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10 April 2018

Enquiries: Daniel Lamond

Our Ref: MCUC 2511/2018 (849557)

Your Ref: ET18-005

Mackay Resort Development Pty Ltd

C/- Liz Taylor 23 Vallely St

FRESHWATER QLD 4870

Dear Sir/Madam

# Development Application for a Material Change of Use (House) 6 Wharf Street PORT DOUGLAS: Lot 12 on PTD20925

Thank you for lodging the above Development Application with Council on 14 February 2018.

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

Please quote Council's application number: MCUC2511/2018 in all subsequent correspondence relating to this development application. Should you require any clarification regarding this, please contact Daniel Lamond on telephone 07 4099 9456.

Yours faithfully

# PAUL HOYE Manager Sustainable Communities

encl.

- Decision Notice
- Approved Plans

# **CORRECTED DECISION NOTICE**

# APPROVAL (WITH CONDITIONS)

# (GIVEN UNDER SECTION 63 OF THE PLANNING ACT 2016)

Thank your for your development application detailed below which was properly made on 14 February 2018 Please be aware that Douglas Shire Council has assessed your application and decided it as follows:

# 1. Applicant's details

Name: Mackay Resort Development Pty Ltd

Postal Address: C/- Liz Taylor

23 Vallely St

FRESHWATER QLD 4870

#### 2. Location details

Street Address: 6 Wharf Street PORT DOUGLAS

Real Property Description: LOT: 21 TYP: PTD PLN: 20925

Local Government Area: Douglas Shire Council

#### 3. Details of proposed development

Material Change of Use (House)

# 4. Decision

Date of decision: 9 April 2018

Decision details: Approved in full with conditions. These conditions are set out in Schedule 1.

## 5. Approved plans and specifications

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

Drawing/report title	Prepared by	Date	Reference no.	Version/issue		
Aspect of development: Material Change of Use						
Floor Plans and Elevations	Balay Vandyke Building Design- Matt Piromalli	Submitted to Council 26 February 2018	Sheet 02, Job No. 171749	J		
Site Plan and Sections	Balay Vandyke Building Design- Matt Piromalli	Submitted to Council 26 February 2018	Sheet 03, Job No. 171749	J		

#### 6. Conditions

This approval is subject to the conditions in Schedule 1. These conditions are clearly identified to indicate whether the assessment manager or concurrence agency imposed them.

#### 7. Further development permits

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

- All Building Work
- All Plumbing Work

#### 8. Properly made submissions

Not applicable — No part of the application required public notification.

# 9. Currency period for the approval

This development approval will lapse at the end of the period set out in section 85 of *Planning Act 2016*. This is a six (6) year period from the day the approval takes effect.

# 10. Rights of appeal

The rights of applicants 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*. For particular applications, there may also be a right to make an application for a declaration by a tribunal (see chapter 6, part 2 of the *Planning Act 2016*).

A copy of the relevant appeal provisions are included in Schedule 2.

#### SCHEDULE 1 - CONDITIONS AND ADVICE

#### PART 1A—CONDITIONS IMPOSED BY THE ASSESSMENT MANAGER

- 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.

#### **Air-conditioning Screens**

3. 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.

#### **Damage to Council Infrastructure**

4. 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 Council immediately of the affected infrastructure and have it repaired or replaced at no cost to Council.

#### **Vehicle Parking**

5. The amount of vehicle parking must be as specified in Council's Planning Scheme which is a minimum of two (2) spaces located on site. In addition, all parking, driveway and vehicular manoeuvring areas must be imperviously sealed and drained.

# **Storage of Machinery and Plant**

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

#### Landscaping Plan

- 7. The site must be landscaped in accordance with details included on a Landscaping Plan. The Landscaping Plan must detail the following:
  - Further planting of appropriate trees and shrubs with screening qualities within established gardens beds along the frontage of the site and adjoining land to the north having regard to Planning Scheme Policy SC6.7- Landscaping;
  - b. Deep planting of setback areas and planter beds within the development;

- c. Provide fencing details (materials and finishes), particularly with respect to any fencing fronting Wharf Street;
- d. Provide an appropriate landscaping strip of deep planting spanning the length of the road frontage boundary in the road reserve. Species in this area must be appropriate for planting near services such as water, sewer, gas, telecommunications etc.
- e. All services in the road verge must be accurately located and detailed on the landscaping plan drawn to scale. The plan must include species with screening qualities to adequately screen the retaining wall to the satisfaction of the Chief Executive Officer. Where this cannot be achieved due to conflict with services in the road verge, services must be relocated at no cost to Council.
- f. Include any other relevant conditions included in this Development Permit. A copy of this Development Approval must be given to the applicant's Landscape Architect/Designer.
- g. A species list detailing all proposed vegetation.

Two (2) A1 copies and one (1) A3 copy of the landscape plan must be endorsed by the Chief Executive Officer. All landscaping plans must be endorsed prior to the issue of a Development Permit for Building Works. Landscaped areas must be maintained at all times to the satisfaction of the Chief Executive Officer. The owner must take responsibility for the maintenance of the on-street landscaping at all times.

#### Ponding and/or Concentration of Stormwater

8. The proposed development is not to create ponding nuisances and/or concentration of stormwater flows to adjoining properties.

#### **Sediment and Erosion Control**

9. Soil and water management 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 Environmental Protection Act 1994, and the FNQROC Development Manual).

#### **External Works**

- 10. Undertake the following works external to the land at no cost to Council:
  - a. Provide a vehicle crossover and apron to Wharf Street.
  - b. Repair any damage to existing roadway (including removal of concrete slurry from footways, roads, kerb and channel and stormwater gullies and drain lines) that may occur during and works carried out in association with the construction of the approved development.

#### **Sewer Works Internal**

11. Provide details demonstrating how the development complies with the Queensland Development Code (QDC) MP1.4, with respect to undertaking building works within close proximity to the sewer. In the event QDC MP1.4 cannot be complied with, an alternative solution, endorsed by an RPEQ must be detailed and approved by the Chief Executive Officer prior to the issue of a Development Permit for Building Work. If an alternative

solution is proposed, it must not result in decreased building setbacks from Wharf Street. This solution once endorsed can be taken as the concurrence agency response for the purpose of the building works referral triggered by proposed development within the zone of influence under the QDC MP1.4.

#### **Building Colours**

12. External building colours must be consistent with shades of the surrounding natural environment and must be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Building Works.

#### PART 1B—ADVICE NOTES

- 1. All building site managers must take all action necessary to ensure building materials and / or machinery on construction sites are secured immediately following the first cyclone watch and that relevant emergency telephone contacts are provided to Council officers, prior to commencement of works.
- 2. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.
- 3. For information relating to the *Planning Act 2016* log on to <a href="www.dilgp.qld.gov.au">www.dilgp.qld.gov.au</a>. To access the *FNQROC Development Manual*, Local Laws and other applicable Policies, log on to <a href="www.douglas.qld.gov.au">www.douglas.qld.gov.au</a>.

#### PART 1C—REASONS FOR DECISION

- A. Section 60 of the *Planning Act 2016*:
  - i. To ensure the development satisfies the Performance Criteria stated in the applicable codes of the 2018 Douglas Shire Planning Scheme.
- B Findings on material questions of fact:
  - The development application was properly lodged to the Douglas Shire Council on 14 February 2018 under section 51 of the *Planning Act 2016* and Part 1 of the Development Assessment Rules; and
  - ii. The development application contained a report which Council reviewed together with Council's own investigation in making its assessment manager decision.
- C. Evidence or other material on which findings were based:
  - i. The development is assessable development under the 2018 Douglas Shire Planning Scheme.
  - ii. Council undertook an assessment in accordance with the provisions of section 60 of the *Planning Act 2016*; and
  - iii. The applicant's reasons are concurred with and conditions have been imposed to make the proposal consistent with the performance criteria of the 2018 Douglas Shire Planning Scheme codes.

#### SCHEDULE 2 – PLANNING ACT EXTRACT ON APPEAL RIGHTS

#### **CHAPTER 6, 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
    - (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 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, table 1, item 1—each principal submitter for the development application; and
  - (d) for an appeal about a change application under schedule 1, table 1, item 2—each principal submitter for the change application; and
  - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); 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—
  - 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 by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

#### **SCHEDULE 1 APPEALS**

#### 1 Appeal rights and parties to appeals

- (1) Table 1 states the matters that may be appealed to—
  - (a) the P&E court; or
  - (b) a tribunal.
- (2) However, table 1 applies to a tribunal only if the matter involves—
  - (a) the refusal, or deemed refusal of a development application, for—
    - (i) a material change of use for a classified building; or
    - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
  - (b) a provision of a development approval for—
    - (i) a material change of use for a classified building; or
    - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
  - (c) if a development permit was applied for—the decision to give a preliminary approval for—
    - (i) a material change of use for a classified building; or
    - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
  - (d) a development condition if—
    - (i) the development approval is only for a material change of use that involves the use of a building classified under the Building Code as a class 2 building; and
    - (ii) the building is, or is proposed to be, not more than 3 storeys; and
    - (iii) the proposed development is for not more than 60 sole-occupancy units; or
  - (e) a decision for, or a deemed refusal of, an extension application for a development approval that is only for a material change of use of a classified building; or
  - (f) a decision for, or a deemed refusal of, a change application for a development approval that is only for a material change of use of a classified building; or
  - (g) a matter under this Act, to the extent the matter relates to—

- (i) the Building Act, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission; or
- (ii) the Plumbing and Drainage Act, part 4 or 5; or
- (h) a decision to give an enforcement notice in relation to a matter under paragraphs (a) to (g); or
- (i) a decision to give an infrastructure charges notice; or
- (j) the refusal, or deemed refusal, of a conversion application; or
- (k) a matter that, under another Act, may be appealed to the tribunal; or
- a matter prescribed by regulation.
- (3) Also, table 1 does not apply to a tribunal if the matter involves—
  - (a) for a matter in subsection (2)(a) to (d)—
    - a development approval for which the development application required impact assessment;
       and
    - (ii) a development approval in relation to which the assessment manager received a properly made submission for the development application; or
  - (b) a provision of a development approval about the identification or inclusion, under a variation approval, of a matter for the development.
- (4) Table 2 states the matters that may be appealed only to the P&E Court.
- (5) Table 3 states the matters that may be appealed only to the tribunal.
- (6) In each table—
  - (a) column 1 states the appellant in the appeal; and
  - (b) column 2 states the respondent in the appeal; and
  - (c) column 3 states the co-respondent (if any) in the appeal; and
  - (d) column 4 states the co-respondents by election (if any) in the appeal.
- (7) If the chief executive receives a notice of appeal under section 230(3)(f), the chief executive may elect to be a co-respondent in the appeal.

# Extract of Schedule 1 of the Planning Act 2016

# Table 1 Appeals to the P&E Court and, for certain matters, to a tribunal

1. Development applications

An appeal may be made against—

- (a) the refusal of all or part of the development application; or
- (b) the deemed refusal of the development application; or
- (c) a provision of the development approval; or
- (d) if a development permit was applied for—the decision to give a preliminary approval.

(a) It a development permit trae applied for the decision to give a promitmary approval.				
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)	
The applicant	The assessment manager	If the appeal is about a concurrence agency's referral response—the concurrence agency	<ol> <li>A concurrence agency that is not a co-respondent</li> <li>If a chosen assessment manager is the respondent—the prescribed assessment manager</li> </ol>	
			<ul><li>3 Any eligible advice agency for the application</li><li>4 Any eligible submitter for the</li></ul>	
			application	

# Table 2 Appeals to the P&E Court only

2. Eligible submitter appeals

An appeal may be made against the decision to give a development approval, or an approval for a change application, to the extent that the decision relates to—

- (a) any part of the development application for the development approval that required impact assessment; or
- (b) a variation request.

Column 1	Column 2	Column 3	Column 4 Co-respondent by election (if any)
Appellant	Respondent	Co-respondent (if any)	
<ol> <li>For a development application—an eligible submitter for the development application</li> <li>For a change application—an eligible submitter for the change application</li> </ol>	For a     development     application—the     assessment     manager      For a change     application—the     responsible entity	The applicant     If the appeal is about a concurrence agency's referral response—the concurrence agency	Another eligible submitter for the application

3. Eligible submitter and eligible advice agency appeals

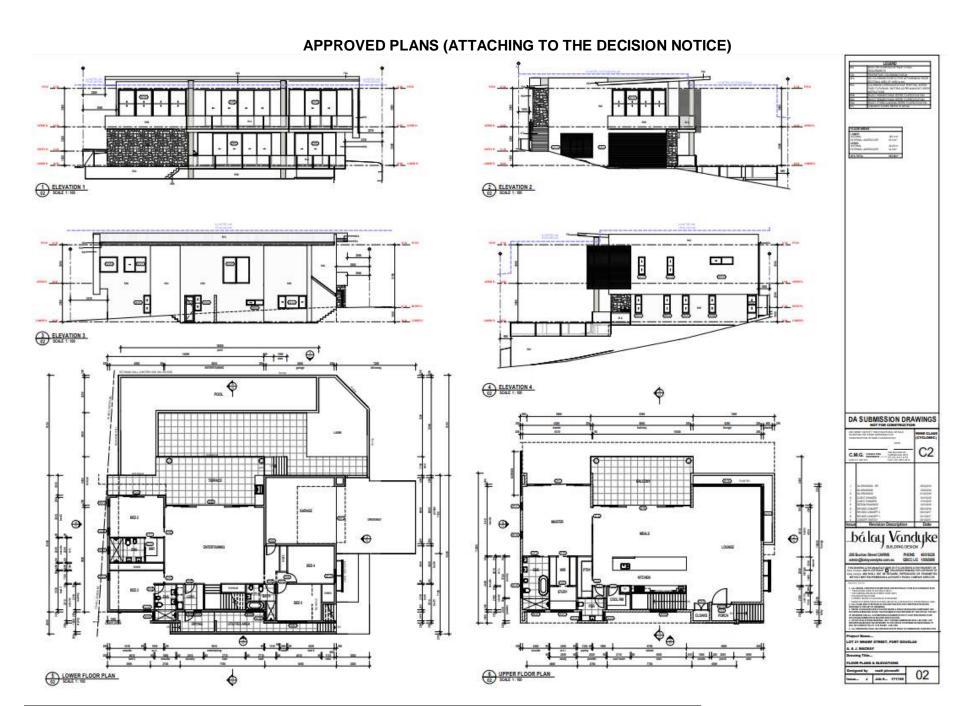
An appeal may be made against a provision of a development approval, or failure to include a provision in the development approval, to the extent the matter relates to—

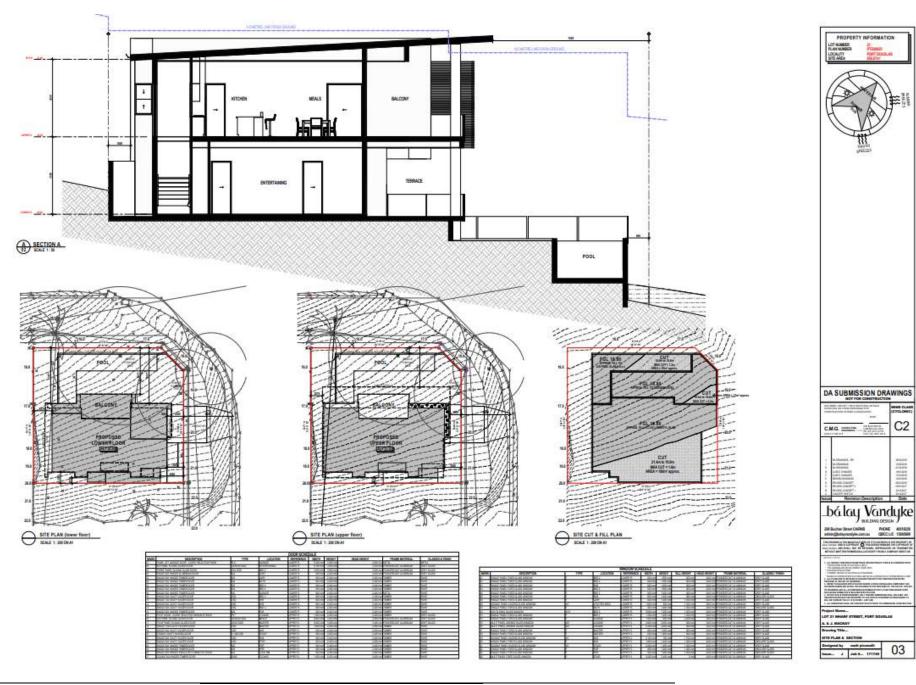
- (a) any part of the development application or the change application, for the development approval, that required impact assessment; or
- (b) a variation request.

Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
<ol> <li>For a development application—an eligible submitter for the development application</li> <li>For a change application—an eligible submitter for the change application</li> </ol>	For a development application—the assessment manager      For a change application—the responsible entity	The applicant     If the appeal is about a concurrence agency's referral response—the concurrence agency	Another eligible submitter for the application
3 An eligible advice agency for the development application or change application			

#### Note

Attached is a Rights of Appeal Waiver form (Schedule 3). Please complete and return this form if you are satisfied with the approval and agree to the conditions contained therein and you wish to waiver the 20 day appeal period available under the *Planning Act 2016* 





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