5.1. APPROVAL EXTENSION REQUEST 40 MURPHY ST PT DOUGLAS FOR A HOUSE

REPORT AUTHOR(S) Jenny Elphinstone, Senior Planning Officer

GENERAL MANAGER Nick Wellwood, General Manager Operations

DEPARTMENT Development Assessment and Coordination

PROPOSAL Application to Extend the Relevant Period for a Material

Change of Use for Multiple Dwellings (Residential).

APPLICANT VHPD Investments Pty Ltd (Tte)

c/- RPS Australia East Pty Ltd

PO Box 1949

CAIRNS QLD 4870

LOCATION OF SITE 40 Murphy Street, Port Douglas

PROPERTY Lot 22 on SP161481

LOCALITY PLAN



Figure 1 - Locality Plan

ZONE Environmental Management

LOCAL PLAN Port Douglas / Craiglie; Precinct 1 Port Douglas; Sub-

precinct 1f Flagstaff Hill.

PLANNING SCHEME Douglas Shire Planning Scheme 1996

REFERRAL AGENCIES None applicable.

NUMBER OF Nil to the notification for the original application (July -

SUBMITTERS August 2005).

STATUTORY Expired.

ASSESSMENT DEADLINE

APPLICATION DATE 25 January 2018 (Application to extend approval period).

RECOMMENDATION

- A. That Council refuses the application to extend the approval period for the material change of use for two multiple dwellings (residential) over land described as Lot 22 on RP161481, located at 40 Murphy Street, Port Douglas, on the following Statement of reasons.
 - Since the issue of the Development Permit the 1996 Douglas Shire Planning Scheme has been superseded by new planning controls.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. The extension to the Development Permit is contrary to the expected outcomes for the land held by the community.
 - There has been a significant lapse of time since the community was last informed about the application. The community should be afforded an opportunity to consider the development in light of the current Planning Scheme.
 - 4. The conditions of the approval are insufficient to adequately consider the impacts of solutions to geotechnical concerns and impacts on the adjacent service road and vegetated batter. The impacts of stormwater and instability of the adjacent service road may influence the visual assessment and outcomes of the development.
- B. In respect to the development of Dual Occupancy on the land Council advise 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 *Planning Act 2016* and the *Planning Regulation 2017* and that any application would be considered on its merits.

EXECUTIVE SUMMARY

The land is sited on the upper side of Murphy Street, east of Owen Street. Approval initially issued in 2006, by the former Council, for two (2), Multiple Dwellings (Residential) to be developed on the land. The application was lodged and initially approved under the 1996 Douglas Shire Planning Scheme. The approval has a four (4) year currency period that was extended, on two separate occasions, by Cairns Regional Council. Recently, an application has been received seeking to extend the approval for a further four (4) years.

Since the issue of the approval Council has amended the Planning Scheme. The development is not an expected outcome for the current land zone.

In determining the extension application Council is unable to amend the approval or its conditions. The considerations of the original approval are considered insufficient in respect to the current Planning Scheme and the conditions are also considered insufficient in addressing possible impacts arising from geotechnical concerns.

A refusal of the extension application does not prohibit a new application being lodged under the current Planning Scheme. A new application would be assessable development under the *Planning Act 2016* and would require public notification.

The report recommends the extension application be refused.

TOWN PLANNING CONSIDERATIONS

Background

The application was lodged to the former Douglas Shire Council under the 1996 Douglas Shire Planning Scheme for impact assessable development for two (2), Multiple Dwellings (Residential) land use. The former Council approved the development on 24 March 2006 and the subsequent Decision Notice was issued on the 31 January 2004. The approval had a four year currency period. A copy of the approval is included in Attachment 1.

A request to extend the approval was lodged with the Cairns Regional Council by letter dated and received on 29 January 2010 together with payment for the extension application. The request was approved by delegated authority and extended the currency period for a further four (4) years, up to and including 31 January 2014. A second extension application was lodged with Cairns Regional Council in October 2013. The request was approved by delegated authority for four year extension up to and including the 31 January 2018.

The 2010 planning report, to consider the first extension, incorrectly advised that the land was not affected by an "overlay." The report content implied that on this basis, the former *Sustainable Planning Act 2009* permitted dual occupancy as-of-right in the Residential zone. However, the land was affected by an overlay, the Cultural Heritage and Valuable Sites, being site Map Code 4, "R15 Lot 119 on SP126932 Island Point Road and all freehold land on the Hill above Macrossan Street." This error was repeated in report for the extension in 2013.

Under the Superseded Planning Scheme, the use was defined as Multi-Unit Housing and this was an impact Assessable (inconsistent) development in the Residential 1 Planning Area of the Special Management Area of Flagstaff Hill. Since the issue of the extension in 2013, Council has adopted a new Planning Scheme that came into effect on 2 January 2018. The current Planning Scheme includes the land in the Environmental Management Zone.

There is no current Development Permit for Building Work issued for the development. The land remains undeveloped.

Proposal

An extension application has been made, on behalf of the current land owner, for a four year extension to the Development Permit TPC 1213. The request was lodged on the 29 January 2018. The applicants advise that the economic climate is now more conducive and the, "design, bulk and scale of the development is generally consistent with Council's new Planning Scheme's intents and provisions." The application further advises the extension has been requested to "allow adequate time for detailed specialist assessments such as geotechnical and service infrastructure engineering assessments and detailed building design to be prepared, applicable Operational and Building Works approvals to be gained and construction to be commenced and completed."

Except for the land use, the applicants imply that the development is consistent with the current Planning Scheme and note there was no submission received in respect to the public notification undertaken for the original application.

State Planning Requirements

Planning Act 2016 (PA)

The request has been lodged under section 86 of the *Planning Act 2016* (PA).

Council must decide the request for an extension approval to the Decision Notice under section 87(a) of the PA,

"When assessing an extension application, the assessment manager may consider any matter that the assessment manager considers relevant, even if the matter was not relevant to assessing the development application."

No referrals are applicable.

Under section 87 there is no ability for Council to amend or change the approval. In deciding the request section 87(2) of the PA states that the assessment manager must decide whether to:

- "(a) give or refuse the extension sought; or
- (b) extend the currency period for a period that is different from the extension sought."

State Planning Requirements

The State Planning Policy (SPP) requires consideration be given to State interests. There are no further State interests, other than those reflected in the current Planning Scheme.

Douglas Shire Planning Scheme Considerations

Under the current 2018 Planning Scheme the land use is Impact assessable (Inconsistent) that requires public notification. There has been a significant length of time that has elapsed since the application underwent public notification.

Council's adoption of the current Scheme is a clear direction that the community seeks protection of the area and that development should be that of a single dwelling per lot, not dual occupancy. The community should be given an ability to lodge submissions.

The land is also affected by the Hillslopes Overlay, Potential Landslide Hazard Overlay and the Landscape Values Overlay. The geotechnical report for the original application was limited to the land and did not consider or review the impact(s) on the adjacent service road and/or batter beneath.

Of particular concern is the question of geotechnical stability of the proposed development and the impact of the development on the batter in the road area beneath the lot. The architectural and landscape architectural designs, including the Visual Assessment Report, assume the natural vegetation in the road area, in particular on the batter, will remain.

Considerations of a nearby application in recent years identified the instability of the batter area and the possible need to shot-crete the batter face to stabilise this area. Condition 4.5 of the approval requires further geotechnical advice. Within the condition there is no ability to consider the impacts of possible solutions.

The engineering condition 4.20 incorrectly refers to a need for "engineering plans for the upgrading of Barrier Street." The condition appears incorrect.

A refusal of the request to extend the application does not prevent the applicant lodging an application under the current Planning Scheme.

ADOPTED INFRASTRUCTURE CHARGES

The proposed development triggers infrastructure charges under Council's

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.

ATTACHMENTS

1. Attachment 1 Current Approval [5.1.1]

Attachment 5.1.1 11 of 109

 ENQUIRIES:
 Michelle Henderson

 PHONE:
 (07) 4099 9457

 FAX:
 (07) 4044 3836

 YOUR REF:
 62081/6696

 OUR REF:
 8/37/143 (4226965)

20 December 2013

P F Young C/- RPS Australia East PO Box 1949 CAIRNS QLD 4870

Dear Sir/Madam

RE: REQUEST TO EXTEND RELEVANT PERIOD FOR DEVELOPMENT APPLICATION - 40 MURPHY STREET PORT DOUGLAS

In accordance with Section 809 of the *Sustainable Planning Act 2009*, please be advised that Council has extended the Period of Approval for four (4) years, up to and including 31 January 2018.

Should you require any further information or assistance, please contact Michelle Henderson of Council's Development Assessment Team on telephone number (07) 4099 9457.

Yours faithfully

MBayel

Graham Boyd

Manager Development & Regulatory Services



ENQUIRIES:

Ms Loiuse Stayte - Planning Officer

DEPARTMENT: Planning Services Section - 2 (07) 4099 9450

OUR REF:

LS:

YOUR REF:

TPC 1213

Mr Peter Young C/- C & B Group PO Box 1949 CAIRNS OLD 4870



31st January 2006

INTEGRATED PLANNING ACT **DECISION NOTICE**

DEVELOPMENT APPLICATION

Applicant's Name

Mr Peter Young

Owner's Name

Mr Peter Young

Proposal

That Council approve the application for a Development Permit for Material Change of Use to permit the development of 2, three bedroom Multiple Dwelling Units (Residential) on land situated at 40 Murphy Street, Port Douglas and described as Lot 22 on

RP161481, subject to conditions.

Application Number

TPC 1213

Site Address

40 Murphy Street, Port Douglas

Property Description

Lot 22 on SP161481, Parish of Salisbury, County of

Solander

1. Decision: **Decision Date: 24th January 2006**

Approved subject to Conditions

Type of Development Approval: 2.

Material Change of Use

Development Permit

.../2.

ALL COMMUNICATIONS TO BE

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 plan of development Drawings No DA-103, DA-104, DA-201, DA-202, & DA-301, dated April 2005, submitted to Council on the 21st June 2005 by C&B Group.

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

Currency Period

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*.

Access

- 4.3 A concrete driveway, minimum width three (3) metres and incorporating kerbing or nib walls, is required to connect the pavement of service road within Murphy Street to the boundary of proposed Lot 22.
 - The Driveway required by this condition shall be constructed in accordance with the requirements of the FNQROC Development Manual and designs submitted for Council's consideration at operational works stage for this application.
- 4.4 The application for operational works for site access to Lot 22 shall include engineered drainage works to collect stormwater flows. Installation of a culvert and headwall directing stormwater via pipes or a batter shute into the stormwater system located in Murphy Street shall be provided to a standard acceptable to the Director Engineering Services.
 - The drainage works are required to be constructed to the satisfaction of the Director Engineering Services prior to signing and dating of a plan of survey.
- 4.5 The concrete driveways and associated drainage works required by these conditions shall be designed and constructed in accordance with the recommendations of a geotechnical engineer or engineering geologist. The operational works applications for work shall be accompanied by the technical recommendations of the selected geotechnical engineer or engineering geologist and the conditions of the development permit may have reference to those technical recommendations.

Traffic Management

- 4.6 The ingress/egress to the site shall be provided with a physical means of speed control. Such speed control device shall be shown on any plans submitted for approval for building works and shall be constructed and maintained at all times.
- 4.7 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.

Landscaping & Fencing

- 4.8 The landscaping concept plan submitted with the proposed development, referenced as plan No. LP-01 and LP-02 dated 13th May 2005 as prepared by Pawsey & Prowse is approved. The following amendments are to be made to the landscaping plan submitted with the proposed development:
 - (a) Syzygium jambos be substituted for a native Syzygium.
- 4.9 The landscaping shown on the approved plan shall be completed before the development is occupied and maintained thereafter.
- 4.10 The applicant shall provide a 1.8 metre high screen fence to the side and rear boundaries 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

- 4.11 The waste storage area must be located outside of a minimum three (3) metre wide landscape strip to the road frontage. The waste storage area must:
 - (a) Contain an impervious surface for the storage of waste containers suitably screened so as not to be visible from adjoining properties or the road reserve;
 - (b) Include a stop cock and stormwater diversion valve at the drainage point;
 - (c) Contain sufficient storage space for the storage of a 240litre refuse bin for each unit in the development.

Refuse storage, removal and collection methods shall be in accordance with the "Environment Protection (Interim Waste) Regulations 1996"

Air Conditioning & Service Equipment

4.12 All service equipment, outdoor lighting and air conditioning equipment must be located so as not to cause a nuisance to the occupants of adjoining units or neighbouring premises. The noise levels shall be maintained in accordance with the requirements of the Environmental Protection Policy - Noise.

Construction Requirements

- 4.13 All construction works are to be carried out in compliance with the Environmental Protection (Water Policy) Policy 1997 and the Environmental Protection Regulation 1998.
- 4.14 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.
- 4.15 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.
- 4.16 Waste solvents, solvent and acrylic based paints and waste water generated during construction must not be introduced to sewer or stormwater systems and should be disposed of using the services of a trade waste contractor or other approved disposal agency.
- 4.17 Air conditioning units, built in vacuum units, swimming pool filtration and pumping units and exterior and security lighting must be so designed, manufactured or located so that they do not cause nuisance as defined by the *Environmental Protection Regulation* 1998.
- 4.18 If Acid Sulphate Soils or Potential Acid Sulphate Soils are reasonable likely to be exposed during this development and Acid Sulphate Soil Management Plan (ASSMP) shall be prepared and submitted prior to development. This ASSMP would be required to meet the approval of the Manager of Environmental Services.

Environmental Management Plan

An Environmental Management Plan (EMP) is to be submitted to Council's Environmental Health section prior to any works being carried out on the site. No works are to be carried out on the site until such time as the applicant has received written approval from Council's Manager Environmental Health that the EMP has been approved.

The EMP must detail:-

- Establish performance criteria and objectives in relation to environmental and social impacts; and
- prevention, minimisation and mitigation strategies for controlling environmental impacts
 and preventing nuisance caused from the reconfiguration of the land and construction
 works. In particular, this plan <u>must</u> address such issues as dust suppression, vegetation
 clearing and disposal, waste disposal, noise management and stormwater management
 (to minimise discharges of sediment, wastes and other substances); and
- proposed monitoring of the effectiveness of remedial measures against performance criteria; and
- details of responsible persons for environmental management; and
- · reporting requirements for meeting performance criteria; and
- corrective actions to rectify deviations from performance criteria.

Attachment 5.1.1
Potential Acid Sulphate Soils have been identified on the site. The EMP must detail remediation and treatment works proposed for Potential Acid Sulphate Soils and/or Actual Acid Sulphate Soils on the site.

The EMP must be implemented **before** any works commence on the site and throughout the duration of works on the site.

Engineering Drawings and Design

4.20 Full engineering drawings, prepared and/or checked by a Registered Professional Engineer, shall be submitted for all roadworks, stormwater drainage and allotment improvement.

Drawings should, in general, include the following:

- a. locality plan;
- b. layout and staging plan, where applicable;
- c. layout plan for each new road;
- d. longitudinal section of each road;
- e. cross sections for each road, including standard cross sections;
- f. detailed plan of each intersection and cul-de-sac head where longitudinal grades do not exceed 1%;
- g. layout plan for each stormwater drainage;
- h. longitudinal sections for each stormwater drainline;
- i. details for non-standard drainage structures;
- j such other details for the proper construction of the works i.e. retaining walls etc;
- k. engineering plans for the upgrading of Barrier Street.

Drainage

- 4.21 Drainage (including underground), together with acceptable points of discaharge are required in localities to be determined following submission of engineering drawings and designs.
- 4.22 Drainage easements and/or reserves as deemed necessary following submission of engineering drawings and designs are to be registered in Council's favour at no cost to the Council.
- The calculated design frequency for all storm water drainage shall be determined on a five (5) year recurrence interval and all relevant design data shall be submitted with the engineering drawings.
- 4.24 Such storm water drainage work shall be designed and constructed to the satisfaction of the Director Engineering Services and will not cause scouring, erosion, loss of vegetation, excess turbidity and landslip either within or external to the site.
- 4.25 Stormwater drainage work shall be designed and constructed to approved engineering standards for hillside development by an approved hydrologist or civil engineer and submitted to the Director Engineering Services. The stormwater drainage works shall be designed to control scouring, erosion, loss of vegetation, excess turbidity and landslip either within or external to the site.

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A drainage easement(s) shall be provided to collect all stormwater drainage, from Lot 23, which is required to be piped underground through Lot 22 to Council's stormwater drainage system.

This easement(s) is to be transferred to Council as a drainage easement in fee simple at the applicant's cost.

- 4.26 Details of surface and subsurface drainage measures to be incorporated in the gully systems on Lot 22 to control erosion, landslip and slope stability shall be approved by a hydrologist or civil engineer and submitted to the Director Engineering Services.
- 4.27 Any stormwater flows from the gullies is required to be piped beneath the driveway accessing Lot 22 and connected via a suitable velocity retarder into the stormwater system in Murphy Street.
- 4.28 All drainage systems on Lot 22 shall be maintained by the property owner.
- 4.29 Adequate surface drainage should be provided, via pipes or open lined channels, with flexible connections, to prevent ponding of water and to prevent runoff from hardstanding areas (roofing, driveways, decking) discharging onto and running down the slopes immediately above or below house locations.
- 4.30 The approved use must not:
 - (a) Interfere with the natural flow of stormwater;
 - (b) cause ponding of stormwater on adjoining properties.

Sewerage

- A sewerage reticulation design incorporating a new rising main to service proposed Lot 23, shall be submitted for approval at Operational Works application stage. The applicant shall extend the new main from the existing main located in Murphy Street to a new manhole to be installed within the south-western boundary of proposed Lot 23.
- 4.32 The applicant is responsible for the external works to connect the development to Council's sewerage reticulation system at a point of discharge specified by the Director of Engineering Services. The works are required to be constructed to the satisfaction of the Director, Engineering Services prior to signing and dating of plan of survey.

Vegetation Removal

- 4.33 Vegetation clearing shall be permitted only in accordance with a permit given pursuant to Local Law No.56 Vegetation Management.
- Note: As the Council wishes to retain a heavily vegetated backdrop to the commercial centre of Port Douglas, it is recommended that an application for vegetation clearing made pursuant to the Local Law should be limited to the areas of the proposed allotments required for construction of a dwelling and areas proximate thereto for domestic recreation including a swimming pool, a driveway and parking/manoeuvring spaces.

Minimum Floor Levels

4.34 The minimum floor level for all habitable rooms in any building erected on the premises must be a minimum of 3.2m AHD; or

Footpath Damage Liability

4.35 All damage occasioned to footpaths and roadways adjacent to the site as a result of or in connection with this development must be repaired by the applicant, at their expense, prior to completion of works associated with the development.

Compliance

- 4.36 All works required pursuant to the above conditions shall be undertaken and completed in accordance with Council's requirements contained in the Planning Scheme Provisions/Codes.
- 4.37 All conditions shall be complied with prior to the issue of the Certificate of Classification for the approved use.

Car Parking

4.38 A car parking area shall be constructed, sealed, and drained for a minimum of two (2) covered spaces and two (2) visitor spaces in accordance with the approved plan of development and maintained thereafter.

Headworks

The applicant shall pay to the 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

1.6

Sewerage

1.6

4.40 No structure is to be located within 2.5m of existing sewer main.

Verandas

4.41 No covered verandas balconies or carports shall be enclosed without the consent of Council.

- 4.42 To guarantee the satisfactory completion of the building, site works, landscaping, drainage works and any required works external to the land, and to ensure payment of headworks contribution, the applicant shall lodge with the Council a Cash Bond or Guarantee to the value of \$20 000, such Guarantee shall be lodged prior to the issue of a Development Approval for Building Works on the land in relation to this Development Permit. The Council may call up this Guarantee to complete all or any part of the works mentioned herein in accordance with the conditions of this approval, should the applicant fail to do so prior to issuing of a Development Permit for Building Work.
- 5. Further Development Approvals Required:

much

Operational Work Building Work Operational Work Permit Building Permit

Terry Melchert

Chief Executive Officer

















