

29 October 2018

Enquiries: Daniel Lamond
Our Ref: MCUC2719/2018 (878022)
Your Ref: PR133458

Administration Office
64 - 66 Front St Mossman
P 07 4099 9444
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Port Douglas Steam Train Co P/L
c/- RPS Australia East Pty Ltd
PO Box 1949
Cairns QLD 4870

Dear Sir/Madam

**Development Application for Material Change of Use (Function Facility)
9 St Crispins Avenue PORT DOUGLAS, 4-6 Escape Street PORT DOUGLAS:
Land Described as LOT: 49 SP: 161464 and LOT: 51 SP: 161464**

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

Please quote Council's application number: MCUC2719/2018 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

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

Please be aware that Douglas Shire Council has assessed your application and decided it as follows:

1. Applicant's details

Name: Port Douglas Steam Train Co P/L

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

2. Location details

Street Address: 9 St Crispins Avenue PORT DOUGLAS, 4-6 Escape Street PORT DOUGLAS

Real Property Description: LOT: 49 SP: 161464, LOT: 51 SP: 161464

Local Government Area: Douglas Shire Council

3. Details of proposed development

Material Change of Use (Function Facility)

4. Decision

Date of decision: 23 October 2018

Decision details: Approved in full with conditions. These conditions are set out in Schedule 1 and are clearly identified to indicate whether the assessment manager or a concurrence agency imposed them.

5. Approved plans and specifications

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

Drawing or Document	Reference	Date
Function Facility Site Plan	Drawing Number PR133458-5, prepared by RPS Australia East Pty Ltd	14 June 2018

6. Further development permits

Not applicable

7. Properly made submissions

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

8. 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 date the approval takes effect.

9. 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

PART 1A—CONDITIONS IMPOSED BY THE ASSESSMENT MANAGER

ASSESSMENT MANAGER CONDITIONS

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.

Limitation of Patrons

3. The overall capacity of the use is limited to a maximum of 110 patrons at any one time. The Applicant shall limit the number of guests to 60 patrons for evening functions and limit the use of the lawn area to the west during evening functions to informal use.

Hours of Operation

4. The hours of operation are limited to between 10:00am and 10:00pm daily at which all patrons must vacate the site, excluding public holidays.

Lighting

5. Light emanating from the site must not cause a light nuisance to surrounding properties in accordance with the Environmental Protection Act 1994.

Crocodile Risk Management

6. Develop a crocodile risk management plan for the function facility land use. The plan should consider warning signage, provision of additional staff to observe and direct patrons away from the waters edge, fencing, landscaping barriers, limitations of night time use of areas and any other means relevant. The risk management plan must be submitted and endorsed by the Chief Executive Officer prior to commencement of use.

Damage to Council Infrastructure

7. 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, including but not limited to; mobilisation of heavy construction equipment, stripping and

grubbing, the applicant/owner must notify Council immediately of the affected infrastructure and have it repaired or replaced at the developer's/owners/builders cost, prior to the Commencement of Use.

Vehicle Parking and Servicing

8. The amount of vehicle parking must be as specified in Council's Planning Scheme which is a minimum of 19 spaces. The car parking layout must comply with the Australian Standard AS2890.1 2004 Parking Facilities – off-street car parking and be constructed in accordance with Austroads and good engineering design. In addition, all parking, driveway and vehicular maneuvering areas must be sealed and drained. Car parking spaces must be clearly defined.

Provision must be made for loading/ unloading of service vehicles.

Provide plans, including swept path diagrams for all parking spaces and the set down area for a medium rigid service vehicle of the vehicle parking area for endorsement by the Chief Executive Officer prior to construction.

The car parking area shall be constructed prior to commencement of use.

Landscaping Plan

9. The site must be landscaped in accordance with details included on a Landscaping Plan. The Landscaping Plan must show:
 - a. Deep planting of the perimeter of the parking area;
 - b. Species to have regard to Council's Planning Scheme Policy SC6.7

Two (2) A1 copies and one (1) A3 copy of the landscape plan must be endorsed by the Chief Executive Officer. The approval and completion of all landscaping works must be undertaken in accordance with the endorsed plan prior to the Commencement of Use. Landscaped areas must be maintained at all times to the satisfaction of the Chief Executive Officer.

Noise Management Plan

- 10. Prepare a Noise Management Plan (NMP) to be endorsed by the Chief Executive Officer prior to commencement of use. The NMP must include procedures for informing prospective clients of the type of venue and the type of sound appropriate for the area and the limited number of guests permitted for evening functions, as well as inductions for waiting staff and instructions for supervising staff. The NMP must state that the venue is not suitable for noisy or rowdy functions, that no amplified music/sound equipment is to be used and include methods for management of rowdy individuals and crowd control measures (including the limited informal use of the lawn area to the west). The NMP must include all measures considered appropriate to ensure that noise nuisance is not caused to the occupiers or users of surrounding properties. The NMP must be updated if the noise levels from the site exceed an average maximum noise level of 10db(A) above the background level at the adjoining boundary of lot 1 on SP154572. In the event that this noise level is exceeded and cannot be complied with, an acceptable solution must be made as an amendment to the NMP to the satisfaction of the Chief Executive Officer prior to any further use of the site as a function facility. The acceptable solution must achieve an average maximum noise level of no more than 5db(A) at the affected building (dwelling) at lot 1 on SP154572.**

Noise Emissions

- 11. The average maximum noise level of the use must not exceed 10db(A) above the background level at the adjoining boundary of lot 1 on SP154572. Alternatively, the average maximum noise level must not exceed 5db(A) at the affected building (dwelling) at lot 1 on SP154572.**

Acoustic Compliance Monitoring

- 12. The applicant must undertake acoustic compliance monitoring to demonstrate that the use does not exceed an average maximum noise level of 10db(A) above the background level when measured at the adjoining boundary of lot 1 on SP154572.**

The acoustic compliance monitoring must take place at one (1) function per month for a period of 12 months from commencement of use. The monitoring must be undertaken by a qualified acoustic engineer. The results must be submitted to Council every month.

Noise Impacts on Surrounding Lots

- 13. The approved use of Proposed Lots 9, 8, 7, 26, 25, 24 and 23 must be changed to Short Term Accommodation, in place of the existing approved use of Dwelling House as per Development Approval CA2639/2008, prior to the occupation of the premises established on Proposed Lots 9, 8, 7, 26, 25, 24 and 23, otherwise the approved Function Facility use shall cease or be changed to adequately manage potential adverse noise impacts to the satisfaction of the Chief Executive Officer.**

Limitation of Use

- 14. Where applicable, the change of use of proposed lots 9, 8, 7, 26, 25, 24 and 23 to Short Term Accommodation be noted on Council's rate file for each Proposed Lot,**

once the change of use is in effect, advising that the approved use of each lot is for Short Term Accommodation only.

Amendment to Development Approval

15. Development approval CA2639/2008 must be amended to reflect the conditions of this development approval to the extent relevant.

PART 1B—ADVICE NOTES

ADVICE

1. This approval, granted under the provisions of the *Planning Act 2016*, shall lapse six (6) years from the day the approval takes effect.
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 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.

LAND USE DEFINITIONS*

In accordance with the 2018 *Douglas Shire Planning Scheme version 1.0*, the approved land use of development assessment application MCUC2719/2018 is defined as:

Function Facility

Premises used for conducting receptions or functions that may include the preparation and provision of food and liquor for consumption on site.

*This definition is provided for convenience only. This Development Permit is limited to the specifications, facts and circumstances as set out in the application submitted to Council and is subject to the abovementioned conditions of approval and the requirements of Council’s Planning Scheme and the FNQROC Development Manual.

PART 1C—STATEMENT OF REASONS

Assessment Benchmark	Reasons for approval despite non-compliance with benchmark
<p>Tourist Accommodation Zone Code</p> <p>PO7 of the code requires that development does not adversely affect the tropical, tourist and residential character and amenity of the area in terms of traffic, noise, dust, odour, lighting or other physical or</p>	<ul style="list-style-type: none"> • The development has been conditioned to require a noise management plan and an acoustic assessment. • The hours of operation have been limited by way of a condition. • The parking area has been conditioned to be imperviously sealed mitigating dust impacts. • The number of patrons has been limited by way of a condition.

<p>environmental impacts.</p>	<ul style="list-style-type: none"> • A landscaping plan has been required by a condition. • Residential lots immediately adjoining the canal area proposed as function facility area have been conditioned to only be used as short term accommodation in place of the existing approved use of 'Dwelling House' as per Development Approval CA2639/2008, prior to the occupation of the premises established on Proposed Lots 9, 8, 7, 26, 25, 24 and 23, otherwise the approved Function Facility use shall cease or be changed to adequately manage potential adverse noise impacts. This gives the applicant the opportunity to change the function facility approval to satisfy Council or to change the approved use of the adjoining land to short term accommodation only, which is expected to mitigate the amenity expectation of surrounding land uses.
<p>Acid Sulfate Soils Overlay Code</p> <p>A1.1 No excavation or filling occurs on the site.</p> <p>Or</p> <p>AO1.2 An acid sulfate soils investigation is undertaken.</p>	<ul style="list-style-type: none"> • The construction of the car park will require minor topdressing and minor excavation on the existing house pads on site. The overarching development approval CA2639/2008 already addressed the acid sulfate soils disturbance at the site. These two points considered, no further investigation to complete the works is required. Further, the threshold of works would not trigger acid sulfate soil investigation under the State Planning Policy as it is not anticipated that greater than 100 cubic metres of excavation is required under the 5 metre AHD mark.
<p>Landscaping Code</p> <p>AO1</p> <p>Development provides landscaping:</p> <p>(a) in accordance with the minimum area, dimensions and other requirements of applicable development codes;</p> <p>(b) that is designed and planned in a way that meets the guidelines for landscaping outlined in Planning Scheme Policy SC6.7 – Landscaping;</p>	<ul style="list-style-type: none"> • No landscaping plan has been submitted as part of the application. It is common practice to condition the requirement for a landscaping plan as part of a development approval. A landscaping plan has been conditioned as part of the approval with a particular requirement for the parking area to be appropriately screened at its perimeter, in accordance with AO8 of the Tourist Accommodation Zone code, which calls up the specific landscaping requirement for screening of parking areas.

<p>(c) that is carried out and maintained in accordance with a landscaping plan that meets the guidelines for landscaping outlined in Planning Scheme Policy SC6.7 - Landscaping.</p>	
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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—
 - (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.

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
 - (l) 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)—
 - (i) 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— <ul style="list-style-type: none"> (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. 			
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	1 A concurrence agency that is not a co-respondent

		concurrency agency	<p>2 If a chosen assessment manager is the respondent—the prescribed assessment manager</p> <p>3 Any eligible advice agency for the application</p> <p>4 Any eligible submitter for the application</p>
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Table 2 Appeals to the P&E Court only			
<p>2. Eligible submitter appeals</p> <p>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—</p> <p>(a) any part of the development application for the development approval that required impact assessment; or</p> <p>(b) a variation request.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
<p>1 For a development application—an eligible submitter for the development application</p> <p>2 For a change application—an eligible submitter for the change application</p>	<p>1 For a development application—the assessment manager</p> <p>2 For a change application—the responsible entity</p>	<p>1 The applicant</p> <p>2 If the appeal is about a concurrence agency's referral response—the concurrence agency</p>	<p>Another eligible submitter for the application</p>
<p>3. Eligible submitter and eligible advice agency appeals</p> <p>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—</p> <p>(a) any part of the development application or the change application, for the development approval, that required impact assessment; or</p> <p>(b) a variation request.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
<p>1 For a development application—an eligible submitter for the development application</p> <p>2 For a change application—an eligible submitter for the change application</p> <p>3 An eligible advice agency for the development application or change application</p>	<p>1 For a development application—the assessment manager</p> <p>2 For a change application—the responsible entity</p>	<p>1 The applicant</p> <p>2 If the appeal is about a concurrence agency's referral response—the concurrence agency</p>	<p>Another eligible submitter for the application</p>

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 waive the 20 day appeal period available under the *Planning Act 2016*

APPROVED PLANS (ATTACHING TO THE DECISION NOTICE)

