

Your Ref: 8/7/2833 (4205238) MH  
Our Ref: J000049:NQL:KLG (L2 House)  
Date: 14 January 2014

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

**Attention: Manager Development & Environment  
Ms Michelle Henderson, Town Planner**

DOUGLAS SHIRE COUNCIL Received	
File Name...	MCUC 5350/2013
Document No	
17 JAN 2014	
Attention	MRH
Information	

Dear Michelle,

**RE: Application seeking a Preliminary Approval for Building Works (House Building Envelope) on land located at Andreassen Road, Mowbray more particularly described as Lot 2 on C2254**

I refer to the above-described matter, and Council's Decision Notice confirming its approval subject to conditions, dated 2 December 2013, and received on 3 December 2013 via the SEDA system.

By letter dated 12 December 2013, the Applicant suspended its Appeal Period for this Application pursuant to Section 366(1) of the *Sustainable Planning Act 2009* ('SPA'), in order to make representations regarding conditions imposed on the Approval issued.

Clarification regarding Application and Approval Obtained

During discussions with Ms Elphinstone of Council on 10 January 2014 regarding this project, she advised that in her view, the Preliminary Approval for Building Works obtained ought properly have been a Development Permit for Material Change of Use for a 'House', in circumstances whereby a 'House' was self assessable development made code assessable by virtue of non-compliance with Code requirements.

Following consideration of these comments, it is noted that:

1. Pursuant to the Port Douglas and Environs Locality Tables of Assessment, a 'House' is assessed against the following codes:
  - Port Douglas and Environs Locality Code;
  - Residential 1 Planning Area Code;
  - House Code;

- **Natural Areas and Scenic Amenity Code (if code application is triggered);**
  - **Vehicle Parking and Access Code.**
2. **Self assessable provisions in the Port Douglas and Environs Locality Code are A1.1 and A2.1(a). The House proposed complies with both requirements;**
  3. **The only Self assessable provision in the Residential 1 Planning Area Code is A4.1. Compliance can be confirmed;**
  4. **Self Assessable provisions within the House Code are A1.1, A1.2, A2.1, A3.1 and A3.2. Compliance can be confirmed;**
  5. **The Natural Areas and Scenic Amenity Code does not apply, given the location of development and mapped constraints on the site;**
  6. **The only Self Assessable provision in the Vehicle Parking and Access Code is A1.1. Compliance can be confirmed.**

**It is noted that compliance with 'service' requirements initially considered problematic with development of houses on the sites have been addressed with the issuance of reconfiguration approvals for easements – these approvals address service and standard requirements for access.**

**As was noted within the Application lodged with then-Cairns Regional Council, the purpose of seeking a Preliminary Approval for Building Works from Council for the houses on lots in this precinct owned by the Applicant was to provide confirmation for both Council and the Applicant as to how Council concerns regarding residential use on land in this area would be managed in so far as location of buildings and flood immunity was concerned. The decision to seek these approvals was made following lengthy pre-lodgement discussions with Council Officers in mid-2013.**

**In these circumstances, it is submitted that:**

- a. **There is no requirement to seek a Development Permit for Material Change of Use for a House on the site in question, given compliance with self assessable requirements can be confirmed in the usual course; and**
- b. **A Private Certifier may legitimately issue a Development Permit for Building Works for the houses on each lot, subject to compliance with Preliminary Approval and other relevant conditions / requirements applicable to the development proposed.**

**We trust this information clarifies the position taken by the Applicant to this point.**

#### Representations regarding Conditions

Pursuant to Section 361(1)(a) of the SPA, the Applicant hereby makes representations regarding the following conditions, and requests Council issue a Negotiated Decision Notice pursuant to Section 363(1) of the SPA.

Detailed representations regarding the conditions imposed are provided below. Conditions in question are identified, representations provided, and requested variations to conditions indicated via strikethrough (deletion) and / or underline (insertion).

It is noted that pursuant to the SPA, conditions must:

- Be relevant to, but not an unreasonable imposition on, the development or use of premises as a consequence of the development (section 345(1));
- Be reasonably required in relation to the development or use of premises as a consequence of the development (section 345(1)(b));
- Comply with decision rules specified and confirmed within sections 346 and 347 of the SPA.

These requirements / provisions have been considered in preparation of the below representations.

#### Condition 5: Proposed Driveway Access

The condition in question provides:

5. ***The proposed driveway to the building pad from the unnamed internal access road, as shown on the Building Pad Plan 42-2013 C01 Issue B prepared by RECS Pty Ltd and dated 11 September 2013, must be constructed at a level that provides immunity from a Q10 ARI flood event. The construction of the driveway must not impede overland flows in a manner that creates a direct or cumulative impact on neighbouring or downstream properties. In this context, the Registered Professional Engineer of Queensland is required to provide a plan of any proposed culvert works associated with the driveway that demonstrate the free movement of stormwater across the site.***

***Access into the driveway must be in accordance [with] the FNQROC Drawing S1105, attached as Appendix 2.***

***Specific details of the driveway must be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Operational Works. Such earthworks must be completed in accordance with the approved plans and to the satisfaction of the Chief Executive Officer, prior to the issue of a Development Permit for Building Works.***

The Applicant makes the following representations with regard this condition:

- (i) Given negotiations with Council Officers prior to the formalization of the recommendation for approval to Council, and the confirmation by Council Officers that a Q10 immunity requires a pad level of greater than 3.4m AHD, Council is requested to insert this level within the condition proper, to remove any uncertainty in regards to its requirements;
- (ii) The requirement that earthworks be completed prior to issuance of a Development Permit for Building Works seems unreasonable, given the relatively short relevant period (2 years) applied to the approval in question.

In the above circumstances, Council is requested to amend the Condition in question as follows:

- 5. ***The proposed driveway to the building pad from the unnamed internal access road, as shown on the Building Pad Plan 42-2013 C01 Issue B prepared by RECS Pty Ltd and dated 11 September 2013, must be constructed at a level that provides immunity from a Q10 ARI flood event (no less than 3.4m AHD). The construction of the driveway must not impede overland flows in a manner that creates a direct or cumulative impact on neighbouring or downstream properties. In this context, the Registered Professional Engineer of Queensland is required to provide a plan of any proposed culvert works associated with the driveway that demonstrate the free movement of stormwater across the site.***

***Access into the driveway must be in accordance [with] the FNQROC Drawing S1105, attached as Appendix 2.***

***Specific details of the driveway must be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Operational Works. Such earthworks must be completed in accordance with the approved plans and to the satisfaction of the Chief Executive Officer, prior to the issue of a ~~Development Permit for Building Works~~. Certificate of Classification for the dwelling in question.***

Condition 6: Operational Works

The condition in question provides:

- 6. ***The proposed earthworks on the site require an application for Operational Works. The concept for filling as detailed on Proposed Building Pad Plan 42-2013 C01 Issue B prepared by RECS Pty Ltd and dated 11 September 2013, will be required to be submitted in addition to the following:***
  - a. ***Details identifying the specific movement of fill material around the site. This is also to include detail on the total volume of material proposed to be brought onto the site and management of this;***
  - b. ***Details on the stockpiling and transportation of fill material; and***

- c. Details identifying that all earthworks will be compliant with the requirements of relevant drainage conditions detailed in conditions 4 and 5 above.***

***Earthwork details must be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Operational Works. Such earthworks must be completed in accordance with the approved plans and to the satisfaction of the Chief Executive Officer, prior to the issue of a Development Permit for Building Works.***

The requirement that all earthworks be completed prior to issuance of a Development Permit for Building Works seems unreasonable, given the relatively short relevant period (2 years) applied to the approval in question. Council is requested to consider allowing some 'staging' for operational works being undertaken on site.

In the above circumstances, Council is requested to amend the Condition in question as follows:

- 6. The proposed earthworks on the site require an application for Operational Works. The concept for filling as detailed on Proposed Building Pad Plan 42-2013 C01 Issue B prepared by RECS Pty Ltd and dated 11 September 2013, will be required to be submitted in addition to the following:***

- a. Details identifying the specific movement of fill material around the site. This is also to include detail on the total volume of material proposed to be brought onto the site and management of this;***
- b. Details on the stockpiling and transportation of fill material; and***
- c. Details identifying that all earthworks will be compliant with the requirements of relevant drainage conditions detailed in conditions 4 and 5 above.***

***Earthwork details must be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Operational Works. Such earthworks must be completed in accordance with the approved plans and to the satisfaction of the Chief Executive Officer:***

***(i) For the proposed Building Pad: prior to the issue of a Development Permit for Building Works; and***

***(ii) For the proposed driveway and access: prior to the issue of a Certificate of Classification for the dwelling in question.***

**Advice Note 1 – Relevant Period**

In addition to the requests for modification of conditions on the Preliminary Approval above, the Applicant notes Council's confirmation of the Relevant Period for the Application as two years within Advice Note 1.

Given the extent of earthworks and subsequent approvals required to effect development as approved, Council is requested to modify this relevant period, providing a four (4) year period in this instance.

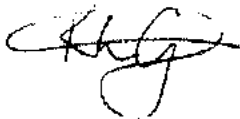
Conclusion

Council is requested to consider the above representations in accordance with Section 362 of the SPA, and issue a Negotiated Decision Notice for the Application.

In conjunction with Council's consideration of these Representations, the Applicant requests the opportunity to meet with relevant Council Officers to discuss issues raised, and work towards a decision in a collaborative manner. We would welcome the opportunity to attend this meeting, together with the Applicant and its Engineers, in February 2014. Please advise of suitable dates for this meeting, so that arrangements may be confirmed as soon as possible.

Should additional information be required, please do not hesitate to call or email.

Kind regards,



**Kristy Gilvear**  
**Director / Town Planner**  
**Gilvear Planning Pty Ltd**

**Far North Queensland Office:**

**Email:** kristy@gilvearplanning.com.au  
**Telephone:** 0448 897 991  
**Postal:** PO Box 228  
BABINDA QLD 4861