

19 July 2018

Enquiries: Jenny Elphinstone
Our Ref: MCUC 2675/2018 (Doc ID 864778)
Your Ref: J000699

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

Helen Kathryn Wagner
C/ Patrick Clifton
Gilvear Planning
PO BOX 228
BABINDA QLD 4861

Attention Mr Patrick Clifton

Dear Sir

**DEVELOPMENT APPLICATION FOR CODE ASSESSABLE MATERIAL
CHANGE OF USE FOR A DWELLING UNIT
AT UNITS 0, 4 AND 5, 12 MACROSSAN STREET, PORT DOUGLAS
ON LAND DESCRIBED AS LOTS 0, 4 AND 5 ON BUP PLN 70539**

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

Please quote Council's application number: MCUC 2675/2018 in all subsequent correspondence relating to this development application.

Should you require any clarification regarding this, please contact Jenny Elphinstone on telephone 07 4099 9482.

Yours faithfully


PAUL HOYE
Manager Sustainable Communities

encl.

- Decision Notice
- Approved Plans

**DOUGLAS SHIRE COUNCIL
DECISION NOTICE
APPROVAL (WITH CONDITIONS)
(GIVEN UNDER SECTION 63 OF *THE PLANNING ACT 2016*)**

Council refers to your development application detailed below which was properly made on 28 June 2018. Please be aware that Douglas Shire Council has assessed your application and decided it as follows.

1. *Applicant's details*

Name: Helen Kathryn Wagner
Postal Address: C/- Patrick Clifton
Gilvear Planning
PO BOX 228
BABINDA QLD 4861

2. *Location details*

Street Address: Units 0, 4 and 5, 12 Macrossan Street, Port Douglas
Real Property Description: Lots 0, 4 and 5 on BUP PLN 70539
Local Government Area: Douglas Shire Council

3. *Details of proposed development*

Development Permit for a Material Change of Use for a Dwelling Unit.

4. *Decision*

Date of decision: 19 July 2018
Decision details: Development Permit approved in full with conditions. These conditions are set out in Schedule 1.

5. *Reasons for the approval despite non-compliance with benchmark*

The development does not meet the section 9.3.9 Dwelling Unit Code, acceptable Outcomes A1.1 and A1.2 of the *2018 Douglas Shire Planning Scheme*. The Assessment Manager has approved the development, despite the non-compliance with the benchmarks due to the following reasons.

- a. The land holds continuing use rights for off-site car parking.
- b. The community management statement allows the storage or rubbish and other material on the common property provided it does not interfere with the peaceful enjoyment of the common property by someone else.
- c. The applicant has advised a mechanical clothes dryer will be provided. A condition of the approval reflects this provision.

- d. Given the central location of the site, the adjacent open space central courtyard and that the application is a conversion of an existing building, the proposed development is considered reasonable and can achieve the respective performance criteria PO1, dwelling unit Code, through the conditions that requires the applicant achieve exclusive use of the adjacent balcony area for private open space and an internal clothes drying machine.

6. 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				
Site and floor plans	Greg Skyring Design and Drafting	23 May 2018	Plan 205-18, sheet 1 of 2	N/A
Elevations	Greg Skyring Design and Drafting	23 May 2018	Plan 205-18, sheet 2 of 2	N/A

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 and Drainage Work must only be carried in compliance with the Queensland *Plumbing and Drainage Act 2002*.

8. Properly made submissions

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

9. Referral agencies for the application

Not applicable

10. 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 *Planning Act 2016*.

10. Rights to make representations and 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*.

Schedule 2 includes extracts from the Development Assessment Rules and the *Planning Act 2016* that sets down these rights.

SCHEDULE 1 - CONDITIONS AND ADVICES IMPOSED BY THE ASSESSMENT MANAGER

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;
 - 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 the Commencement of Use, except where specified otherwise in these conditions of approval.

Exclusive Use of Balcony Area

3. The applicant must achieve exclusive use of the adjacent balcony area (common property) for use as private open space. A copy of the registered amended common property plan must be provided to Council prior to the Commencement of Use and the exclusivity must be maintained for the life of the approval.

Clothes Dryer

4. A clothes drying machine must be provided internal to the unit prior to the Commencement of Use and must continue to be provided for the life of the approval.

PART 1B – ADVICE NOTES

1. 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*.
2. 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 potential cyclone warning and that relevant emergency telephone contacts are provided to Council officers, prior to commencement of works.
3. An ongoing continuing provision of off-site car parking (previously paid to the former Douglas Shire Council) is attributed to the development.
4. This approval does not negate the requirement for compliance with relevant Local Laws and statutory requirements.
5. For information relating to the *Planning Act 2016* log on to www.dsdmip.qld.gov.au. To access the FNQROC Development Manual, Local Laws and other applicable Policies log on to www.douglas.qld.gov.au.

[illegible]

GREG SKYRING <i>Design</i> ARCHITECTS & DRAFTING 1100 CHASE SUITE 100 WILMINGTON, DE 19801 TEL. (410) 683-1000 FAX (410) 683-1001	PROJECT Proposed New Residence in Existing Office Space, 12 Macrossan Street, LA RPT-2007, PORT DOUGLAS		DATE H. Wagner	REVISIONS 02	PLAN NUMBER 205-18	SHEET 1 of 2
	SCALE AS INDICATED		TITLE Site and Floor Plans		DATE OF ISSUE 2005.12	NO.

Part 7: Miscellaneous

29. Missed referral agency

- 29.1. This section applies if, at any time before the application is decided, an applicant has not referred the application to a referral agency referred to in section 55 (1) of the Act or to another referral agency for all referral requirements under section 55(2) of the Act in the time provided to refer the application (a *missed referral agency*).¹⁹
- 29.2. A party to the application may, by notice given to each other party to the application, advise the parties that the applicant has not referred the application in accordance with section 54(1) of the Act.
- 29.3. Despite section 31.1(a) and subject to section 31.4 where notice has been given under section 29.2, the application does not lapse as a result of a missed referral agency.²⁰
- 29.4. The applicant must refer the application in accordance with section 5.1, as if 'the day after part 1 has ended' is 'after the day the applicant gave or received notice about a missed referral agency'.
- 29.5. Part 2 and part 3 apply to the missed referral agency once action is taken under section 29.4.
- 29.6. Despite section 11.1, any referral agency referred the development application as a result of this section may make an information request.
- 29.7. If a notice about a missed referral agency is given before part 5 starts, then part 5 cannot start before part 2 has ended in relation to the missed referral agency.²¹
- 29.8. If part 4 applies to the application, the giving of a notice under this section has no effect on any actions already undertaken under part 4.
- 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.²²
- 31. Lapsing of the application**
- 31.1. An application lapses if the applicant does not carry out the following actions in the prescribed period, including any further agreed period under the relevant section—
- (a) give the referral agency material to each referral agency that is party to the application and advise the assessment manager when the referral agency material was given under section 5, section 27 or section 29, as relevant to the application;²³ or

¹⁹ As provided for under section 5.

²⁰ As set out in section 31.4, this section has no effect where a missed referral notice has already been given about the missed referral agency.

²¹ Section 23.2 describes the effect on the decision period if part 5 had already commenced before notice about the missed referral had been given.

²² 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.

²³ This provision is subject to section 29.3.

- (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

- (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—
- (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 by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.
- (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 Other appeals

- (1) Subject to this chapter, 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.