

1 October 2019

Enquiries: Jenny Elphinstone Tel 07 4099 9482
Our Ref: CA 2019_3131/1 (Doc ID 922027)
Your Ref: 20190541

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

Austart Homes Cairns Pty Ltd
C/- Patrick Clifton, GMA Certification
PO Box 831
PORT DOUGLAS QLD 4877

Email: Patrick.C@gmacert.com.au

Dear Sir

**Development Application for MCUC (Multiple Dwelling) & ROL (1 Lot into 4 Lots)
At 11-15 Dickson Street Craiglie
On Land Described as Lot 404 on C2251**

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

Please quote Council's application number: CA 2019_3131/1 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


Paul Hoyer
Manager Environment & Planning

cc. State Assessment and Referral Agency (SARA) E: CairnsSARA@dilgp.qld.gov.au

encl.

- Decision Notice
 - Concurrence Agency Response
 - Reasons for Decision.
- Advice For Making Representations and Appeals (Decision Notice)



Decision Notice

Preliminary Approval Only (with conditions)

Given under section 63 of the Planning Act 2016

Applicant Details

Name: Austart Homes Cairns Pty Ltd
Postal Address: C/- Patrick Clifton, GMA Certification
PO Box 831
Port Douglas Qld 4877
Email: Patrick.C@gmacert.com.au

Property Details

Street Address: 11-15 Dickson Street Craiglie
Real Property Description: Lot 404 on C2251
Local Government Area: Douglas Shire Council

Details of Proposed Development

Development Permit for Combined Application (Material Change of Use Code (Multiple Dwellings) & Reconfiguring of a Lot (1 Lot into 4 Lots))

Decision

Date of Decision: 1 October 2019
Decision Details: Preliminary Approval (subject to conditions)

Proposed Drawing(s) and/or Document(s)

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

Note – The plans referenced above will require amending in order to comply with conditions of this Decision Notice.

Assessment Manager Conditions & Advices

Preliminary approval limit

1. This preliminary approval is for a period of two (2) years from the date the approval takes effect.

Lot Yield

2. The allotment yield as detailed on Austart Homes Lot Plan amended 16 August 2019 may reduce due to constraints. The lot yield will ultimately be determined following compliance with the conditions of this Development Permit with particular reference to Road layout and sewer design conditions.

Road Layout

3. Further investigations must be undertaken by an appropriately qualified professional with respect to the proposed road layout and compliance with Queensland Streets and the FNQROC Development Manual. The investigation is to include but not be limited to the following:
 - a. Dickson Street must be designed to show how the road can be upgraded to an Access Street standard at the alignment proposed on the plans, having regard to the existing horizontal and vertical geometry of the intersection and the current access arrangements to existing lots on Dickson Street. The design must include underground drainage, kerb and channel, property accesses on both sides of the road and street lighting;
 - b. Dickson Street must be constructed in accordance with the approved plans for the frontage of the site inclusive of underground drainage and street lighting. The road formation must include the kerb and channel on the development side. A minimum of 5.5m wide sealed section of the ultimate profile is to be constructed;
 - c. Plans are to be submitted demonstrating that each allotment can accommodate an individual driveway with sufficient frontage at the kerb and sufficient separation from the intersection; and
 - d. Design the road interface to the existing intersection in accordance with FNQROC and Austroads guidelines for intersections. The plans must show how the new road interfaces with the existing intersection, including curve radii, pavement extent, surface grade and crossfall, and linemarking. Supporting calculations are to include assessment of the sight lines and turn templates for the design vehicles and check vehicles; and
 - e. The design must have regard to the differing land zones on either side of the Street.

Additional plans and supporting information incorporating the above requirements must be submitted prior to the issue of a Development Permit for Reconfiguration of a lot.

Drainage Study of Site

4. Undertake a local drainage study of the site to determine the drainage required to facilitate access to the property from Dickson Street and to demonstrate that the works have no impacts on upstream and downstream properties. In particular, the study must address the following:
 - a. The contributing catchment boundaries;
 - b. Calculation of the volume of stormwater flow for the minor (5-year ARI) and major (100-year ARI) flood events;
 - c. Primary and secondary flow paths for the 5, 10 and 100 year ARI flood events (pre and post development);
 - d. Identify the underground drainage infrastructure required on Old Port Road and Dickson Street to convey runoff and allow conventional road and verge profile per the FNQROC Development Manual;
 - e. The extent of the 100-year ARI flood event in relation to the site and the frontage roads both pre- and post-development;
 - f. Identify any requirement for drainage easements;
 - g. Information on the proposed works and any impacts proposed at the drainage outlet from the proposed development or frontage road upgrades, including implications for access to the neighbouring lot on Dickson Street; and
 - h. Lawful point of discharge.

The study must be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Reconfiguration of a lot.

Sewerage Works Internal

5. Undertake the following sewerage works internal to the subject land:
 - a. Provide a single internal sewer connection to each lot in accordance with the FNQROC Development Manual;
 - b. The sewer design plans are required to demonstrate that the sewer alignments achieve the separation and setback distances from buildings, structures and boundaries in accordance with FNQROC and WASA guidelines. The plans must also show the existing trees and clearances achieved to these; and
 - c. Where the sewer is not within the subject land, the drawings must detail the offsets, levels, vegetation and any site features that will impact the constructability of the sewer. Land owners consent for the sewer on the land is required.

The above works must be designed and constructed in accordance with the FNQROC Development Manual.

Additional plans and supporting information incorporating the above requirements must be submitted prior to the issue of a Development Permit for Reconfiguration of a lot.

ADVICES

1. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.
2. 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.
3. Council can support a request for a Negotiated Decision Notice to elevate this preliminary approval to a development permit in the event that the conditions of the preliminary approval are complied with.

Further Development Permits

Development Permit for a Material Change of Use and Reconfiguring of a Lot

Concurrence Agency Response

Concurrence Agency	Concurrence Agency Reference	Date	Council Electronic Reference
State Department Manufacturing, Infrastructure and Planning	1906-11654 SRA	23 July 2019	911727

Refer to Attachment 2: Concurrence Agency Requirements. (Please note that these conditions / requirements may be superseded by subsequent negotiations with the relevant referral agencies).

Note –This Concurrence Agency Response maybe amended by agreement with the respective agency.

Currency Period for the Approval

This approval, granted under the provisions of the *Planning Act 2016*, shall lapse two (2) years from the day the approval takes effect in accordance with the provisions of Section 85 of the *Planning Act 2016*.

Rights to make Representations & 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*.

A copy of the relevant appeal provisions are attached.

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Concurrence Agency Conditions

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Department of
State Development,
Manufacturing,
Infrastructure and Planning

SARA reference: 1906-11654 SRA
Council reference: CA 3131/2019
Applicant reference: 20190541

23 July 2019

Chief Executive Officer
Douglas Shire Council
PO Box 723
Mossman Qld 4873
enquiries@douglas.qld.gov.au

Attention: Jenny Elphinstone

Dear Sir/Madam

SARA response—11-15 Dickson Street, Craiglie

(Referral agency response given under section 56 of the Planning Act 2016)

The development application described below was confirmed as properly referred by the Department of State Development, Manufacturing, Infrastructure and Planning on 21 June 2019.

Response

Outcome:	Referral agency response - No requirements Under section 56(1)(a) of the Planning Act 2016, the department advises it has no requirements relating to the application.
Date of response:	23 July 2019
Reasons:	The reasons for the referral agency response are in Attachment 1 .

Development details

Description:	Development permit	Material change of use for Multiple dwellings (construction of four additional dwellings to the existing dwelling) Reconfiguring a lot (1 lot into 5 lots)
SARA role:	Referral Agency.	
SARA trigger:	Schedule 10, Part 9, Division 4, Subdivision 2, Table 1—Reconfiguring a lot near a State transport corridor Schedule 10, Part 9, Division 4, Subdivision 2, Table 3—Reconfiguring a lot near a State-controlled road intersection	

Far North Queensland regional office
Ground Floor, Cnr Grafton and Hartley
Street, Cairns
PO Box 2358, Cairns QLD 4870

Page 1 of 3

Schedule 10, Part 9, Division 4, Subdivision 2, Table 4—Material
change of use of premises near a State transport corridor or that is a
future State transport corridor
(Planning Regulation 2017)

SARA reference: 1906-11654 SRA
Assessment Manager: Douglas Shire Council
Street address: 11-15 Dickson Street, Craiglie
Real property description: Lot 404 on C2251
Applicant name: Austart Homes Pty Ltd
Applicant contact details: C/- GMA Certification Group Pty Ltd
5 Owen St
Port Douglas QLD 4877
patrick.C@gmacert.com.au

The department has no requirements in relation to this development application.

A copy of this response has been sent to the applicant for their information.

For further information please contact Tony Croke, Principal Planning Officer, on 40373205 or via email
CairnsSARA@dcdmip.qld.gov.au who will be pleased to assist.

Yours sincerely



Kylie Drysdale
Planning Manager

cc Austart Homes Pty Ltd C/- GMA Certification Group Pty Ltd, email: patrick.C@gmacert.com.au
enc Attachment 1 - Reasons for referral agency response

Attachment 1—Reasons for referral agency response

(Given under section 56(7) of the *Planning Act 2016*)

The reasons for the department's decision are:

- The department carried out an assessment of the development application against the State Development Provisions, version 2.4, State code 1: Development in a state-controlled road environment and has found that the proposed development complies with the relevant performance outcomes.
- The premises is approximately 47m from the state-controlled road and is unlikely to create a safety hazard or distraction.
- Any filling or excavation works required for the construction of the additional dwellings are unlikely to impact on the state-controlled road.
- Any increased stormwater and drainage flows as a result of the development will be discharged via the lawful points of discharge, Davidson Street and Dickson Street, and are unlikely to impact on the state-controlled road.
- Vehicular access is via Davidson Street and Dickson Street, both local government roads.
- The nearest proposed access (associated with proposed Lot 13) will be located approximately 51m from the state-controlled road intersection. It is unlikely that unnecessary queuing will occur at the intersection.

Material used in the assessment of the application:

- The development application material and submitted plans
- *Planning Act 2016*
- *Planning Regulation 2017*
- The *State Development Assessment Provisions* (version 2.4), as published by the department
- The Development Assessment Rules
- SARA DA Mapping system

Reasons for Decision

The reasons for this decision are:

1. Sections 60, 62 and 63 of the *Planning Act 2016*:
 - a. the proposed plan(s) and document(s) as detailed above;
 - b. the Conditions and Advices as listed above;
 - c. to ensure the development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme Version 1.0; and
 - d. to ensure compliance with the *Planning Act 2016*.
2. Findings on material questions of fact:
 - a. the development application was properly lodged to the Douglas Shire Council on 26 March 2019 under section 51 of the *Planning Act 2016* and Part 1 of the Development Assessment Rules;
 - b. the development application contained information from the applicant which Council reviewed together with Council's own investigation of assessment against the State Planning Policy and the 2018 Douglas Shire Planning Scheme in making its assessment manager decision.
3. Evidence or other material on which findings were based:
 - a. The development triggered assessable development under the Assessment Table associated with the Zone Code;
 - b. Council undertook an assessment in accordance with the provisions of sections 60, 62 and 63 of the *Planning Act 2016*; and
 - c. The applicant's reasons have been considered and the following findings are made:
 - i. A request for further information was sought seeking detail of the proposed infrastructure and development of the adjacent road area. The extent of information received is insufficient to condition a Development Permit. The extent of information available is sufficient to condition a Preliminary Approval.

Planning Act 2016
Chapter 3 Development assessment

[s 74]

Division 2 Changing development approvals

Subdivision 1 Changes during appeal period

74 What this subdivision is about

- (1) This subdivision is about changing a development approval before the applicant's appeal period for the approval ends.
- (2) This subdivision also applies to an approval of a change application, other than a change application for a minor change to a development approval.
- (3) For subsection (2), sections 75 and 76 apply—
 - (a) as if a reference in section 75 to a development approval were a reference to an approval of a change application; and
 - (b) as if a reference in the sections to the assessment manager were a reference to the responsible entity; and
 - (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.

Extracts from the Planning Act 2016 – Appeal Rights

Planning Act 2016
Chapter 6 Dispute resolution

[s 229]

- (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

Page 212

Current as at 1 July 2019

Authorised by the Parliamentary Counsel

- (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 an appeal relating to the *Plumbing and Drainage Act
2018*—
 - (i) for an appeal against an enforcement notice given
because of a belief mentioned in the *Plumbing and
Drainage Act 2018*, section 143(2)(a)(i), (b) or
(c)—5 business days after the day the notice is
given; or
 - (ii) for an appeal against a decision of a local
government or an inspector to give an action notice
under the *Plumbing and Drainage Act 2018*—5
business days after the notice is given; or

- (iii) otherwise—20 business days after the day the notice is given; or
- (g) 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, section 1, table 1, item 1—each principal submitter for the application whose submission has not been withdrawn; and
 - (d) for an appeal about a change application under schedule 1, section 1, table 1, item 2—each principal submitter for the application whose submission has not been withdrawn; and
 - (e) each person who may elect to be a co-respondent for the appeal other than an eligible submitter for a development application or change application the subject of the appeal; 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 to an appeal by filing a notice of election in the approved form—
- (a) if a copy of the notice of appeal is given to the person—within 10 business days after the copy is given to the person; or
 - (b) otherwise—within 15 business days after the notice of appeal is lodged with the registrar of the tribunal or the P&E Court.

- (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 Non-appealable decisions and matters

- (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.

Part 2 Development tribunal

Division 1 General

233 Appointment of referees

- (1) The Minister, or chief executive, (the *appointer*) may appoint a person to be a referee, by an appointment notice, if the appointer considers the person—
 - (a) has the qualifications or experience prescribed by regulation; and
 - (b) has demonstrated an ability—
 - (i) to negotiate and mediate outcomes between parties to a proceeding; and
 - (ii) to apply the principles of natural justice; and
 - (iii) to analyse complex technical issues; and
 - (iv) to communicate effectively, including, for example, to write informed succinct and well-organised decisions, reports, submissions or other documents.

