

4 April 2018

Enquiries: Jenny Elphinstone T: 07 4099 9482  
Our Ref: 43/ 2494/2018 (8/37/143) (Doc ID 848636)  
Your Ref: PR139319/OCK/MD/L77211

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VHPD Investments Pty Ltd (Tte)  
c/- RPS Australia East Pty Ltd  
PO Box 1949  
**CAIRNS QLD 4870**

Attention Mr Owen Caddick-King

Dear Sir

**EXTENSION APPLICATION TO THE RELEVANT PERIOD FOR MATERIAL CHANGE OF  
USE APPROVAL FOR MULTIPLE DWELLINGS (RESIDENTIAL)  
AT 40 MURPHY STREET PORT DOUGLAS  
ON LAND DESCRIBED AS LOT 22 ON SP161481**

Council refers to the above Development Application with Council on 25 January 2018.

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

In respect to the development of Dual Occupancy on the land Council advises the Applicant that there remains opportunity to lodge an application for a Material Change of use under the current Scheme as the use is not prohibited development under the *Planning Act 2016* and the *Planning Regulation 2017* and that any application would be considered on its merits.

Please quote Council's application number: MCUI 2494/2018 (43.2018.2494.1) 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



**NICK WELLWOOD**  
General Manager Operations

encl.

- Decision Notice

**DOUGLAS SHIRE COUNCIL**  
**DECISION NOTICE — REFUSAL**  
**(GIVEN UNDER SECTION 87 OF *THE PLANNING ACT 2016*)**

Council refers to the development application detailed below which was properly made on 25 January 2018. Please be aware that Douglas Shire Council has assessed your application and decided it as follows:

**1. *Applicant's details***

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Name: VHPD Investments Pty Ltd (Tte)

Postal Address: c/- RPS Australia East Pty Ltd  
PO Box 1949  
CAIRNS QLD 4870

**2. *Location details***

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Street Address: 40 Murphy Street, Port Douglas

Real Property Description: Lot 22 on S161481

Local Government Area: Douglas Shire Council

**3. *Details of proposed development***

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Application requesting an extension to the relevant period of approval for four (4) years to the Development Permit for a Material Change of Use for Multiple Dwellings (Residential).

**4. *Decision***

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Date of decision: 4 April 2018.

Decision details: Refused.

Statement of reasons.

1. Since the issue of the Development Permit the 1996 Douglas Shire Planning Scheme has been superseded by new planning controls. The development approved under the Development Permit is inconsistent with the current Planning Scheme and planning controls.
2. The extension to the Development Permit is contrary to the expected outcomes for the land held by the community.
3. There has been a significant lapse of time since the community was last informed about the application. The community should be afforded an opportunity to consider the development in light of the current Planning Scheme.

4. The conditions of the approval are insufficient to adequately consider the impacts of solutions to geotechnical concerns and impacts on the adjacent service road and vegetated batter. The impacts of stormwater and instability of the adjacent service road may influence the visual assessment and outcomes of the development.

#### **5. Further development permits**

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Not applicable

#### **6. Properly made submissions**

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

#### **7. Rights of appeal**

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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 1.

- (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.