

6 April 2018

Enquiries: Jenny Elphinstone T: 07 4099 9482
Our Ref: 40/ 2550/2018 (Doc ID 849003)
Your Ref:

Administration Office
64 - 66 Front St Mossman
P 07 4099 9444
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Ms Piyawan Unruean and Mr Christopher O'Dowd
PO Box 527
MOSSMAN QLD 4873

Dear Sir/Madam

**DEVELOPMENT APPLICATION FOR MATERIAL CHANGE OF USE FOR A HOME BASED
BUSINESS (MASSAGE) AT 23 BAYIL DRIVE BONNIE DOON
ON LAND DESCRIBED AS LOT 45 ON SP199682**

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

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

Please quote Council's application number: MCUC 2550/2018 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

DOUGLAS SHIRE COUNCIL
DECISION NOTICE
DEVELOPMENT PERMIT - 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 14 March 2018. Please be aware that Douglas Shire Council has assessed your application and decided it as follows:

1. Location details

Street address: 23 Bayil Drive, Bonnie Doon.

Real property description: Lot 45 on SP199682,

Local government area: Douglas Shire Council,

2. Details of the proposed development

Development Permit for a Material Change of Use for a Home Based Business (Massage).

3. Decision

Decision: Development Permit approved in full with conditions. These conditions are set out in Schedule 1.

Date of decision: 6 April 2018.

4. Approved plans and specifications

Copies of the following plan is included in Schedule 2.

Drawing/report title	Prepared by	Date	Reference no.
Site and internal room plan.	Applicant	As submitted to Council on 14 March 2018	Council Doc ID: 846795

5. 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.

6. Further development permits

None required.

7. Properly made submissions

None. No part of the application required public notification.

8. Referral agencies for the application

Not applicable.

9. 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 *Planning Act 2016*.

10. Rights to make representations and rights of appeal

The rights of applicants to make representations regarding conditions under section 75 of the *Planning Act 2016* and the 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*. 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*).

Schedule 3 includes extracts from the *Planning Act 2016* that sets down the applicant's rights to make representations and the applicant's appeal 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 Commencement of Use, except where specified otherwise in these conditions of approval.

Vehicle Parking

3. The amount of vehicle parking must be as specified in Council's Planning Scheme which is a minimum of one (1) space. All parking, driveway and vehicular manoeuvring areas must be imperviously sealed, drained and line marked.

Advertising Signage

4. Advertising signage is limited to one non-illuminated sign:
 - a. no greater than 1.0 metre in length and 0.3 metres in width;
 - b. no higher than 1.5 metres in height;
 - c. displaying the occupier's name, business, hours of operation and contact details only; and
 - d. is only position on the front yard of the land.

Operators

5. The use is only to be conducted by a resident or residents of the premises and during the hours Monday to Saturday 8:00am to 8:00pm there may be a maximum of one (1) non-resident employee on site at any one time.

Hours of use

6. The home based business is only to be conducted between the hours of 8:00 am to 8:00 pm Monday to Saturday and 1:00pm to 5:00pm, excluding public holidays, except where the home based business comprises office activities such as book-keeping or computer work. These hours include delivery vehicles.

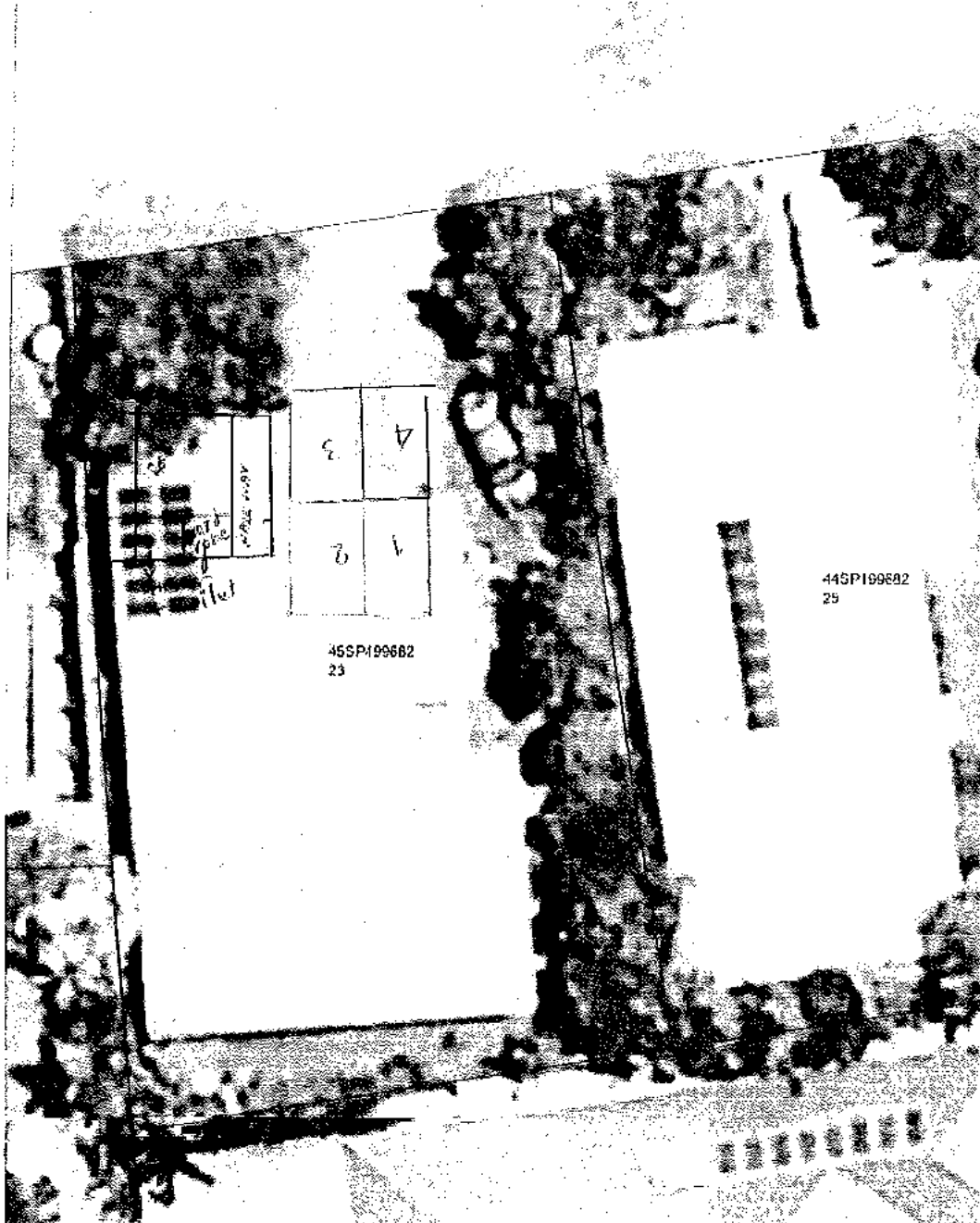
PART 1B – ADVICE NOTES

1. This approval, granted under the provisions of the *Planning Act 2009*, 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. This approval does not negate the requirement for compliance with relevant Local Laws and statutory requirements.
3. For information relating to the *Planning Act 2016* log on to <https://planning.dsdmip.qld.gov.au/>.
4. To access the FNQROC Development Manual, Douglas Shire Local Laws and other applicable Policies log on to www.dsc.qld.gov.au.

SCHEDULE 2 – APPROVED PLAN

DOUGLAS
SHIRE COUNCIL

Cooya Beach



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Scale = 1 : 189

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In consideration of these agencies permitting use of this data you acknowledge and agree that these agencies give no warranty in relation to the data (including accuracy, reliability, completeness, currency or suitability) and accept no liability (including without limitation, liability in negligence) for any loss, damage or costs (including consequential damage) relating to any use of the data. Data must not be used for direct marketing or be used in breach of the privacy laws.

SCHEDULE 3 – PLANNING ACT 2016 EXTRACTS ON MAKING REPRESENTATIONS AND APPEAL RIGHTS

Planning Act 2016
Chapter 3 Development assessment

[s 75]

- (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.

Subdivision 2 Changes after appeal period

77 What this subdivision is about

This subdivision is about changing a development approval, other than the currency period, after all appeal periods in relation to the approval end.

78 Making change application

- (1) A person may make an application (a *change application*) to change a development approval.
- (2) A change application must be made to the responsible entity.
- (3) The *responsible entity* is—
 - (a) for a change application for a minor change to a development condition that a referral agency imposes—the referral agency; or
 - (b) the P&E Court, if—
 - (i) the change application is for a minor change; and
 - (ii) the development approval was given because of an order of the court; and

- (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.