

### 5.3. TAVERN CHANGE OF HOURS 53 MACROSSAN STREET PORT DOUGLAS

REPORT AUTHOR(S)	Jenny Elphinstone, Senior Planning Officer
GENERAL MANAGER	Nick Wellwood, General Manager Operations
DEPARTMENT	Development Assessment and Coordination
PROPOSAL	Material Change of Use (Code Assessment) Tavern - Request a Change Application
APPLICANT	Larette Pty Ltd C/ Danielle Piat PO Box 4 PORT DOUGLAS QLD 4877
LOCATION OF SITE	Shops 12-13, 53-61 Macrossan Street, Port Douglas
PROPERTY	Lot 1 on SP150461
LOCALITY PLAN	



Figure 3 - Locality Plan

<b>LOCALITY</b>	Port Douglas and Environs
<b>PLANNING AREA</b>	Commercial
<b>PLANNING SCHEME</b>	Douglas Shire Planning Scheme 2006
<b>REFERRAL AGENCIES</b>	None applicable as per advice received from State Assessment Referral Agency (Department of Transport and Main Roads)
<b>NUMBER OF SUBMITTERS</b>	Not applicable.
<b>STATUTORY ASSESSMENT DEADLINE</b>	11 September 2017
<b>APPLICATION DATE</b>	17 November 2016 (Original Application) 14 August 2017 (Application to change)

## **RECOMMENDATION**

**That Council approves the application to change the development approval for a Material Change of Use for a Tavern over land described as Lot 1 on SP150461, located at Shops 12-13, 53-61 Macrossan Street, Port Douglas, whereby:**

**A. Condition 7 of the approval is amended as follows:**

**7. Hours of Use**

**Hours of use open for trading for food and liquor service are 11:00 am to ~~12:00 midnight~~ 1:00am the following morning, seven days of the week. All customers must vacate the premises within thirty (30) minutes after the venue closes liquor and food service. The operator must seek to ensure patrons leave in an orderly manner.**

**B. All other parts of the Decision Notice issued dated 14 December 2016 remain unchanged.**

## **EXECUTIVE SUMMARY**

At the Ordinary Meeting held on 13 December 2016 Council approved a development application for a material change of use for a small Tavern at 53-61 Macrossan Street, Port Douglas. The application sought and was approved for trading hours 11:00 am to 12:00 midnight, seven days a week. The use has been established and is currently operating as Jimmy Rum's Mixing Lounge. The applicant is seeking an extension of trading hours for an additional hour being 11:00am to 1:00am the following day, seven days a week. The use is predominantly conducted indoors together with a small area of private courtyard. As the premises holds a Liquor Licence all matters regarding noise and conduct of patrons are controlled by the Office of Liquor and Gaming Regulation. The land is not included in the Live Entertainment Precinct under the proposed planning scheme. However, no live

entertainment is proposed. Under the current planning scheme the use is defined as a Tavern and is code assessable development. It is recommended the extended hours be approved.

## TOWN PLANNING CONSIDERATIONS

### Background

The existing Shop is part of a complex developed under a Town Planning Consent (TPC 1258) for 2 Multi-Unit Dwellings (tourist), Shops and Restaurant issued by the former Douglas Shire Council in 2007. The respective application for TPC 1258 was lodged under the 1996 Planning Scheme. The development provided the required thirty-five (35) onsite car parking spaces for the overall development, three of which must be dedicated to the tourist residential use.

At the Ordinary Meeting held on 13 December 2017 Council resolved to approve a material change of use to convert two, existing shops and adjacent verandah seating into a small bar. The use is limited to sixty (60) patrons consistent with the State's liquor licensing requirements for a bar. Amenities are available in the existing complex and provide for staff and patrons. The applicant advised that there is no intention for live entertainment and any music played will be at reasonable levels so as to not extend beyond legal decibel range. The use has been established and Council is not aware of any complaints having been made regarding the business. The bar utilises existing parking on the land and provides seven car spaces to meet the Acceptable Solution of the Planning Scheme Vehicle Parking and Access Code. A copy of the current approval is included in Attachment 1.

### Proposal

The Applicant has requested the hours of use be extended for one hour to finish at 1:00am instead of at 12:00 midnight, seven days a week.

### Planning Act 2016 (PA)

The requests have been lodged under section 78 of the *Planning Act 2016*.

### Minor Change

Council must decide the application for a minor change under Section 81(2) and 81(3) considering:

- “(2) (a) *the information the applicant included with the application; and*
- (b) *if the responsible entity is the assessment manager—any properly made submissions about the development application or another change application that was approved; and*
- (c) *any pre-request response notice or response notice given in relation to the change application; and*
- (d) *if the responsible entity is, under section 78(3)(ba) or (bb), the Minister—all matters the Minister would or may assess against or have regard to, if the*

*change application were a development application called in by the Minister; and*

*(da) if paragraph (d) does not apply—all matters the responsible entity would or may assess against or have regard to, if the change application were a development application; and*

*(e) another matter that the responsible entity considers relevant.*

(3) For subsection (2)(d) and (da), the responsible entity—

*(a) must assess against, or have regard to, the matters that applied when the development application was made; and*

*(b) may assess against, or have regard to, the matters that applied when the change application was made.”*

In deciding the request for a minor change section 81 (4) states the responsible entity must decide to—

*“(a) make the change, with or without imposing development conditions, or amending development conditions, relating to the change; or*

*(b) refuse to make the change.”*

In addition to Council issuing a “Decision Notice”, for an application for a minor change, Section 83 PA also requires Council to issued a “Notice of Decision” explaining the decision.

## MINOR CHANGE CONSIDERATIONS

### Assessment Benchmarks

Table 1

Benchmarks Applying for the Minor Change	Benchmark Reference	Compliance
State Planning Policy	None applicable	Not required
Current Douglas Shire Planning Scheme	Port Douglas and Environs Locality Code	Continues to comply
	Commercial Planning Area Code	Continues to comply
	No land use code for a Tavern	-
	Vehicle Parking and Access Code General Code	Continues to comply
Proposed Douglas Shire Planning Scheme	Use defined as a <i>Bar</i> .	In the Centre Zone the use of <i>Bar</i> is impact assessable
	Centre Zone Code	Noting the building was established under a previous planning scheme, the proposed change complies with code requirements.
	Port Douglas Local Plan, Precinct 1a	No live entertainment is proposed. The proposed change complies with code.
	No applicable land use code	-
	Access, parking and servicing code	Use continued to satisfy code.



## Relevant Matters

Table 2.

<b>Referral Agency</b>	No referral requirement as per advice received from the State Assessment Referral Agency
<b>Public Notification / Submissions</b>	<p>There were no submissions received against the original application.</p> <p>The development is code assessable against the current planning schemes.</p> <p>The development would be impact assessable under the proposed planning scheme as the land is not within the Live Entertainment Precinct.</p>

## Reasons for Decision

- a. The minor change required an approval under the *Planning Act 2016*.
- b. The application for a minor change was properly made.
- c. The application continues to comply with the current planning scheme applicable codes.
- d. As no live entertainment is proposed the development meets the requirements for the proposed planning scheme.

## ADOPTED INFRASTRUCTURE CHARGES

The proposed change does not effect Adopted 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 *Sustainable Planning Act 2009* and the *Sustainable Planning Regulation 2009*, Council is the assessment manager for the application.

## **ATTACHMENTS**

12. 53 Macrossan Street Tavern Approval Attachment 1 **[5.3.1]**

**YOUR REF:** Tavern  
**OUR REF:** MCUC1797/2016 (D#798773)

14 December 2016

L'Artte Pty Ltd  
PO Box 4  
PORT DOUGLAS QLD 4877

e: jigor888@gmail.com

Attention: Mr Jim Gorman and Ms Danielle Piat

Dear Sir/Madam

**DECISION NOTICE UNDER S 335 SUSTAINABLE PLANNING ACT 2009:  
DEVELOPMENT APPLICATION FOR  
53-61 MACROSSAN STREET PORT DOUGLAS**

With reference to the abovementioned Development Application, which was determined by Council at the Ordinary Meeting held on 13 December 2016, please find attached the relevant Decision Notice.

The Notice includes extracts from the Act with respect to making representations about conditions, negotiated decisions, suspension of the appeal period, and lodging an Appeal.

This notice also includes an Infrastructure Charges Notice issued in accordance with section 648F of the *Sustainable Planning Act 2009*.

Should you have any enquiries in relation to this Decision Notice, please contact Jenny Elphinstone of Development Assessment and Coordination on telephone number 07 4099 9482.

Yours faithfully

Paul Hoyer  
Manager Sustainable Communities

Att

43.2016.1797  
1/11 (D#798773)

**DECISION NOTICE DETAILS**  
**SUSTAINABLE PLANNING ACT 2009**

**APPLICANT DETAILS**

L'Artte Pty Ltd  
PO Box 4  
PORT DOUGLAS QLD 4877

**ADDRESS**

53-61 Macrossan Street, Port Douglas

**REAL PROPERTY DESCRIPTION**

Lot 1 on SP150461

**PROPOSAL**

Material Change of Use for a Tavern

**DECISION**

Approved subject to conditions (refer to approval package below).

**DECISION DATE**

13 December 2016

**TYPE**

Material Change of Use (Development Permit)

**REFERRAL AGENCIES**

For an application involving	Name of referral agency	Advice agency or concurrence agency	Address
State-controlled road	State Referral Assessment Agency, Department of Infrastructure, Local Government and Planning.	Concurrence	Far North Queensland Regional Office PO Box 2358 CAIRNS QLD 4870

No requirements.



**SUBMISSIONS**

There were no submissions for this application.

**FURTHER DEVELOPMENT PERMITS REQUIRED**

Development Permit for Building Works

**CODES TO COMPLY WITH FOR SELF-ASSESSABLE DEVELOPMENT**

None

**DOES THE ASSESSMENT MANAGER CONSIDER THE APPLICATION TO BE IN CONFLICT WITH APPLICABLE CODES, PLANNING SCHEME, STATE PLANNING POLICIES OR PRIORITY INFRASTRUCTURE PLAN (IF YES, INCLUDE STATEMENT OF REASONS)**

Not in conflict

**APPROVED DRAWING(S) AND/OR DOCUMENT(S)**

The term 'approved drawing(s) and/or document(s)' or other similar expression means:

<b>Drawing or Document</b>	<b>Reference</b>	<b>Date</b>
<b>Site And Internal Floor Plans</b>	<b>Generally as Prepared by The Applicant (to be amended by Condition 3).</b>	<b>As Submitted To Council On 15 November 2016</b>

**ASSESSMENT MANAGER CONDITIONS**

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.

**Amended Plan**

3. Prior to commencement of use, provide Council with a properly-scaled and dimensioned plan showing the bar area and internal and external seating arrangements for the proposed use. Any external seating is not to interfere with pedestrian circulation to other tenancies in the development.

**Air-Conditioning Screens**

4. Air-conditioning units located above ground level and visible from external properties and the street must be screened with appropriate materials to improve the appearance of the building. Such screening must be completed prior to the Commencement of Use.

**External Areas and Customer Numbers**

5. Any use of external seating areas is limited to undercover areas on the land and the total use is limited to 60 patrons.

**Vehicle Parking**

6. The amount of vehicle parking must be as specified in Council's Planning Scheme which is a minimum of seven (7) car spaces for the Tavern use for visitors and employees to be provided on the land. The car parking layout must comply with the Australian Standard AS2890.1 2004 Parking Facilities – off-street car parking and be constructed in accordance with Austroads and good engineering design. In addition, all parking, driveway and vehicular manoeuvring areas must be imperviously sealed, drained and line marked.

**Advertising Signage**

7. All signage associated with the use must be approved by the Chief Executive Officer. No flashing or animated signage is permitted. The signage must comply with the Design and Siting of Advertising Devices Code contained within the Douglas Shire Planning Scheme and plans detailing the signage must be endorsed by the Chief Executive Officer prior to the Commencement of Use.

**8. Hours of Use**

Hours of use open for trading for food and liquor service are 11:00 am to 12:00 midnight, seven days of the week. All customers must vacate the premises within thirty (30) minutes after the venue closes liquor and food service. The operator must seek to ensure patrons leave in an orderly manner.

**ADVICE**

1. This approval, granted under the provisions of the *Sustainable Planning Act 2009*, shall lapse four (4) years from the day the approval takes effect in accordance with the provisions of sections 339 and 341 of the *Sustainable Planning Act 2009*.
2. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements. Note a Department of Transport and Main Roads (section 50) approval where the verandah is within the State-controlled road reserve as the use is changing.

**Infrastructure Charges Notice**

3. A charge levied for the supply of trunk infrastructure is payable to Council towards the provision of trunk infrastructure in accordance with the Adopted Infrastructure Charges Notice, a copy of which is attached for reference purposes only. The original Adopted Infrastructure Charges Notice will be provided under cover of a separate letter.

The amount in the Adopted Infrastructure Charges Notice has been calculated according to Council's Adopted Infrastructure Charges Resolution.

Please note that this Decision Notice and the Adopted Infrastructure Charges Notice are stand-alone documents. The Sustainable Planning Act 2009 confers rights to make representations and appeals in relation to a Decision Notice and an Adopted Infrastructure Charges Notice separately.

The amount in the Adopted Infrastructure Charges Notice is subject to index adjustments and may be different at the time of payment. Please contact Development Assessment and Coordination at Council for review of the charge amount prior to payment.

The time when payment is due is contained in the Adopted Infrastructure Charges Notice.

4. For information relating to the *Sustainable Planning Act 2009* log on to [www.dilgp.qld.gov.au](http://www.dilgp.qld.gov.au). To access the *FNQROC Development Manual*, Local Laws and other applicable Policies, log on to [www.douglas.qld.gov.au](http://www.douglas.qld.gov.au).

#### **LAND USE DEFINITIONS\***

In accordance with the *Douglas Shire Planning Scheme 2006*, the approved land use of Tavern is defined as:

Means the use of premises for:

- the sale of liquor for consumption on or off the premises;
- dining activities;
- entertainment activities, including gaming machines.

The use may include accommodation of tourists or travellers.

The use includes facilities commonly described as:

- hotel; or
- tavern.

\*This definition is provided for convenience only. This Development Permit is limited to the specifications, facts and circumstances as set out in the application submitted to Council and is subject to the abovementioned conditions of approval and the requirements of Council's Planning Scheme and the FNQROC Development Manual.

#### **RIGHTS OF APPEAL**

Attached

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## **End of Decision Notice**

APPENDIX 1: APPROVED DRAWING(S) & DOCUMENT(S) To be amended by Condition 3.







