



30.06.2021

Our Ref: 34807-002-02
Your Ref: MCU 2020_3524/1

The Chief Executive Officer
Douglas Shire Council
PO Box 723
MOSSMAN QLD 4873

Attn: Environment & Planning – Neil Beck

Dear Neil

**Change Application for a Minor Change - Development Permit MCU 2020_3524/1
Material Change of Use (Retirement Facility)
111-119 Port Douglas Road, Port Douglas – Lot 3 on RP729991**

We act on behalf of Applicant, Port Pacific Developments, in relation to the abovementioned matter. The Applicant proposes to make a minor change to the existing approval.

The current approval, dated 17 December 2020 (MCU 2020_3524/1 (988283)) permits the establishment of a Retirement Facility.

In accordance with section 78 of the Planning Act 2016 (the Act) we hereby submit a Change Application for a minor change to the abovementioned development permit and seek Council's approval to remove a condition of approval.

Conditions 3.g and 4 requires the provision of an internal footpath network constructed in accordance with the FNQROC Development Manual to connect the dwellings to the central communal facilities so that residents are not required to walk on the internal road.

The internal driveway is private infrastructure and has been designed as a shared space for vehicles and pedestrians. The driveway itself will only be utilised by residents and visitors of the facility and will not be open to the general public. The speed environment within the premises will be restricted to 10km/hr to ensure safety of all users. Signage indicating the speed limit and shared driveway will be provided within the premise.

In comparison with other operating retirement villages within the region in particular Savannah Lifestyle Resorts Mareeba and Botanica Life Style Resort Caravonica, neither site has the provision of internal footpaths with pedestrians and vehicles sharing the internal driveway. It is noted that both sites are significantly larger than that of the approved development at 111-119 Port Douglas Road.



Furthermore, from discussions with the operators of the above mentioned retirement villages, the shared driveway provides the appropriate level of access for both pedestrians and vehicles in terms of safety.

Additionally, the provision of an internal footpath will reduce the verge available for landscaping and will detract from the green environment/amenity of the site.

In view of the above, the requirement for the internal footpath is not considered warranted for the site. To facilitate the proposed change it is requested that Conditions 3.g and 4 are removed in their entirety.

Planning Act 2016 Considerations

The Change Application can only be assessed as a minor change if the change satisfies the definition of *minor change* provided in Schedule 2 of the *Planning Act 2016* as follows:-

“minor change means a change that—

.....

(b) for a development approval—

(i) would not result in substantially different development; and

(ii) if a development application for the development, including the change, were made when the change application is made would not cause—

(A) the inclusion of prohibited development in the application; or

(B) referral to a referral agency, other than to the chief executive, if there were no referral agencies for the development application; or

(C) referral to extra referral agencies, other than to the chief executive; or

(D) a referral agency to assess the application against, or have regard to, matters prescribed by regulation under section 55(2), other than matters the referral agency must have assessed the application against, or have had regard to, when the application was made; or

(E) public notification if public notification was not required for the development application.”

A response as to how the proposed Change Application satisfies the criteria of a *minor change*, as defined within the *Planning Act 2016*, is provided below:

(i) would not result in substantially different development; and

Response:

The Development Assessment Rules at Schedule 1 provides advice on determining what is considered substantially different development. On review, it is considered that the proposed changes do not result in a substantially different development as:



- The proposed changes do not involve a new use.
- The changes do not result in the application applying to a new parcel of land.
- The proposed changes do not substantially alter the built form of the development.
- The proposed changes do not result in the proposed development to operate as originally intended.
- The changes do not result in removing any components of the development.
- The proposed change will not result in significant impacts on traffic flow and the transport network.
- The proposed changes do not introduce or increase the severity of any known impacts.
- There is no incentive or offset component associated with the development approval.
- The proposed changes will not have any impacts on infrastructure provision as the changes do not result in a such an increase in yield which would require additional demand on infrastructure.

(ii) *if a development application for the development, including the change, were made when the change application is made would not cause –*

(A) *the inclusion of prohibited development in the application; or*

Response:

The proposed changes do not result in the inclusion of prohibited development in the application.

(B) *referral to a referral agency, other than to the chief executive, if there were no referral agencies for the development application; or*

(C) *referral to extra referral agencies, other than to the chief executive; or*

(D) *a referral agency to assess the application against, or have regard to, matters prescribed by regulation under section 55(2), other than matters the referral agency must have assessed the application against, or have had regard to, when the application was made; or*

Response:

The initial application triggered referral to State for assessment by referral agencies. A review of the referral triggers confirms that if the application were submitted today, referral to any additional referral agencies or for any other matters would not be triggered.



(E) *public notification if public notification was not required for the development application.*

Response:

The initial development application did not require public notification and the change does not cause a change to the level of assessment for the development.

Accordingly, based on the above, we advise that the proposed change is considered a minor change as it does not result in substantially different development, does not introduce development that would now be considered prohibited, has no effect on referral agency triggers should the application be remade now.

Affected Entities

No affected entities have been identified.

Land Owner's Consent

As confirmed by the Certificate of Title included within *Attachment B*, the registered owners of the subject land are Obay Pty Ltd and J. & V. Noli Pty Ltd. Written consent is required to accompany this application as the applicant is not the registered owner of the subject land. Written consent is also included with *Attachment B*.

Supporting Documents

In accordance with the Act, the following documentation is attached to allow Council's consideration:

Attachment A: Planning Act Form 5 – Change Application Form;
Attachment B: Certificate of Title & Owners Consent
Attachment C: Decision Notice dated 17 December 2020 (MCU 2020_3524/1 (988283))

Conclusion

Overall, it is considered that the above has clearly demonstrated that the proposed changes constitute a minor change and therefore the Change Application can be assessed and approved by Council as minor change.

In accordance with Douglas Shire Council's Fees and Charges the applicable fee for change application is 10% of the current prescribed fee, being \$1,800.22.

It is requested that an invoice is raised for the application fee and be addressed as follows:

Port Pacific Developments
c/- Brazier Motti
PO Box 1185
Cairns QLD 4870



We trust that the enclosed documentation is sufficient to allow for assessment, however, should you have any further queries or wish to discuss please do not hesitate to contact this office.

Yours Sincerely,

Michael Tessaro
Senior Planner
Brazier Motti Pty Ltd

ATTACHMENT A

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Change application form

Planning Act Form 5 (version 1.2 effective 7 February 2020) made under Section 282 of the Planning Act 2016.

This form is to be used for a change application made under section 78 of the *Planning Act 2016*. It is important when making a change application to be aware of whether the application is for a minor change that will be assessed under section 81 of the *Planning Act 2016* or for an other change that will be assessed under section 82 of the *Planning Act 2016*.

An applicant must complete all parts of this form, and provide any supporting information that the form identifies as being required to accompany the change application, unless stated otherwise. Additional pages may be attached if there is insufficient space on the form to complete any part.

Note: All terms used in this form have the meaning given under the *Planning Act 2016*, the *Planning Regulation 2017*, or the *Development Assessment Rules (DA Rules)*.

PART 1 – APPLICANT DETAILS

1) Applicant details	
Applicant name(s) (individual or company full name)	Port Pacific Developments c/- Brazier Motti Pty Ltd
Contact name (only applicable for companies)	
Postal address (P.O. Box or street address)	PO Box 1185
Suburb	Cairns
State	QLD
Postcode	4870
Country	Australia
Email address (non-mandatory)	Cns.planning@braziermotti.com.au
Mobile number (non-mandatory)	
Applicant's reference number(s) (if applicable)	34807-002-02

2) Owner's consent - Is written consent of the owner required for this change application?

Note: Section 79(1A) of the *Planning Act 2016* states the requirements in relation to owner's consent.

- Yes – the written consent of the owner(s) is attached to this change application
 No

PART 2 – LOCATION DETAILS

3) Location of the premises (complete 3.1) or 3.2), and 3.3) as applicable)

3.1) Street address and lot on plan

- Street address **AND** lot on plan (all lots must be listed), **or**
 Street address **AND** lot on plan for an adjoining or adjacent property of the premises (appropriate for development in water but adjoining or adjacent to land e.g. jetty, pontoon. All lots must be listed).

a)	Unit No.	Street No.	Street Name and Type	Suburb
		111-119	Port Douglas Road	Port Douglas
	Postcode	Lot No.	Plan Type and Number (e.g. RP, SP)	Local Government Area(s)
		3	RP729991	Douglas Shire Council
b)	Unit No.	Street No.	Street Name and Type	Suburb
	Postcode	Lot No.	Plan Type and Number (e.g. RP, SP)	Local Government Area(s)



**Queensland
Government**

3.2) Coordinates of premises (appropriate for development in remote areas, over part of a lot or in water not adjoining or adjacent to land e.g. channel dredging in Moreton Bay)

Note: Place each set of coordinates in a separate row.

Coordinates of premises by longitude and latitude

Longitude(s)	Latitude(s)	Datum	Local Government Area(s) (if applicable)
		<input type="checkbox"/> WGS84 <input type="checkbox"/> GDA94 <input type="checkbox"/> Other: <input type="text"/>	

Coordinates of premises by easting and northing

Easting(s)	Northing(s)	Zone Ref.	Datum	Local Government Area(s) (if applicable)
		<input type="checkbox"/> 54 <input type="checkbox"/> 55 <input type="checkbox"/> 56	<input type="checkbox"/> WGS84 <input type="checkbox"/> GDA94 <input type="checkbox"/> Other: <input type="text"/>	

3.3) Additional premises

- Additional premises are relevant to the original development approval and the details of these premises have been attached in a schedule to this application
- Not required

PART 3 – RESPONSIBLE ENTITY DETAILS

4) Identify the responsible entity that will be assessing this change application

Note: see section 78(3) of the Planning Act 2016

Douglas Shire Council

PART 4 – CHANGE DETAILS

5) Provide details of the existing development approval subject to this change application

Approval type	Reference number	Date issued	Assessment manager/approval entity
<input checked="" type="checkbox"/> Development permit <input type="checkbox"/> Preliminary approval	MCU 2020_3524/1	17 December 2020	Douglas Shire Council
<input type="checkbox"/> Development permit <input type="checkbox"/> Preliminary approval			

6) Type of change proposed

6.1) Provide a brief description of the changes proposed to the development approval (e.g. changing a development approval for a five unit apartment building to provide for a six unit apartment building):

Changing conditions of approval

6.2) What type of change does this application propose?

- Minor change application – proceed to Part 5
- Other change application – proceed to Part 6

PART 5 – MINOR CHANGE APPLICATION REQUIREMENTS

7) Are there any affected entities for this change application		
<input checked="" type="checkbox"/> No – proceed to Part 7 <input type="checkbox"/> Yes – list all affected entities below and proceed to Part 7 Note: section 80(1) of the Planning Act 2016 states that the person making the change application must give notice of the proposal and the details of the change to each affected entity as identified in section 80(2) of the Planning Act 2016.		
Affected entity	Pre-request response provided? (where a pre-request response notice for the application has been given, a copy of the notice must accompany this change application)	Date notice given (where no pre-request response provided)
	<input type="checkbox"/> No <input type="checkbox"/> Yes – pre-request response is attached to this change application	
	<input type="checkbox"/> No <input type="checkbox"/> Yes – pre-request response is attached to this change application	
	<input type="checkbox"/> No <input type="checkbox"/> Yes – pre-request response is attached to this change application	

PART 6 – OTHER CHANGE APPLICATION REQUIREMENTS

Note: To complete this part it will be necessary for you to complete parts of DA Form 1 – Development application details and in some instances parts of DA Form 2 – Building work details, as mentioned below. These forms are available at <https://planning.dsdmip.qld.gov.au>.

8) Location details - Are there any additional premises included in this change application that were not part of the original development approval?
<input type="checkbox"/> No <input type="checkbox"/> Yes

9) Development details
9.1) Is there any change to the type of development, approval type, or level of assessment in this change application? <input type="checkbox"/> No <input type="checkbox"/> Yes – the completed Sections 1 and 2 of Part 3 (Development details) of DA Form 1 – Development application details as these sections relate to the new or changed aspects of development are provided with this application.
9.2) Does the change application involve building work? <input type="checkbox"/> No <input type="checkbox"/> Yes – the completed Part 5 (Building work details) of DA Form 2 – Building work details as it relates to the change application is provided with this application.

10) Referral details – Does the change application require referral for any referral requirements?
Note: The application must be referred to each referral agency triggered by the change application as if the change application was the original development application including the proposed change. <input type="checkbox"/> No <input type="checkbox"/> Yes – the completed Part 5 (Referral details) of DA Form 1 – Development application details as it relates to the change application is provided with this application. Where referral is required for matters relating to building work the Referral checklist for building work is also completed.

11) Information request under Part 3 of the DA Rules
<input type="checkbox"/> I agree to receive an information request if determined necessary for this change application <input type="checkbox"/> I do not agree to accept an information request for this change application Note: By not agreeing to accept an information request I, the applicant, acknowledge:

- that this change application will be assessed and decided based on the information provided when making this change application and the assessment manager and any referral agencies relevant to the change application are not obligated under the DA Rules to accept any additional information provided by the applicant for the change application unless agreed to by the relevant parties
 - Part 3 of the DA Rules will still apply if the application is an application listed under section 11.3 of the DA Rules.
- Further advice about information requests is contained in the [DA Forms Guide: Forms 1 and 2](#).

12) Further details

- Part 7 of *DA Form 1 – Development application details* is completed as if the change application was a development application and is provided with this application.

PART 7 – CHECKLIST AND APPLICANT DECLARATION

13) Change application checklist

I have identified the:

- responsible entity in 4); and
- for a minor change, any affected entities; and Yes
- for an other change all relevant referral requirement(s) in 10)

Note: See the *Planning Regulation 2017* for referral requirements

- For an other change application, the relevant sections of [DA Form 1 – Development application details](#) have been completed and is attached to this application Yes Not applicable

- For an other change application, where building work is associated with the change application, the relevant sections of [DA Form 2 – Building work details](#) have been completed and is attached to this application Yes Not applicable

- Supporting information addressing any applicable assessment benchmarks is attached to this application Yes
- Note:** This includes any templates provided under 23.6 and 23.7 of *DA Form 1 – Development application details* that are relevant as a result of the change application, a planning report and any technical reports required by the relevant categorising instrument(s) (e.g. the local government planning scheme, State Planning Policy, State Development Assessment Provisions). For further information, see [DA Forms Guide: Planning report template](#).

- Relevant plans of the development are attached to this development application Yes
- Note:** Relevant plans are required to be submitted for all relevant aspects of this change application. For further information, see [DA Forms Guide: Relevant plans](#).

14) Applicant declaration

- By making this change application, I declare that all information in this change application is true and correct.
- Where an email address is provided in Part 1 of this form, I consent to receive future electronic communications from the responsible entity and any relevant affected entity or referral agency for the change application where written information is required or permitted pursuant to sections 11 and 12 of the *Electronic Transactions Act 2001*.

Note: It is unlawful to intentionally provide false or misleading information.

Privacy – Personal information collected in this form will be used by the responsible entity and/or chosen assessment manager, any relevant affected entity or referral agency and/or building certifier (including any professional advisers which may be engaged by those entities) while processing, assessing and deciding the change application.

All information relating to this change application may be available for inspection and purchase, and/or published on the assessment manager's and/or referral agency's website.

Personal information will not be disclosed for a purpose unrelated to the *Planning Act 2016*, *Planning Regulation 2017* and the DA Rules except where:

- such disclosure is in accordance with the provisions about public access to documents contained in the *Planning Act 2016* and the *Planning Regulation 2017*, and the access rules made under the *Planning Act 2016* and *Planning Regulation 2017*; or
- required by other legislation (including the *Right to Information Act 2009*); or
- otherwise required by law.

This information may be stored in relevant databases. The information collected will be retained as required by the *Public Records Act 2002*.

PART 8 – FOR COMPLETION OF THE ASSESSMENT MANAGER – FOR OFFICE USE ONLY

Date received: Reference number(s):

QLeave notification and payment			
<i>Note: For completion by assessment manager if applicable</i>			
Description of the work			
QLeave project number			
Amount paid (\$)		Date paid (dd/mm/yy)	
Date receipted form sighted by assessment manager			
Name of officer who sighted the form			

ATTACHMENT B

brazier motti



Queensland Titles Registry Pty Ltd
ABN 23 648 568 101

Title Reference: 20990154	Search Date: 29/06/2021 08:32
Date Title Created: 19/06/1975	Request No: 37693764
Previous Title: 20977057	

ESTATE AND LAND

Estate in Fee Simple

LOT 3 REGISTERED PLAN 729991
Local Government: DOUGLAS

REGISTERED OWNER

INTEREST

Dealing No: 719773452 03/12/2019

OBRAY PTY LTD A.C.N. 632 191 774

J & V NOLI PTY LTD A.C.N. 629 557 928

1/2

1/2

AS TENANTS IN COMMON

EASEMENTS, ENCUMBRANCES AND INTERESTS

1. Rights and interests reserved to the Crown by Deed of Grant No. 20977057 (POR 97)

ADMINISTRATIVE ADVICES

NIL

UNREGISTERED DEALINGS

NIL

** End of Current Title Search **

Owner's consent for making a change development application under the *Planning Act 2016*

Obray Pty Ltd A.C.N. 632 191 774
J & V Noli Pty Ltd A.C.N. 629 557 928

as owners of the premises identified as follows:

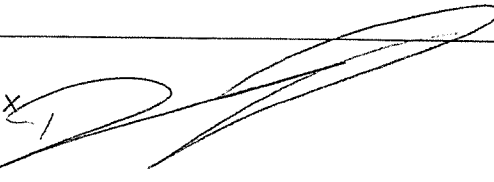

111-119 Port Douglas Road, Port Douglas
Lot 3 on RP729991

consent to the making of a development change application under the *Planning Act 2016* by:

Port Pacific Developments
c/- Brazier Motti Pty Ltd

on the premises described above for:

- Material Change of Use (Retirement Facility) – Council Ref: MCU 2020_3524/1

	
_____	_____
Obray Pty Ltd	J & V Noli Pty Ltd
Name: <i>D. Curran</i>	Name: <i>James Paul Noli</i>
Position: <i>DCIL</i>	Position: <i>Director</i>
Date: <i>29/6</i>	Date: <i>29/6/2021</i>

ATTACHMENT C

brazier motti



17 December 2020

Enquiries: Daniel Lamond
Our Ref: MCUC 2020_3524/1 (988283)
Your Ref: 34807-002-01

Administration Office
64 - 66 Front St Mossman
P 07 4099 9444
F 07 4098 2902

Port Pacific Developments
C/- Brazier Motti
PO Box 1185
CAIRNS QLD 4870



Received 17/12/2020

Dear Sir/Madam

**Development Application for Material Change of Use (Retirement Facility)
At 111-119 Port Douglas Road PORT DOUGLAS
On Land Described as LOT: 3 RP: 729991**

Please find attached the Decision Notice for the above-mentioned development application.

Please quote Council's application number: MCUC 2020_3524/1 in all subsequent correspondence relating to this development application.

Should you require any clarification regarding this, please contact Daniel Lamond on telephone 07 4099 9444.

Yours faithfully

A handwritten signature in black ink, appearing to read 'P. Hoyer'.

For

Paul Hoyer
Manager Environment & Planning

cc. State Assessment and Referral Agency (SARA) E: CairnsSARA@dsmip.qld.gov.au

encl.

- Decision Notice
 - Approved Drawing(s) and/or Document(s)
 - Concurrence Agency Response
 - Reasons for Decision
- Advice For Making Representations and Appeals (Decision Notice)
- Adopted Infrastructure Charges Notice
- Advice For Making Representations and Appeals (Infrastructure Charges)



Decision Notice

Approval (with conditions)

Given under section 63 of the Planning Act 2016

Applicant Details

Name: Port Pacific Developments
Postal Address: C/- Brazier Motti
PO Box 1185
CAIRNS QLD 4870
Email: cairns@braziermotti.com.au or

Property Details

Street Address: 111-119 Port Douglas Road PORT DOUGLAS
Real Property Description: LOT: 3 RP: 729991
Local Government Area: Douglas Shire Council

Details of Proposed Development

Development Permit- Material Change of Use (Retirement Facility)

Decision

Date of Decision: 15 December 2020
Decision Details: Approved (subject to conditions)

Approved Drawing(s) and/or Document(s)

Copies of the following plans, specifications and/or drawings are enclosed.

Drawing or Document	Reference	Date
Site Plan	Plan prepared by 8 Pencils, Drawing No. DA01, Revision DA3	20 October 2020
House Types A, B, C & D	Plan prepared by 8 Pencils, Drawing No. DA02, Revision DA2	26 February 2020
House Types E & Duplex	Plan prepared by 8 Pencils, Drawing No. DA03, Revision DA2	26 February 2020
Central Facilities	Plan prepared by 8 Pencils, Drawing No. DA03, Revision DA2	26 February 2020
Central Facilities Renders	Plan prepared by 8 Pencils, Drawing No. DA03, Revision DA2	26 February 2020

Note – The plans referenced above will require amending in order to comply with conditions of this Decision Notice.

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.

Amended Plans

3. Provide amended plans to adequately address the following requirements;
 - a. Sufficient detail to demonstrate privacy is achieved for the residents having regard to the location of windows to prevent overlooking from habitable rooms in addition to private open space areas (i.e patios) when located in close proximity to one another.
 - b. Locations of windows of all rooms in all dwellings and the relationship with the neighbouring dwellings. Windows of habitable rooms on neighbouring properties are to be located no less than two metres apart and must not be oriented to allow overlooking into a neighbouring dwelling;
 - c. Boundary setbacks of all houses to be no less than two metres from the side boundary adjoining Lot 0 on SP176458;
 - d. Removal of the internal footpath leading into Lot 0 on SP176458;
 - e. Any proposed internal fencing separating the dwellings;
 - f. A reasonable level of amenity and compliance with the National Construction Code with respect fire separation requirements;
 - g. The internal footpath network in accordance with Condition 4;
 - h. The stormwater detention basin;
 - i. Bin locations at dwellings which are not next to windows of habitable rooms or patios;
 - j. Corrected internal boundaries for sites 26, 27, 35 and 36.

Amended plans must be submitted and be to the satisfaction of the Chief Executive Officer prior to the issue of a Development Permit for Building Work or lodgement of the Development Application for Operational Works, whichever occurs first.

Advice: In addition to the requirements of 3a above, the National Construction Code (NCC) requires that walls of neighbouring buildings cannot be any closer than 1800mm and fascias cannot be closer than 900mm, with penetrations (windows etc).

Internal pedestrian network

4. Provide a footpath in accordance with the FNQROC Development Manual design requirements or other agreed design requirements which connects the dwellings to the central communal facilities so that residents are not required to walk on the internal road.

Waste Collection

5. All bins must be displayed on the inside of the internal circulation road in order for a side lifting truck to service the development efficiently or via an alternative service route or solution endorsed by the Chief Executive Officer prior to commencement of use.

Damage to Infrastructure

6. In the event that any part of Council's existing sewer, water or road infrastructure is damaged as a result of construction activities occurring on the site, the applicant / owner must notify Douglas Shire Council immediately of the affected infrastructure and have it repaired or replaced by Douglas Shire Council, at the developer's cost, prior to the commencement of use.

Water Supply and Sewerage Works External

7. Undertake water supply and sewerage works external to the site to connect the site to existing water supply and sewerage infrastructure to Council's systems at point of connection where sufficient capacity exists:
 - a. Provided a single metered water supply connection to the lot frontage;
 - b. Connect the sewer pressure main to the existing 300mm diameter gravity sewer on the eastern side of the road. The sewer connection must be into an existing manhole or a new manhole and the manhole is to be upgraded and lined to the requirements of the FNQROC Development Manual for a discharge manhole;
 - c. Alternatively, provide an engineering investigation that demonstrates that a sewer connection into the adjacent 100mm sewer main servicing the neighbouring resort can service the development. The investigation must confirm ownership and tenure of the service relied upon and must include supporting calculations for the existing resorts pump station and the new pump station required to service the development.

The plan of the works must be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Operational Works.

Water Supply and Sewerage Works Internal

8. Undertake the following water supply and sewerage works internal to the subject land:
 - a. Provide a single internal sewer connection to the development in accordance with the FNQROC Development Manual;
 - b. Provide a single metered water supply connection to the development with suitable bypass arrangement for fire fighting flows as certified by a hydraulic

consultant. The location of the water meter is to be at an accessible location to be endorsed by the Chief Executive Officer;

All of the above works must be designed and constructed in accordance with the FNQROC Development Manual and must be endorsed by the Chief Executive Officer prior to commencement of works.

External Works

9. Provide the following external works at no cost to Council;
 - a. Construct a water connection in accordance with condition 7 above;
 - b. Construct a sewer connection in accordance with condition 7 above;
 - c. Construct a 2000mm wide concrete footpath for the full length of the frontage to Port Douglas Road in accordance with the FNQROC Development Manual. The footpath must not detrimentally impact on the significant street trees on the road verge of the street. The three individual footpath accesses to the site are not approved.
 - d. Repair any damage to existing roadway (including removal of concrete slurry from footways, roads and stormwater gullies and drain lines) that may occur during and works carried out in association with the construction of the approved development.

External works are to be approved via an Operational Works Development Permit and are to be completed prior to commencement of use.

Stormwater and Drainage

10. All stormwater from the property must be directed to a lawful point of discharge such that it does not adversely affect surrounding properties or properties downstream, in accordance with the Queensland Urban Drainage Manual, Fourth Edition (2016). To address this requirement, the applicant must demonstrate that:
 - a. flows exiting the site post development are attenuated by the proposed detention basin; and
 - b. filling along the western boundary does not displace runoff from within the swale such that it would impact the neighbouring property and create an actionable nuisance. Additional supporting information is to be submitted for endorsement by the Chief Executive Officer including level information and cross sections to demonstrate the implications of the fill extents within the available waterway area of the swale prior to submission of the Development Application for Operational Works.

Stormwater and drainage works are to be approved via an Operational Works Development Permit and are to be completed prior to commencement of use.

Stockpiling and Transportation of Fill Material

11. Soil used for filling or spoil from the excavation is not to be stockpiled in locations that can be directly viewed from adjoining premises or a road frontage for any longer than one (1) month from the commencement of works.

Transportation of fill or spoil to and from the site must not occur within:

- a. peak traffic times; or
- b. before 7:00 am or after 6:00 pm Monday to Friday; or
- c. before 7:00 am or after 1:00 pm Saturdays; or
- d. on Sundays or Public Holidays.

Emissions

12. Dust emissions or other air pollutants must not extend beyond the boundary of the site and cause a nuisance to surrounding properties to the satisfaction of the Chief Executive Officer.

Storage of Machinery and Plant

13. The storage of any machinery, material and vehicles must not cause a nuisance to surrounding properties, to the satisfaction of the Chief Executive Officer.

Sediment and Erosion Control

14. An RPEQ certified erosion and sediment control plan in accordance with the IECA requirements must be prepared as part of the Operational Works Development Application. Sediment and erosion control measures must be installed / implemented prior to discharge of water from the site, such that no external stormwater flow from the site adversely affects surrounding or downstream properties in accordance with the requirements of the FNQROC Development Manual.

Vehicle Parking

15. The amount of vehicle parking must be as specified on the approved plan which is a minimum of one space per dwelling unit, one space for ambulance parking and two staff parking spaces and a minimum of 11 visitor spaces, of which two must be designed in accordance with AS2890 for disability access. 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 maneuvering areas must be imperviously sealed, drained and line marked.

Lighting

16. Provide internal street lighting in accordance with AS4282/ 1997.

Air-Conditioning Screens

17. 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.

Landscaping Plan

18. The site must be landscaped in accordance with details included on a Landscaping Plan. The Landscaping Plan must show:

Planting Design

- a. Species to have regard to Council's Planning Scheme Policy SC6.7 Landscaping.

- b. A planting design that does not include any species that are identified as Declared or Environmental Weeds or constitute an Invasive Species;
- c. Provide a hierarchy of planting, which includes shade trees, shrubs and groundcovers.
- d. Natural and finished ground levels including details of all retaining works;
- e. A two (2) metre wide strip of dense planting on the inside of the sites frontage screening the pool, the central facilities building and house number 40 from the road;
- f. No on-street landscaping;

A3 copies of the landscape plan must be endorsed by the Chief Executive Officer. The approval and completion of all landscaping works must be undertaken in accordance with the endorsed plan prior to the commencement of use. Landscaped areas must be maintained at all times to the satisfaction of the Chief Executive Officer.

Street Fencing

19. Details of the street fencing must be detailed in the Landscape Plan and be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Building Work.

Construction Signage

20. Prior to the commencement of any construction works associated with the development, a sign detailing the project team must be placed on the road frontage of the site and must be located in a prominent position. The sign must detail the relevant project coordinator for the works being undertaken on the site, and must list the following parties (where relevant) including telephone contacts:
 - a. Developer;
 - b. Project Coordinator;
 - c. Architect / Building Designer;
 - d. Builder;
 - e. Civil Engineer;
 - f. Civil Contractor;
 - g. Landscape Architect.

Acoustic Report / Attenuation Measures for Mens Shed component

21. The 'Man Shed' component of the proposal within the central facilities building is expected to generate noise via the use of machinery. A noise impact assessment report prepared by a suitably qualified and experienced acoustic engineer must be prepared inclusive of reasonable and practicable measures proposed to be implemented to minimise the impact of noise on the existing acoustic environment of the surrounding residences and demonstrate compliance with condition 19 below. The acoustic report must;
- a. investigate potential noise impacts on sensitive land uses external to the site, namely the dwelling houses and units neighbouring the site;
 - b. establish the noise profile of the locality;
 - c. detail the generation of noise associated with all noise emitting plant to be used;
 - d. detail proposed attenuation treatments to the building with building plans;
 - e. any other matters considered relevant by the acoustic engineer to ensure the proposed development does not unduly impact on neighbouring or surrounding properties.

The acoustic report must be submitted and endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Building Work.

Acoustic Report / Noise Emissions

22. For the mens shed component of the development, the average maximum noise level ($L_{max,T}$) of plant must not exceed at an affected building:
- a. Day (7am to 6pm): Background noise level $L_{90,T} + 5$ dBA (with the exemption of reverse signals from machinery and plant).
 - b. Night (6pm to 7am): No audible noise.

Mens Shed limitation

23. The 'Man shed' component of the communal facilities must only be used by residents of the retirement facility.

Minimum Fill and Floor Level

24. All floor levels in all habitable buildings must be located 300mm above the 1% AEP flood level, plus any hydraulic grade effect (whichever is the greater), in accordance with FNQROC Development Manual and Planning Scheme requirements.

Acid Sulfate Soil Investigation

25. Undertake an Acid Sulfate Soil investigation in the area to be affected by this development. Soil sampling and analysis must be undertaken in accordance with procedures specified in, '*Guidelines for Sampling and Analysis of Lowland Acid Sulfate Soils in Queensland*' (1998) or an updated version of document produced by the Department of Natural Resources, Mines and Energy and State Planning Policy—'*Planning and Managing Development involving Acid Sulfate Soils*'. The results of this investigation must be submitted to Council for approval prior to any earthworks commencing on the site.

Identification of soils with a pyrite content in excess of the action levels nominated in the latest version of DNRM – QASSIT: ‘*Guidelines for Sampling and Analysis of Lowland Acid Sulfate Soils in Queensland*’ (1998) will trigger the requirement for preparation of an Acid Sulfate Soil Environmental Management Plan in accordance with the most recent requirements of the DNRME: ‘*Queensland Acid Sulfate Soil Technical Manual*’ (2002) including Soil Management Guidelines which must be prepared to the satisfaction of the Chief Executive Officer.

Boundary fence

26. Provide an 1800mm high fence along the northern side boundary which is impermeable.

Security Screens

27. Security screens must be provided to all dwelling units to ensure the safety and security of residents.

Wayfinding

28. A map of the layout of the development is located near the main entrance to the facility adjacent to the central facilities building.

Further Development Permits

Please be advised that the following development permits are required to be obtained before the development can be carried out:

- Operational Work
- Building Work

All Plumbing and Drainage Work must only be carried in compliance with the Queensland *Plumbing and Drainage Act 2018*.

Concurrence Agency Response

Note – Concurrence Agency Response is attached. This Concurrence Agency Response maybe amended by agreement with the respective agency.

Currency Period for the Approval

This approval, granted under the provisions of the *Planning Act 2016*, shall lapse six (6) years from the day the approval takes effect in accordance with the provisions of Section 85 of the *Planning Act 2016*.

Rights to make Representations & Rights of Appeal

The rights of applicants to make representations and rights to appeal to a Tribunal or the Planning and Environment Court against decisions about a development application are set out in Chapter 6, Part 1 of the *Planning Act 2016*.

A copy of the relevant appeal provisions are attached.

Approved Drawing(s) and/or Document(s)

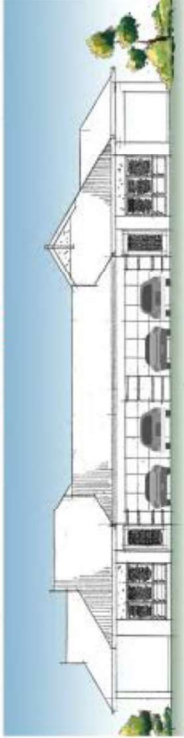




SIDE ELEVATION



STREET ELEVATION



SIDE ELEVATION



STREET ELEVATION



UNIT A & B - FLOOR PLAN

DATE: 12/01/2020
 TIME: 10:30 AM
 DRAWN BY: J. B. B. B.
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 PROJECT NO: 2187



UNIT C & D - FLOOR PLAN

DATE: 12/01/2020
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 PROJECT NO: 2187

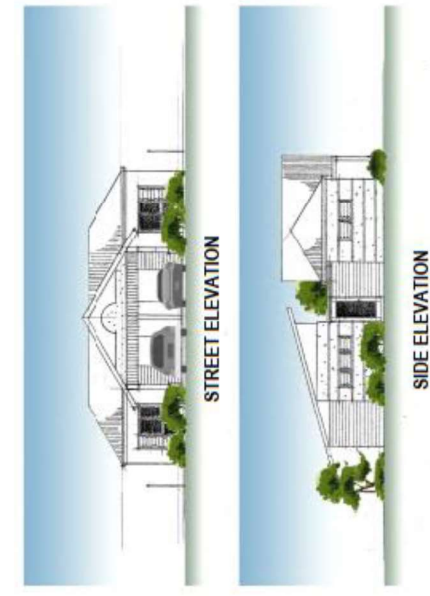
NO.	DESCRIPTION	DATE
1	PORT PACIFIC DEVELOPMENTS	
2	OVER 50% ACCOMMODATION COMPLEX	
3	PORT DOUGLAS	
4	HOUSE TYPES A, B, C & D	

PRELIMINARY
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DATE: 12/01/2020
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 PROJECT NO: 2187

SIZE
 1:100

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 TIME: 10:30 AM
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 PROJECT NO: 2187

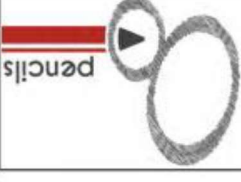


PROJECT	OVER 80% ACCOMMODATION COMPLEX
CLIENT	PORT DOUGLAS
CONTRACT	HOUSE TYPES E & DUPLEX
DATE	11/10/20
SCALE	1:100
PROJECT NO.	2187 DA03 DA2
DATE	11/10/20

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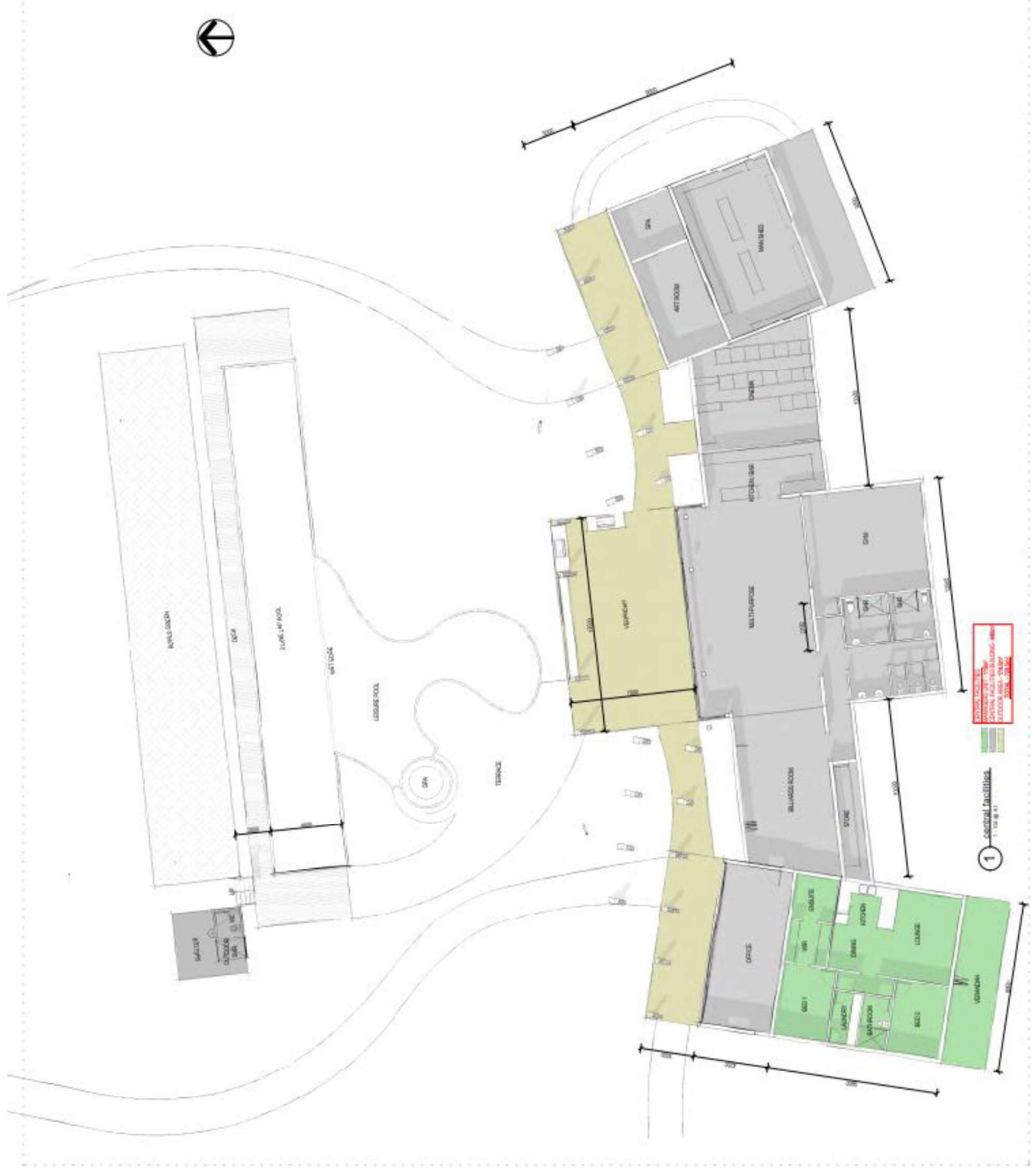
NO.	DESCRIPTION	DATE

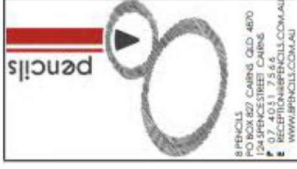
PORT PACIFIC DEVELOPMENTS
 OVER 50% ACCOMMODATION COMPLEX
 PORT DOUGLAS
 CENTRAL FACILITIES

PROJECT NO. 2187 DA04 DA2
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PROJECT NO.	2187
DATE	DAUS
REVISED DATE	DAZ
PROJECT NAME	OVERSEA ACCOMMODATION COMPLEX
CLIENT	PORT DOUGLAS
DESIGNER	CENTRAL FACILITY SERVICES
LOCATION	PORT PACIFIC DEVELOPMENTS
SCALE	
DATE	
BY	
CHECKED BY	
DATE	

OVERSEA ACCOMMODATION COMPLEX
 PORT DOUGLAS
 CENTRAL FACILITY SERVICES

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PROJECT NO. 2187
 DATE DAUS
 REVISED DATE DAZ

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Concurrence Agency Conditions

RA6-N



Department of
**State Development,
Manufacturing,
Infrastructure and Planning**

SARA reference: 2004-16427 SRA
Council reference: MCUC2020_3524/1
Applicant reference: 34807-002-01

20 May 2020

Chief Executive Officer
Douglas Shire Council
PO Box 723
Mossman Qld 4873
enquiries@douglas.qld.gov.au

Attention: Daniel Lamond

Dear Sir/Madam

SARA response—111-119 Port Douglas Road, Port Douglas

(Referral agency response given under section 58 of the *Planning Act 2016*)

The development application described below was confirmed as properly referred by the Department of State Development, Manufacturing, Infrastructure and Planning on 23 April 2020.

Response

Outcome:	Referral agency response – with conditions.
Date of response:	20 May 2020
Conditions:	The conditions in Attachment 1 must be attached to any development approval.
Advice:	Advice to the applicant is in Attachment 2 .
Reasons:	The reasons for the referral agency response are in Attachment 3 .

Development details

Description:	Development permit Material change of use - Retirement Facility
SARA role:	Referral Agency.
SARA trigger:	Material change of use of a premises near a State transport corridor - Schedule 10, Part 9, Division 4, Subdivision 2, Table 4, Item 1 (Planning Regulation 2017)
SARA reference:	2004-16427 SRA

Page 1 of 7

Far North Queensland regional office
Ground Floor, Cnr Grafton and Hartley
Street, Cairns
PO Box 2356, Cairns QLD 4870

Assessment Manager: Douglas Shire Council
 Street address: 111-119 Port Douglas Road, Port Douglas
 Real property description: Lot 3 on RP729991
 Applicant name: Port Pacific Developments c/- Brazier Motti Pty Ltd
 Applicant contact details: PO Box 1185
 Cairns QLD 4870
 Michael.Tessaro@braziermotti.com.au

State-controlled road access permit: This referral included an application for a road access location, under section 62A(2) of *Transport Infrastructure Act 1994*. Below are the details of the decision:

- Approved
- Reference: TMR20-029914 (500-1485)
- Date: 13/05/2020

If you are seeking further information on the road access permit, please contact the Department of Transport and Main Roads at cairns.office@tmr.qld.gov.au

Representations

An applicant may make representations to a concurrence agency, at any time before the application is decided, about changing a matter in the referral agency response (s.30 Development Assessment Rules)

Copies of the relevant provisions are in **Attachment 4**.

A copy of this response has been sent to the applicant for their information.

For further information please contact Jarrod Clarke, Planning Officer, on 40373208 or via email CairnsSARA@dsmip.qld.gov.au who will be pleased to assist.

Yours sincerely



Brett Nancarrow
 Manager (Planning)

cc Port Pacific Developments C/- Brazier Motti Pty Ltd, Michael.Tessaro@braziermotti.com.au

enc Attachment 1 - Referral agency conditions
 Attachment 2 - Advice to the applicant
 Attachment 3 - Reasons for referral agency response
 Attachment 4 - Representations provisions
 Attachment 5 - Approved plans and specifications

Attachment 1—Referral agency conditions

(Under section 56(1)(b)(i) of the *Planning Act 2016* the following conditions must be attached to any development approval relating to this application) (Copies of the plans and specifications referenced below are found at Attachment 5)

No.	Conditions	Condition timing
Material Change of Use		
Schedule 10, Part 9, Division 4, Subdivision 2, Table 4 - The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of Department of Transport and Main Roads to be the enforcement authority for the development to which this development approval relates for the administration and enforcement of any matter relating to the following conditions:		
1.	<p>(a) The road access location is be located generally in accordance with TMR Layout Plan (6504 2.50km), prepared by Queensland Government Transport and Main Roads, dated 12/05/2020, Reference TMR20-29914 (500-1485), Issue A.</p> <p>(b) Road access driveway extension works comprising of a sealed driveway must be provided between the existing driveway and the permitted access location generally in accordance with TMR Layout Plan (6504–2.50km), prepared by Queensland Government Transport and Main Roads, dated 12/05/2020, Reference TMR20-29914 (500-1485), Issue A</p> <p>(c) The road access driveway works must be designed and constructed in accordance with the Road Planning and Design Manual, 2nd edition, Department of Transport and Main Roads, 2016.</p>	<p>(a) At all times.</p> <p>(b) and (c): Prior to the commencement of use.</p>
2.	Stormwater management of the development must ensure no worsening or actionable nuisance to the state-controlled road.	At all times.

Attachment 2—Advice to the applicant

General advice	
Ref.	Advertising device
1.	<p>Advertising advice should be obtained from the Department of Transport and Main Roads (DTMR) if the approved development intends to erect, alter or operate an advertising sign or another advertising device that would be visible from a state-controlled road, and beyond the boundaries of the state-controlled road, and reasonably likely to create a traffic hazard for the state-controlled road.</p> <p><i>Note: DTMR has powers under section 139 of the Transport Operations (Road Use Management - Accreditation and Other Provisions) Regulation 2015 to require removal or modification of an advertising sign and/or a device which is deemed that it creates a danger to traffic.</i></p>
Ref.	Transport Noise Corridor
2.	<p>Mandatory Part (MP) 4.4 of the Queensland Development Code (QDC) commenced on 1 September 2010 and applies to building work for the construction or renovation of a residential building in a designated <i>transport noise corridor</i>. MP4.4 seeks to ensure that the habitable rooms of Class 1, 2, 3 and 4 buildings located in a <i>transport noise corridor</i> are designed and constructed to reduce transport noise. <i>Transport noise corridor</i> means land designated under Chapter 8B of the <i>Building Act 1975</i> as a <i>transport noise corridor</i>. Information about <i>transport noise corridors</i> is available at state and local government offices.</p> <p>A free online search tool can be used to find out whether a property is located in a designated <i>transport noise corridor</i>. This tool is available at the State Planning Policy Interactive Mapping System website: https://spp.dsdp.esriaustraliaonline.com.au/geoviewer/map/planmaking and allows searches on a registered lot number and/or property address to determine whether and how the QDC applies to the land. Transport Noise Corridors are located under Information Purposes within Transport Infrastructure of the State Planning Policy (SPP) mapping system.</p>
Ref.	Road Access Works Approval
3.	<p>In accordance with section 33 of the Transport Infrastructure Act 1994 (TIA), an applicant must obtain written approval from Department of Transport and Main Roads (DTMR) to carry out road works, including road access works on a state-controlled road.</p> <p>Please contact DTMR on 4045 7144 to make an application under section 33 of the TIA to carry out road works. This approval must be obtained prior to commencing any works on the state-controlled road reserve. The approval process may require the approval of engineering designs of the proposed works, certified by a Registered Professional Engineer of Queensland (RPEQ).</p> <p>The road works approval process takes time – please contact Transport and Main Roads as soon as possible to ensure that gaining approval does not delay construction.</p>

Attachment 3—Reasons for referral agency response

(Given under section 58(7) of the *Planning Act 2016*)

The reasons for the department's decision are:

- The development will not create a safety hazard for users of the state-controlled road.
- The change of use will not compromise the structural integrity or result in the worsening of the physical condition or operating performance of the state-controlled road.
- A development approval over the site will not compromise the state's ability to operate, maintain or construct state-controlled roads.

Material used in the assessment of the application:

- The development application material and submitted plans
- *Planning Act 2016*
- *Planning Regulation 2017*
- The *State Development Assessment Provisions* (version [2.6]), as published by the department
- The *Development Assessment Rules*
- SARA DA Mapping system

Attachment 4—Change representation provisions

(page left intentionally blank – attached separately)

Attachment 5—Approved plans and specifications

(page left intentionally blank – attached separately)

Our ref TMR20-029914 (S00-1485)
Your ref 34807-002-01
Enquiries Ronald Kaden



Department of
Transport and Main Roads

13 May 2020

Decision Notice – Permitted Road Access Location (s62(1) Transport Infrastructure Act 1994)

This is not an authorisation to commence work on a state-controlled road¹

Development application reference number MCUC2020_3524/1, lodged with Douglas Shire Council involves constructing or changing a vehicular access between Lot 3RP729991 the land the subject of the application, and Port Douglas Road (a state-controlled road).

In accordance with section 62A(2) of the *Transport Infrastructure Act 1994* (TIA), this development application is also taken to be an application for a decision under section 62(1) of TIA.

Applicant Details

Name and address Port Pacific Developments
C/- Brazier Motti
PO Box 1185
Cairns QLD 4870

Application Details

Address of Property 111-119 Port Douglas Road, Port Douglas QLD 4877
Real Property Description 3RP729991
Aspect/s of Development Development Permit for Material Change of Use for Retirement Facility

Decision (given under section 67 of TIA)

It has been decided to approve the application, subject to the following conditions:

No.	Conditions of Approval	Condition Timing
1	The permitted road access location is near the northern boundary of Lot 3RP729991, in accordance with: (a) TMR Layout Plan (6504 - 2.50km) Issue A 12/05/2020, and (b) Site Plan prepared by 8 Pencils dated 26/02/2020 reference DA01 rev DA2	At all times.
2	Direct access is prohibited between Port Douglas Road and Lot 3RP729991 at any other location other than the permitted road access location described in Condition 1.	At all times.

¹ Please refer to the further approvals required under the heading 'Further approvals'

Program Delivery and Operations Branch
Far North Region, Cairns Corporate Tower, 15 Lake Street Cairns Queensland 4870
PO Box 6185 Cairns Queensland 4870

Telephone (07) 4045 7151
Website www.tmr.qld.gov.au
ABN: 39 407 690 291

Reasons for the decision

The reasons for this decision are as follows:

- a) Currently the subject site (Lot 3 on RP729991) has road frontage to Port Douglas Road, a state-controlled road.
- b) No direct access between Lot 3 on RP729991 and Port Douglas Road currently exists.
- c) The proposed development is intending to construct a new access to the existing service road running parallel to the state-controlled road.
- d) Under TIA, the department is required to issue a section 62 decision for the access.

Please refer to **Attachment A** for the findings on material questions of fact and the evidence or other material on which those findings were based.

Information about the Decision required to be given under section 67(2) of TIA

1. There is no guarantee of the continuation of road access arrangements, as this depends on future traffic safety and efficiency circumstances.
2. In accordance with section 70 of the TIA, the applicant for the planning application is bound by this decision. A copy of section 70 is attached as **Attachment B**, as required, for information.

Further information about the decision

1. In accordance with section 67(7) of TIA, this decision notice:
 - a) starts to have effect when the development approval has effect; and
 - b) stops having effect if the development approval lapses or is cancelled; and
 - c) replaces any earlier decision made under section 62(1) in relation to the land.
2. In accordance with section 485 of the TIA and section 31 of the *Transport Planning and Coordination Act 1994* (TPCA), a person whose interests are affected by this decision may apply for a review of this decision only within 28 days after notice of the decision was given under the TIA. A copy of the review provisions under TIA and TPCA are attached in **Attachment C** for information.
3. In accordance with section 485B of the TIA and section 35 of TPCA a person may appeal against a reviewed decision. The person must have applied to have the decision reviewed before an appeal about the decision can be lodged in the Planning and Environment Court. A copy of the Appeal Provisions under TIA and TPCA is attached in **Attachment C** for information.

Further approvals

The Department of Transport and Main Roads also provides the following information in relation to this approval:

1. Road Access Works Approval Required – Written approval is required from the department to carry out road works that are road access works (including driveways) on a state-controlled road in accordance with section 33 of the TIA. This approval must be obtained prior to commencing any works on the state-controlled road. The approval process may require the approval of

engineering designs of the proposed works, certified by a Registered Professional Engineer of Queensland (RPEQ). Please contact the department to make an application.

If further information about this approval or any other related query is required, Mr Ronald Kaden, Development Control Officer, Corridor Management should be contacted by email at ron.p.kaden@tmr.qld.gov.au or on (07) 4045 7151.

Yours sincerely



Peter McNamara
Principal Engineer (Civil)

Attachments: Attachment A – Decision evidence and findings
Attachment B - Section 70 of TIA
Attachment C - Appeal Provisions
Attachment D - Permitted Road Access Location Plan

Attachment A

Decision Evidence and Findings

Evidence or other material on which findings were based:

Title of Evidence / Material	Prepared by	Date	Reference no.	Version / Issue
TMR Layout Plan (6504 - 2.50km)	Queensland Government Transport and Main Roads	12 May 2020	TMR20-29914 (500-1485)	A
Site Plan	8 Pencils	26 February 2020	DA01	DA2

Attachment B
Section 70 of TIA

Transport Infrastructure Act 1994
Chapter 6 Road transport infrastructure
Part 5 Management of State-controlled roads

70 Offences about road access locations and road access works, relating to decisions under s 62(1)

- (1) This section applies to a person who has been given notice under section 67 or 68 of a decision under section 62(1) about access between a State-controlled road and adjacent land.
- (2) A person to whom this section applies must not—
- (a) obtain access between the land and the State-controlled road other than at a location at which access is permitted under the decision; or
 - (b) obtain access using road access works to which the decision applies, if the works do not comply with the decision and the noncompliance was within the person's control; or
 - (c) obtain any other access between the land and the road contrary to the decision; or
 - (d) use a road access location or road access works contrary to the decision; or
 - (e) contravene a condition stated in the decision; or
 - (f) permit another person to do a thing mentioned in paragraphs (a) to (e); or
 - (g) fail to remove road access works in accordance with the decision.

Maximum penalty—200 penalty units.

- (3) However, subsection (2)(g) does not apply to a person who is bound by the decision because of section 68.

Attachment C
Appeal Provisions

Transport Infrastructure Act 1994
Chapter 16 General provisions

485 Internal review of decisions

- (1) A person whose interests are affected by a decision described in schedule 3 (the *original decision*) may ask the chief executive to review the decision.
- (2) The person is entitled to receive a statement of reasons for the original decision whether or not the provision under which the decision is made requires that the person be given a statement of reasons for the decision.
- (3) The *Transport Planning and Coordination Act 1994*, part 5, division 2—
 - (a) applies to the review; and
 - (b) provides—
 - (i) for the procedure for applying for the review and the way it is to be carried out; and
 - (ii) that the person may apply to QCAT to have the original decision stayed.

485B Appeals against decisions

- (1) This section applies in relation to an original decision if a court (the appeal court) is stated in schedule 3 for the decision.
- (2) If the reviewed decision is not the decision sought by the applicant for the review, the applicant may appeal against the reviewed decision to the appeal court.
- (3) The *Transport Planning and Coordination Act 1994*, part 5, division 3—
 - (a) applies to the appeal; and
 - (b) provides—
 - (i) for the procedure for the appeal and the way it is to be disposed of; and
 - (ii) that the person may apply to the appeal court to have the original decision stayed.
- (4) Subsection (5) applies if—
 - (a) a person appeals to the Planning and Environment Court against a decision under section 62(1) on a planning application that is taken, under section 62A(2), to also be an application for a decision under section 62(1); and

(b) a person appeals to the Planning and Environment Court against a decision under the Planning Act on the planning application.

(5) The court may order—

(a) the appeals to be heard together or 1 immediately after the other; or

(b) 1 appeal to be stayed until the other is decided.

(6) Subsection (5) applies even if all or any of the parties to the appeals are not the same.

(7) In this section—

original decision means a decision described in schedule 3.

reviewed decision means the chief executive's decision on a review under section 485.

31 Applying for review

- (1) A person may apply for a review of an original decision only within 28 days after notice of the original decision was given to the person under the transport Act.
- (2) However, if—
 - (a) the notice did not state the reasons for the original decision; and
 - (b) the person asked for a statement of the reasons within the 28 days mentioned in subsection (1)the person may apply within 28 days after the person is given the statement of the reasons.
- (3) In addition, the chief executive may extend the period for applying.
- (4) An application must be written and state in detail the grounds on which the person wants the original decision to be reviewed.

32 Stay of operation of original decision

- (1) If a person applies for review of an original decision, the person may immediately apply for a stay of the decision to the relevant entity.
- (2) The relevant entity may stay the original decision to secure the effectiveness of the review and any later appeal to or review by the relevant entity.
- (3) In setting the time for hearing the application, the relevant entity must allow at least 3 business days between the day the application is filed with it and the hearing day.
- (4) The chief executive is a party to the application.
- (5) The person must serve a copy of the application showing the time and place of the hearing and any document filed in the relevant entity with it on the chief executive at least 2 business days before the hearing.
- (6) The stay—
 - (a) may be given on conditions the relevant entity considers appropriate; and
 - (b) operates for the period specified by the relevant entity; and
 - (c) may be revoked or amended by the relevant entity.
- (7) The period of a stay under this section must not extend past the time when the chief executive reviews the original decision and any later period the relevant entity allows the applicant to enable the applicant to appeal against the decision or apply for a review of the decision as provided under the QCAT Act.

(8) The making of an application does not affect the original decision, or the carrying out of the original decision, unless it is stayed.

(9) In this section—

relevant entity means—

- (a) if the reviewed decision may be reviewed by QCAT—QCAT; or
- (b) if the reviewed decision may be appealed to the appeal court—the appeal court.

35 Time for making appeals

(1) A person may appeal against a reviewed decision only within—

- (a) if a decision notice is given to the person—28 days after the notice was given to the person; or
- (b) if the chief executive is taken to have confirmed the decision under section 34(5)—56 days after the application was made.

(2) However, if—

- (a) the decision notice did not state the reasons for the decision; and
- (b) the person asked for a statement of the reasons within the 28 days mentioned in subsection (1)(a);

the person may apply within 28 days after the person is given a statement of the reasons.

(3) Also, the appeal court may extend the period for appealing.



Branch/Unit:	Corridor Management / Far North Region
Projection/Datum:	Gaussieric Datum of Australia (GDA) 1994
Legend:	<p> Land Parcels</p> <p> Subject Land</p>

TMR Layout Plan (6504 - 2.50km)

Queensland Government Transport and Main Roads					
Plan:	1 / 1	Issue:	A	Date:	12/05/2020
Drawn by:	RPK	File ref:	TMR20-29614 (500-1485)		

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PORT PACIFIC DEVELOPMENTS

OVER 50% ACCOMMODATION COMPLEX

PORT DOUGLAS

SITE PLAN

PRELIMINARY
NOT FOR CONSTRUCTION

PROJECT NO: 2187 DA01 DA2

DATE: 15/01/2020

DESIGNED BY: [Name]

DRAWN BY: [Name]

CHECKED BY: [Name]

APPROVED BY: [Name]

DATE: 15/01/2020

SCALE: 1:1000

PROJECT NO: 2187 DA01 DA2

DATE: 15/01/2020

DESIGNED BY: [Name]

DRAWN BY: [Name]

CHECKED BY: [Name]

APPROVED BY: [Name]

DATE: 15/01/2020

SCALE: 1:1000

Development Assessment Rules—Representations about a referral agency response

The following provisions are those set out in sections 28 and 30 of the Development Assessment Rules¹ regarding representations about a referral agency response

Part 6: Changes to the application and referral agency responses

28 Concurrence agency changes its response or gives a late response

- 28.1. Despite part 2, a concurrence agency may, after its referral agency assessment period and any further period agreed ends, change its referral agency response or give a late referral agency response before the application is decided, subject to section 28.2 and 28.3.
- 28.2. A concurrence agency may change its referral agency response at any time before the application is decided if—
- (a) the change is in response to a change which the assessment manager is satisfied is a change under section 26.1; or
 - (b) the Minister has given the concurrence agency a direction under section 99 of the Act; or
 - (c) the applicant has given written agreement to the change to the referral agency response.²
- 28.3. A concurrence agency may give a late referral agency response before the application is decided, if the applicant has given written agreement to the late referral agency response.
- 28.4. If a concurrence agency proposes to change its referral agency response under section 28.2(a), the concurrence agency must—
- (a) give notice of its intention to change its referral agency response to the assessment manager and a copy to the applicant within 5 days of receiving notice of the change under section 25.1; and
 - (b) the concurrence agency has 10 days from the day of giving notice under paragraph (a), or a further period agreed between the applicant and the concurrence agency, to give an amended referral agency response to the assessment manager and a copy to the applicant.

¹ Pursuant to Section 68 of the *Planning Act 2016*

² In the instance an applicant has made representations to the concurrence agency under section 30, and the concurrence agency agrees to make the change included in the representations, section 28.2(c) is taken to have been satisfied.

Part 7: Miscellaneous

30 Representations about a referral agency response

- 30.1. An applicant may make representations to a concurrence agency at any time before the application is decided, about changing a matter in the referral agency response.³

³ An applicant may elect, under section 32, to stop the assessment manager's decision period in which to take this action. If a concurrence agency wishes to amend their response in relation to representations made under this section, they must do so in accordance with section 28.



PLANS AND DOCUMENTS
referred to in the REFERRAL
AGENCY RESPONSE

SARA ref: 2004-16427 SRA

Date: 20 May 2020

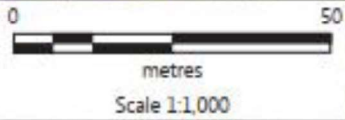


Road Access Junction
Approx 270m north of Sorrento Crescent
(2.50km LHS)

Road Access Driveway

Permitted Road Access Location
Near the northern boundary of Lot 3RP72991.
x 145.463272 y -16.510834

3RP72991
111-119 Port Douglas Road



Branch/Unit :	Corridor Management / Far North Region
Projection/Datum :	Geocentric Datum of Australia (GDA) 1994
Land Parcels	Subject Land

**TMR Layout Plan
(6504 - 2.50km)**

Queensland Government Transport and Main Roads		
Plan:	Issue:	Date:
1 / 1	A	12/05/2020
Drawn by:	File ref:	
PP/PC	TMR20-20914 (500-1465)	

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Reasons for Decision

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 1 April 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 Medium Density Residential 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.

Extracts from the Planning Act 2016 - Making Representations During Applicant's Appeal Period

Planning Act 2016
Chapter 3 Development assessment

[s 74]

Division 2 Changing development approvals

Subdivision 1 Changes during appeal period

74 What this subdivision is about

- (1) This subdivision is about changing a development approval before the applicant's appeal period for the approval ends.
- (2) This subdivision also applies to an approval of a change application, other than a change application for a minor change to a development approval.
- (3) For subsection (2), sections 75 and 76 apply—
 - (a) as if a reference in section 75 to a development approval were a reference to an approval of a change application; and
 - (b) as if a reference in the sections to the assessment manager were a reference to the responsible entity; and
 - (c) as if a reference in section 76 to a development application were a reference to a change application; and
 - (d) as if the reference in section 76(3)(b) to section 63(2) and (3) were a reference to section 83(4); and
 - (e) with any other necessary changes.

75 Making change representations

- (1) The applicant may make representations (*change representations*) to the assessment manager, during the applicant's appeal period for the development approval, about changing—
 - (a) a matter in the development approval, other than—
 - (i) a matter stated because of a referral agency's response; or

-
- (ii) a development condition imposed under a direction made by the Minister under chapter 3, part 6, division 2; or
 - (b) if the development approval is a deemed approval—the standard conditions taken to be included in the deemed approval under section 64(8)(c).
 - (2) If the applicant needs more time to make the change representations, the applicant may, during the applicant's appeal period for the approval, suspend the appeal period by a notice given to the assessment manager.
 - (3) Only 1 notice may be given.
 - (4) If a notice is given, the appeal period is suspended—
 - (a) if the change representations are not made within a period of 20 business days after the notice is given to the assessment manager—until the end of that period; or
 - (b) if the change representations are made within 20 business days after the notice is given to the assessment manager, until—
 - (i) the applicant withdraws the notice, by giving another notice to the assessment manager; or
 - (ii) the applicant receives notice that the assessment manager does not agree with the change representations; or
 - (iii) the end of 20 business days after the change representations are made, or a longer period agreed in writing between the applicant and the assessment manager.
 - (5) However, if the assessment manager gives the applicant a negotiated decision notice, the appeal period starts again on the day after the negotiated decision notice is given.

76 Deciding change representations

- (1) The assessment manager must assess the change representations against and having regard to the matters that

must be considered when assessing a development application, to the extent those matters are relevant.

- (2) The assessment manager must, within 5 business days after deciding the change representations, give a decision notice to—
 - (a) the applicant; and
 - (b) if the assessment manager agrees with any of the change representations—
 - (i) each principal submitter; and
 - (ii) each referral agency; and
 - (iii) if the assessment manager is not a local government and the development is in a local government area—the relevant local government; and
 - (iv) if the assessment manager is a chosen assessment manager—the prescribed assessment manager; and
 - (v) another person prescribed by regulation.
- (3) A decision notice (a *negotiated decision notice*) that states the assessment manager agrees with a change representation must—
 - (a) state the nature of the change agreed to; and
 - (b) comply with section 63(2) and (3).
- (4) A negotiated decision notice replaces the decision notice for the development application.
- (5) Only 1 negotiated decision notice may be given.
- (6) If a negotiated decision notice is given to an applicant, a local government may give a replacement infrastructure charges notice to the applicant.

Extracts from the Planning Act 2016 – Appeal Rights

Planning Act 2016
Chapter 6 Dispute resolution

[s 229]

- (2) The person is taken to have engaged in the representative's conduct, unless the person proves the person could not have prevented the conduct by exercising reasonable diligence.
- (3) In this section—
 - conduct* means an act or omission.
 - representative* means—
 - (a) of a corporation—an executive officer, employee or agent of the corporation; or
 - (b) of an individual—an employee or agent of the individual.
 - state of mind*, of a person, includes the person's—
 - (a) knowledge, intention, opinion, belief or purpose; and
 - (b) reasons for the intention, opinion, belief or purpose.

Chapter 6 Dispute resolution

Part 1 Appeal rights

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states—
 - (a) matters that may be appealed to—
 - (i) either a tribunal or the P&E Court; or
 - (ii) only a tribunal; or
 - (iii) only the P&E Court; and
 - (b) the person—
 - (i) who may appeal a matter (the *appellant*); and
 - (ii) who is a respondent in an appeal of the matter; and

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Current as at 1 October 2020

Authorised by the Parliamentary Counsel

-
- (iii) who is a co-respondent in an appeal of the matter;
and
 - (iv) who may elect to be a co-respondent in an appeal of the matter.
- (2) An appellant may start an appeal within the appeal period.
- (3) The *appeal period* is—
- (a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency; or
 - (b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
 - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or
 - (d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
 - (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or
 - (f) for an appeal relating to the *Plumbing and Drainage Act 2018*—
 - (i) for an appeal against an enforcement notice given because of a belief mentioned in the *Plumbing and Drainage Act 2018*, section 143(2)(a)(i), (b) or (c)—5 business days after the day the notice is given; or
 - (ii) for an appeal against a decision of a local government or an inspector to give an action notice under the *Plumbing and Drainage Act 2018*—5 business days after the notice is given; or

- (iii) otherwise—20 business days after the day the notice is given; or
- (g) for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

Note—

See the P&E Court Act for the court's power to extend the appeal period.

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—
 - (a) the adopted charge itself; or
 - (b) for a decision about an offset or refund—
 - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
 - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

230 Notice of appeal

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—
 - (a) is in the approved form; and
 - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar, must, within the service period, give a copy of the notice of appeal to—

- (a) the respondent for the appeal; and
 - (b) each co-respondent for the appeal; and
 - (c) for an appeal about a development application under schedule 1, section 1, table 1, item 1—each principal submitter for the application whose submission has not been withdrawn; and
 - (d) for an appeal about a change application under schedule 1, section 1, table 1, item 2—each principal submitter for the application whose submission has not been withdrawn; and
 - (e) each person who may elect to be a co-respondent for the appeal other than an eligible submitter for a development application or change application the subject of the appeal; and
 - (f) for an appeal to the P&E Court—the chief executive; and
 - (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The *service period* is—
- (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
 - (b) otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent to an appeal by filing a notice of election in the approved form—
- (a) if a copy of the notice of appeal is given to the person—within 10 business days after the copy is given to the person; or
 - (b) otherwise—within 15 business days after the notice of appeal is lodged with the registrar of the tribunal or the P&E Court.

- (7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department's website for this purpose.

231 Non-appealable decisions and matters

- (1) Subject to this chapter, section 316(2), schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
- (2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section—
decision includes—
 - (a) conduct engaged in for the purpose of making a decision; and
 - (b) other conduct that relates to the making of a decision; and
 - (c) the making of a decision or the failure to make a decision; and
 - (d) a purported decision; and
 - (e) a deemed refusal.

non-appealable, for a decision or matter, means the decision or matter—

- (a) is final and conclusive; and
- (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the *Judicial Review Act 1991* or otherwise,

whether by the Supreme Court, another court, any tribunal or another entity; and

- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, any tribunal or another entity on any ground.

232 Rules of the P&E Court

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with rules of the P&E Court.

Part 2 Development tribunal

Division 1 General

233 Appointment of referees

- (1) The Minister, or chief executive, (the *appointer*) may appoint a person to be a referee, by an appointment notice, if the appointer considers the person—
 - (a) has the qualifications or experience prescribed by regulation; and
 - (b) has demonstrated an ability—
 - (i) to negotiate and mediate outcomes between parties to a proceeding; and
 - (ii) to apply the principles of natural justice; and
 - (iii) to analyse complex technical issues; and
 - (iv) to communicate effectively, including, for example, to write informed succinct and well-organised decisions, reports, submissions or other documents.

17 December 2020

Enquiries: Daniel Lamond
Our Ref: MCUC 2020_3524 (988283)
Your Ref: 34807-002-01

Port Pacific Developments
C/- Brazier Motti
PO Box 1185
CAIRNS QLD 4870

Dear Sir/Madam

**Adopted Infrastructure Charge Notice
For Development Application Material Change of Use (Retirement Facility)
At 111-119 Port Douglas Road PORT DOUGLAS
On Land Described as LOT: 3 RP: 729991**

Please find attached the Adopted Infrastructure Charges Notice issued in accordance with section 119 of the *Planning Act 2016*.

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

Please also find attached extracts from the Act regarding the following:

- your right to make representations to Council about the Adopted Infrastructure Charges Notice; and
- your Appeal rights with respect to the Adopted Infrastructure Charges Notice.

Please quote Council's application number: MCUC 2020_3524 in all subsequent correspondence relating to this matter.

Should you require any clarification regarding this, please contact Daniel Lamond on telephone 07 4099 9444.

Yours faithfully




For

Paul Hoyer
Manager Environment & Planning

encl.

- Adopted Infrastructure Charges Notice
- Rights to Make Representations and Appeals Regarding Infrastructure Charges

Adopted Infrastructure Charges Notice

	2018 Douglas Shire Planning Schemes Applications
INFRASTRUCTURE CHARGES NOTICE	

Port Pacific Developments C/- Brazier Motti	0	
DEVELOPERS NAME	ESTATE NAME	STAGE
111-119 Port Douglas Road	Port Douglas	3RP729991
STREET No. & NAME	SUBURB	LOT & RP No.s
Retirement Facility		MCUC2020_3524
DEVELOPMENT TYPE		COUNCIL FILE NO.
DOC ID 986384	1	
DSC Reference Doc . No.	VERSION No.	

	Use	Charge per Use	Amount Due	Amount Paid	Receipt Code & GL Code
Port Douglas and Environs Area					
2 bedroom units	18	15,718.00	\$282,924.00		Code 895 GL 07500.0135.0825
1 bedroom units	24	10,479.00	\$251,496.00		
Central Facilities Building	440	129.34	56,909.60		
Total Demand			\$591,329.60		
Less credit for previous gymnasium	177	129.34	\$22,893.18		
TOTAL			\$568,436.42		

Prepared by	D Lamond	19-Nov-20	Amount Paid	
Checked by	N Beck	19-Nov-20	Date Paid	
Date Payable	MCU - Before the change occurs			
Amendments	Date		Receipt No.	
			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 Local Government Infrastructure Plan and Charges Schedule.

Charge rates under the current Policy are not subject to indexing.

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 Environment & Planning on 07 4099 9444 or by email on enquiries@douglas.qld.gov.au

Subdivision 5 Changing charges during relevant appeal period

124 Application of this subdivision

This subdivision applies to the recipient of an infrastructure charges notice given by a local government.

125 Representations about infrastructure charges notice

- (1) During the appeal period for the infrastructure charges notice, the recipient may make representations to the local government about the infrastructure charges notice.
- (2) The local government must consider the representations.
- (3) If the local government—
 - (a) agrees with a representation; and
 - (b) decides to change the infrastructure charges notice;the local government must, within 10 business days after making the decision, give a new infrastructure charges notice (*a negotiated notice*) to the recipient.
- (4) The local government may give only 1 negotiated notice.
- (5) A negotiated notice—
 - (a) must be in the same form as the infrastructure charges notice; and
 - (b) must state the nature of the changes; and
 - (c) replaces the infrastructure charges notice.
- (6) If the local government does not agree with any of the representations, the local government must, within 10 business days after making the decision, give a decision notice about the decision to the recipient.
- (7) The appeal period for the infrastructure charges notice starts again when the local government gives the decision notice to the recipient.

126 Suspending relevant appeal period

- (1) If the recipient needs more time to make representations, the recipient may give a notice suspending the relevant appeal period to the local government.
- (2) The recipient may give only 1 notice.
- (3) If the representations are not made within 20 business days after the notice is given, the balance of the relevant appeal period restarts.
- (4) If representations are made within the 20 business days and the recipient gives the local government a notice withdrawing the notice of suspension, the balance of the relevant appeal period restarts the day after the local government receives the notice of withdrawal.

Division 3 Development approval conditions about trunk infrastructure

Subdivision 1 Conditions for necessary trunk infrastructure

127 Application and operation of subdivision

- (1) This subdivision applies if—
 - (a) trunk infrastructure—
 - (i) has not been provided; or
 - (ii) has been provided but is not adequate; and
 - (b) the trunk infrastructure is or will be located on—
 - (i) premises (the *subject premises*) that are the subject of a development application, whether or not the infrastructure is necessary to service the subject premises; or
 - (ii) other premises, but is necessary to service the subject premises.

Extracts from the Planning Act 2016 –Appeal Rights

Planning Act 2016
Chapter 6 Dispute resolution

[s 229]

- (2) The person is taken to have engaged in the representative's conduct, unless the person proves the person could not have prevented the conduct by exercising reasonable diligence.
- (3) In this section—
 - conduct** means an act or omission.
 - representative** means—
 - (a) of a corporation—an executive officer, employee or agent of the corporation; or
 - (b) of an individual—an employee or agent of the individual.
 - state of mind**, of a person, includes the person's—
 - (a) knowledge, intention, opinion, belief or purpose; and
 - (b) reasons for the intention, opinion, belief or purpose.

Chapter 6 Dispute resolution

Part 1 Appeal rights

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states—
 - (a) matters that may be appealed to—
 - (i) either a tribunal or the P&E Court; or
 - (ii) only a tribunal; or
 - (iii) only the P&E Court; and
 - (b) the person—
 - (i) who may appeal a matter (the *appellant*); and
 - (ii) who is a respondent in an appeal of the matter; and

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Current as at 1 October 2020

Authorised by the Parliamentary Counsel

-
- (iii) who is a co-respondent in an appeal of the matter; and
 - (iv) who may elect to be a co-respondent in an appeal of the matter.
- (2) An appellant may start an appeal within the appeal period.
- (3) The *appeal period* is—
- (a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency; or
 - (b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
 - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or
 - (d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
 - (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or
 - (f) for an appeal relating to the *Plumbing and Drainage Act 2018*—
 - (i) for an appeal against an enforcement notice given because of a belief mentioned in the *Plumbing and Drainage Act 2018*, section 143(2)(a)(i), (b) or (c)—5 business days after the day the notice is given; or
 - (ii) for an appeal against a decision of a local government or an inspector to give an action notice under the *Plumbing and Drainage Act 2018*—5 business days after the notice is given; or

- (iii) otherwise—20 business days after the day the notice is given; or
- (g) for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

Note—

See the P&E Court Act for the court's power to extend the appeal period.

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—
 - (a) the adopted charge itself; or
 - (b) for a decision about an offset or refund—
 - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
 - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

230 Notice of appeal

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—
 - (a) is in the approved form; and
 - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar, must, within the service period, give a copy of the notice of appeal to—

-
- (a) the respondent for the appeal; and
 - (b) each co-respondent for the appeal; and
 - (c) for an appeal about a development application under schedule 1, section 1, table 1, item 1—each principal submitter for the application whose submission has not been withdrawn; and
 - (d) for an appeal about a change application under schedule 1, section 1, table 1, item 2—each principal submitter for the application whose submission has not been withdrawn; and
 - (e) each person who may elect to be a co-respondent for the appeal other than an eligible submitter for a development application or change application the subject of the appeal; and
 - (f) for an appeal to the P&E Court—the chief executive; and
 - (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The *service period* is—
- (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
 - (b) otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent to an appeal by filing a notice of election in the approved form—
- (a) if a copy of the notice of appeal is given to the person—within 10 business days after the copy is given to the person; or
 - (b) otherwise—within 15 business days after the notice of appeal is lodged with the registrar of the tribunal or the P&E Court.

- (7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department's website for this purpose.

231 Non-appealable decisions and matters

- (1) Subject to this chapter, section 316(2), schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
- (2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section—
decision includes—
 - (a) conduct engaged in for the purpose of making a decision; and
 - (b) other conduct that relates to the making of a decision; and
 - (c) the making of a decision or the failure to make a decision; and
 - (d) a purported decision; and
 - (e) a deemed refusal.

non-appealable, for a decision or matter, means the decision or matter—

- (a) is final and conclusive; and
- (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the *Judicial Review Act 1991* or otherwise,

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- whether by the Supreme Court, another court, any tribunal or another entity; and
- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, any tribunal or another entity on any ground.

232 Rules of the P&E Court

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with rules of the P&E Court.

Part 2 Development tribunal

Division 1 General

233 Appointment of referees

- (1) The Minister, or chief executive, (the *appointer*) may appoint a person to be a referee, by an appointment notice, if the appointer considers the person—
- (a) has the qualifications or experience prescribed by regulation; and
- (b) has demonstrated an ability—
- (i) to negotiate and mediate outcomes between parties to a proceeding; and
- (ii) to apply the principles of natural justice; and
- (iii) to analyse complex technical issues; and
- (iv) to communicate effectively, including, for example, to write informed succinct and well-organised decisions, reports, submissions or other documents.