areas from the intrusion of tourist accommodation and activity;
- Protect sensitive environments and natural features which give Port Douglas its distinctive character and identity, in particular Four Mile Beach, Dicksons Inlets and Flagstaff Hill; ...

In relation to the abovementioned outcomes, the following comments are provided:

- Allowing the approved Multiple Dwelling (Tourist) development to be established on the land will support the consolidation of Port Douglas as a major tourist accommodation centre. The subject proposal is located on the south-western side of Murphy Street which is characterised as an area where tourist accommodation has been established. The subject land backs onto and is within easy walking distance of the commercial strip of Port Douglas. The subject land is considered ideally suited for the type and form of tourist accommodation currently approved on the land.
- The design of the approved tourist accommodation development was reviewed and required to be amended by the Douglas Iconic Places Panel prior to approval by the Panel. Approval of the proposal by the Panel is suggested to reflect that the proposed building design and landscape treatment satisfactorily addressed the high quality tropical seaside resort design intent for the Port Douglas locality.
- Allowing the approved Multiple Dwelling (Tourist) development to be established on the land will compliment the intent to consolidate the area between Macrossan Street and Marina Mirage as the major tourist, retail, dining, and entertainment centre of the Shire.
- The approved tourist accommodation development has the characteristics of a residential unit development and is compatible with the form of development and use of land established on the south-western side of Murphy Street and which backs onto the main commercial strip of Port Douglas. The tourist accommodation and restaurant development that has been established on the south-western side of Murphy Street and which backs onto the main commercial strip of Port Douglas combined with the limited number of vacant allotments that remain on the south-western side of Murphy Street does not provide for a discreet residential environment. The subject land will be impacted by tourist vehicle and pedestrian traffic and would potentially be subject to noise and other amenity related impacts due to the proximity to the main commercial strip and other tourist accommodation within the locality. It is considered that the approved tourist accommodation development which characterises a residential unit development is a better type and form of development on the land and achieves the Code's preferred outcomes better than the development of a single house intended for permanent residential purposes.
- In terms of protecting the sensitive environment of Flagstaff Hill, it is noted that the subject land has been cleared of natural vegetation, is located on the lower foothill of Flagstaff Hill



and is located adjacent to multiple unit development on one side and commercial development at the rear of the property. The approved tourist accommodation development which incorporates building design features and landscape treatment that addresses the high quality tropical seaside resort design intent for the Port Douglas locality, is considered to compliment the intent to protect the sensitive environment of Flagstaff Hill through its design and the fact that the development will have negligible impact on sensitive environment of Flagstaff Hill.

The outcome considered to be of most relevance to the proposed development in the Residential 1 Planning Area Code is as follows:

- Maintain and enhance the residential character and amenity of established residential neighbourhoods.

In relation to the abovementioned outcome, the following comments are provided:

- The approved tourist accommodation development has the characteristics of a residential unit development and is compatible with the form of development and use of land established on the south-western side of Murphy Street which backs onto the main commercial strip of Port Douglas. The tourist accommodation and restaurant development that has been established on the south-western side of Murphy Street which backs onto the main commercial strip of Port Douglas combined with the limited number of vacant allotments that remain on the south-western side of Murphy Street does not provide for a discreet residential environment. The subject land will be impacted by tourist vehicle and pedestrian traffic and would potentially be subject to noise and other amenity related impacts due to the proximity to the main commercial strip and other tourist accommodation within the locality. Whilst the Residential 1 Planning Area is typically expected to be an area where tourist accommodation would be inconsistent with the locality, in this instance, the approved tourist accommodation development which characterises a residential unit development is a better type and form of development on the land compatible with existing established development on the south-western side of Murphy Street and which backs onto the main commercial strip of Port Douglas.

It is considered that the above review of applicable Planning Scheme Code outcomes provides adequate grounds to support granting the requested extension of time. Whilst there are evident inconsistencies with specific Planning Scheme provisions, the approved tourist accommodation development is a good fit for the site and location and is considered to be supported by the outcomes of applicable Planning Scheme Codes.

With regard to the conditions included on the Development Approval, it is expected that they are consistent with the conditions likely to be imposed on the proposed development should it be approved today. However, should there be a need to amend the conditions of the Development Approval to amend or include additional conditions to address any inconsistency in the conditions, it is expected that Fred and Lola Langton would be willing to consider any reasonable request.

The Community's Current Awareness of the Development Approval

The approved development underwent an impact assessment process, including public notification, prior to approval of the development by the Douglas Iconic Places Panel. Only one submission was received in response to the public notification process and the submission clearly acknowledged that



the development application was made pursuant to the Superseded Planning Scheme provisions and related to a use of land that was identified as inconsistent under the current Planning Scheme. The submitter was clearly aware of the proposed development however did not seek to lodge an Appeal against the Panel's approval of the development.

It would appear from the one submission received that the public notification given made the community reasonably aware of the Superseded Planning Scheme provisions that the development application relied upon. However, the receipt of only one submission could suggest that the proposed development did not cause concern for the community and it is expected that the granting of the requested extension of time would be generally accepted by the community now.

Since approval of the approved tourist accommodation development, the land owner has maintained a sign on the land fronting Murphy Street with the wording, "LOT FOR SALE 1012M² SITE DA APPROVED FOR 4 X 2 BEDROOM TOWNHOUSES \$1.26m CONTACT YOUR PREFERRED AGENT" (refer to **Attachment C** for a photo of the sign on the land). It is expected that land owners within the immediate locality would have the greatest interest in the approval and the sign maintained on the land is considered to provide adequate opportunity for land owners within the immediate locality to be aware of the development approval.

Likelihood of Further Submissions Being Received Should a Further Development Application be Required for the Proposed Development

As indicated above, the receipt of only one submission during the public notice period for the approved tourist accommodation development appears to suggest that the proposed development did not cause concern for the community. For the reasons stated in the review of the current Planning Schemes Code provisions, the approved tourist accommodation development is considered a good fit for the site and location and it is expected that a further development application for the proposed development is not likely to generate any further submissions as compared to that received during the original public notification period.

Views of Concurrence Agency

As per the response dated 17 January 2014, the Department of State Development, Infrastructure and Planning has no objection to the extension being approved.

We trust the further details provided are adequate for the assessment of the request. However, should you require any further details or clarification prior to finally determining the request or seek to meet to further discuss the request, please do not hesitate to contact the undersigned.

Yours sincerely
RPS

Owen Caddick-King
Principal - Planner

cc: Fred Langton
PO Box 260
PORT DOUGLAS QLD 4877

enc: **Attachment A:** Council's Minutes
Attachment B: Panel's request for further information
Attachment C: Photo of For Sale Sign on Land



Attachment B

Panel's request for further information

62857/OCK/AF/L73251



Our Ref: Meeting 42 Item 6.3.5 March 2010
 Council Ref: 8/3588
 Your Ref: 62857

Douglas Iconic Panel

23 March 2010

FA Langton
 C/- Conics Pty Ltd
 PO Box 1949
 CAIRNS QLD 4870

RECEIVED
 24 MAR 2010

BY:.....

Attention: Owen Caddick-King

Dear Sir / Madam

Re Request for Additional Information and Reconsideration of Design Style

Development Application seeking a Development Permit for a Material Change of Use for 4 Multiple Dwellings (Tourist) under the Superseded 1996 Planning Scheme on land at 27 Murphy Street, Port Douglas described as Lot 113 on PTD2091

I am writing to you on behalf of the Douglas Iconic Panel to provide an update of the Panel's current assessment of the abovementioned development application and to seek additional information and reconsideration of the particular design styles as proposed.

On 5 March 2010 the Panel resolved to defer making a decision about the application as it was not satisfied that the material provided demonstrated that the proposed development was sympathetic to the localities developing tropical Queensland vernacular building style. However, the Panel has also subsequently resolved to provide you with the opportunity to conclusively demonstrate compliance and to incorporate additional tropical Queensland vernacular building style features.

The Panel considers that inclusion of a tropical Queensland vernacular building style is a relevant requirement under the superseded 1996 Douglas Shire Planning Scheme. In addition, it is also noted that the planning scheme provides many examples throughout its contents of how, cumulatively, tropical Queensland vernacular building style can be achieved. Therefore it is considered by the Panel that significant weight should be given to these examples when assessing and deciding the application.

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To facilitate the Panel's assessment it is therefore requested that the following additional material is provided:

- True perspectives from all relevant vantage points, particularly with regard to perspectives from the street frontage and immediately adjoining residents. The Panel notes that no perspectives have been provided, however these are considered necessary to conclusively demonstrate Queensland vernacular building style and minimal visual amenity impact; and
- Elevations and sections conclusively illustrating the proposed forms, materials and colours to all external surfaces of the proposed building.

With regard to tropical Queensland vernacular building style features, it is strongly recommended the following specific features are reconsidered:

- Roof pitch. In particular it is noted that the proposed roof has minimal, if any pitch and/or appearance of a pitch. The Panel considers that a roof pitch and/or appearance of a pitch of between 15-45 degrees is likely to achieve compliance with the desired outcome. When considering roof pitch, the height provisions within the planning scheme should not be compromised as result of any changes;
- Fenestrations and articulations. In particular it is noted the walls adjoining the neighbouring lots are large with minimal fenestrations or articulation. The Panel considers that additional features need to be added to the walls to achieve compliance with the desired outcome; and
- Veranda style. Based on the material provided it is unclear if and/or how the proposed veranda style will achieve the prescribed style.

The above items are not exhaustive, hence it is recommended that all examples, that cumulatively achieve tropical Queensland vernacular building style, are considered and addressed when providing true perspectives and elevations.

As per our letter dated 16 March 2010, the Panel's decision making period has been extended to 16 April 2010. While the Panel is willing to consider entering into extension agreements with the applicant beyond this timeframe, at this time it is requested that any additional information is provided on or before 9 April 2009. This intum will allow the Panel to comply with its statutory decision making timeframes.

Should you have any questions regarding the abovementioned, please contact the undersigned on (07) 4039 8041.

Yours sincerely



Ben Thrower
Project Manager
Douglas Iconic Panel

cc: Mr Simon Clarke
 Assessment Manager
 Cairns Regional Council
 PO Box 359
 CAIRNS QLD 4870



Attachment C

Photo of 'For Sale' Sign on Land

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