

21 May 2025

**Enquiries:** Jenny Elphinstone  
**Our Ref:** MCUI 2025\_5729/1 (Doc ID 1294425)  
**Your Ref:**

Angel Developments FNQ Pty Ltd (Tte)  
C/- Planning Plus (Evan Yelavich)  
PO Box 399  
**REDLYNCH QLD 4870**

Email: [evan@planningplus.qld.com.au](mailto:evan@planningplus.qld.com.au)

Attention Mr Evan Yelavich

Dear Sir

**Development Application for Material Change of Use-for a Bar  
At Unit 26, 22 Warner Street Port Douglas  
On Land Described as Lot 26 on SP173578**

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

Please quote Council's application number: MCUI 2025\_5729/1 in all subsequent correspondence relating to this development application.

Should you require any clarification regarding this, please contact Jenny Elphinstone on telephone 07 4099 9444.

Yours faithfully



**Neil Beck**  
**A/Manager Environment & Planning**

encl.

- Decision Notice
  - Approved Drawing(s) and/or Document(s)
  - Concurrence Agency Response
  - Reasons for Decision
- Advice For Making Representations and Appeals (Decision Notice)



## Decision Notice

### Part Approval Only (with conditions)

*Given under s 63 of the Planning Act 2016*

#### Applicant Details

Name: Angel Developments FNQ Pty Ltd (Tte)  
Postal Address: C/- Planning Plus (Evan Yelavich)  
PO Box 399  
Redlynch Qld 4870  
Email: [evan@planningplusqld.com.au](mailto:evan@planningplusqld.com.au)

#### Property Details

Street Address: Unit 26, 22 Warner Street Port Douglas  
Real Property Description: Lot 26 on SP173578  
Local Government Area: Douglas Shire Council

#### Details of Proposed Development

Development Permit for Material Change of Use for a Bar.

#### Decision

Date of Decision: 21 May 2025.  
Decision Details: Approved (subject to conditions)

#### Approved Drawing(s) and/or Document(s)

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

The term 'approved drawing(s) and/or document(s) or other similar expressions means:

Drawing or Document	Reference	Date
Cover Page	Angel Construction Project No. 190225, Sheet G-01, Revision A.	26 February 2025.
Existing	Angel Construction Project No. 190225, Sheet A-02, Revision A.	26 February 2025.
New	Angel Construction Project No. 190225, Sheet A-01, Revision A.	26 February 2025.

## Assessment Manager Conditions & Advices

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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.

### Vehicle Parking

3. The use of the shared parking in the common property area available to the premises, at the rear of the building with access off Warner Street is limited to use by employees/owners. Where employees utilise this area CCTV security and night lighting must be provided in evening periods.

### Bicycle Parking

4. The applicant must provide a bicycle stand, of an appropriate rack design and particular location in the Grant Street pavement (road) area to the satisfaction of the Chief Executive Officer providing for two bicycle spaces.

The bicycle parking rack installation must be no less than 700mm clearance from the back of kerb due to the parallel parking arrangement, allowing for cars parked on the adjacent street to open their doors without obstruction.

The bicycle parking rack must be provided prior to the commencement of use, and maintained thereafter, to the satisfaction of the Chief Executive Officer.

### Hours of Use

5. Hours of use open for trading for food and liquor service are as follows:

Monday to Thursday	3pm to 11pm;
Friday	3pm to Midnight;
Saturday	11am to 1am the following Sunday morning; and
Sunday	11am to 11pm.

All customers must vacate the premises within twenty (20) minutes after the venue closes liquor and food service.

The operator must seek to ensure patrons leave in an orderly manner. Signage requesting patrons to behaviour respectfully and have regard to neighbours when leaving the premises must be placed at the patron exit.

### Window Openings to Grant Street

6. The windows to the Grant Street elevation can be open until 9pm after which the windows are to be closed for the remainder of the evening operating hours.

The windows to the Grant Street elevation must be closed during any period of live entertainment, unless otherwise approved by the Chief Executive Officer.

## Sound Attenuation

7. The noise attenuation elements nominated as per the application (double glazing to windows and door to Grant Street elevation and acoustic treatment to walls and ceiling) must be fully installed and works completed prior to the commencement of use.

## Daytime Use

8. During the daytime use the majority of the glazed window elevation must be transparent.

## Advice

1. 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 cyclone watch and that relevant emergency telephone contacts are provided to Council officers, prior to commencement of works.
2. This approval does not negate the requirement for compliance with all other relevant Council Local Laws and other statutory requirements.

Note - Trading hours are also subject to Liquor License restrictions.

## Advertising Signage

3. The signage must comply with the Design and Siting of Advertising Devices Code contained within the Douglas Shire Planning Scheme. Separate approval may be necessary dependant on the proposed advertising devices.
4. For information relating to the *Planning Act 2016* log on to <https://planning.dsdmip.qld.gov.au/>. To access the *FNQROC Regional Development Manual*, Local Laws, the Douglas Shire Planning Scheme and other applicable Policies log on to [www.douglas.qld.gov.au](http://www.douglas.qld.gov.au).

## Properly Made Submission

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Dr Tim and Mrs Currie, 45 Murphy Street, Port Douglas, QLD.

## Further Development Permits

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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 2018*.

## Currency Period for the Approval

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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*.

## Rights to make Representations & Rights of Appeal

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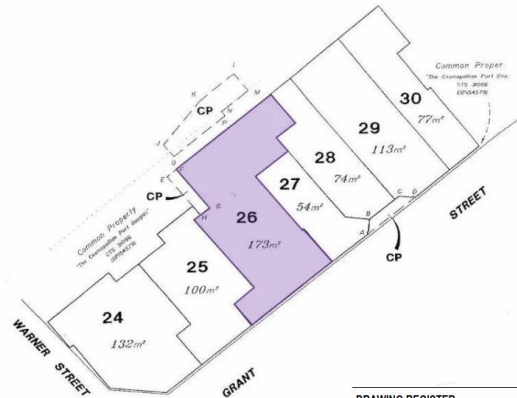
The rights of applicants to make representations and rights to appeal to a Tribunal or the Planning and Environment Court against decisions about a development application are set out in Chapter 6, Part 1 of the *Planning Act 2016*.

A copy of the relevant appeal provisions is attached.

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

# ANGELA & ADRIAN WHITTAKER

## 26/9 GRANT ST PORT DOUGLAS



**SITE INFORMATION -**  
CLIENTS NAME: ANGELA & ADRIAN WHITTAKER  
PROJECT ADDRESS: 26/9 GRANT ST PORT DOUGLAS  
STATE: QLD  
POST CODE: 4877  
RP/SP NUMBER: SP154579  
BUILDING CLASS: CLASS 6  
WIND CLASS: C2  
SOIL CLASS: S  
AVG ANNUAL RAINFALL: 2010mm  
AVG LOW TEMPERATURE: 23.5°C  
AVG HIGH TEMPERATURE: 29.3°C

DRAWING REGISTER		
SHEET	TITLE	REV
A02	EXISTING	
A03	DEMOLITION	
A04	NEW	1
A07	SECTIONS	
G01	COVER PAGE	
G02	LEGEND, DETAILS & NOTES	
G03	TILE PLAN	
G04	RENDERS	
G05	WINDOWS & DOORS	
S01	FLOOR	
S02	WALL	
S03	ROOF	
S04	ENGINEERING	

LEGEND - SOIL CLASSIFICATION	
CLASS	FOUNDATION
A	MOST SAND AND ROCK SITES WITH LITTLE OR NO GROUND MOVEMENT FROM MOISTURE CHANGES
S	SLIGHTLY REACTIVE CLAY SITES WITH ONLY SLIGHT GROUND MOVEMENT FROM MOISTURE CHANGES
M	MODERATELY REACTIVE CLAY OR SILT SITES WHICH CAN EXPERIENCE MODERATE GROUND MOVEMENT FROM MOISTURE CHANGES
H	HIGHLY REACTIVE CLAY SITES WHICH CAN EXPERIENCE HIGH GROUND MOVEMENT FROM MOISTURE CHANGES
E	EXTREMELY REACTIVE CLAY SITES WHICH CAN EXPERIENCE EXTREME GROUND MOVEMENT FROM MOISTURE CHANGES
A TO P	FILLED SITES - SEE AS 2870
P	SITES WHICH INCLUDE SOFT SOILS, SUCH AS SOFT CLAY OR SILT OR LOOSE SANDS; LANDSLIP; MINE SUBSIDENCE; COLLAPSING SOILS; SOILS SUBJECT TO EROSION; REACTIVE SITES SUBJECT TO ABNORMAL MOISTURE CONDITIONS OR SITES WHICH CANNOT BE CLASSIFIED OTHERWISE

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designs@angelconstruction.com.au  
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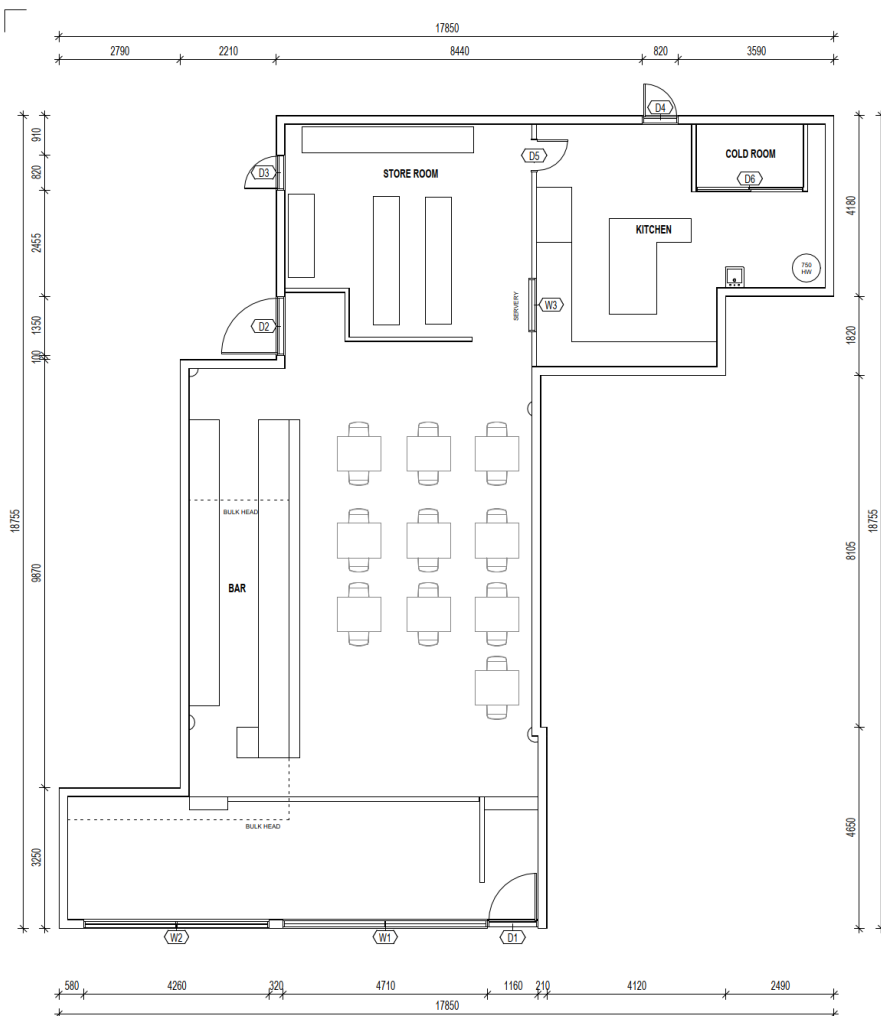


TO BE CERTIFIED AS  
STRUCTURALLY ADEQUATE

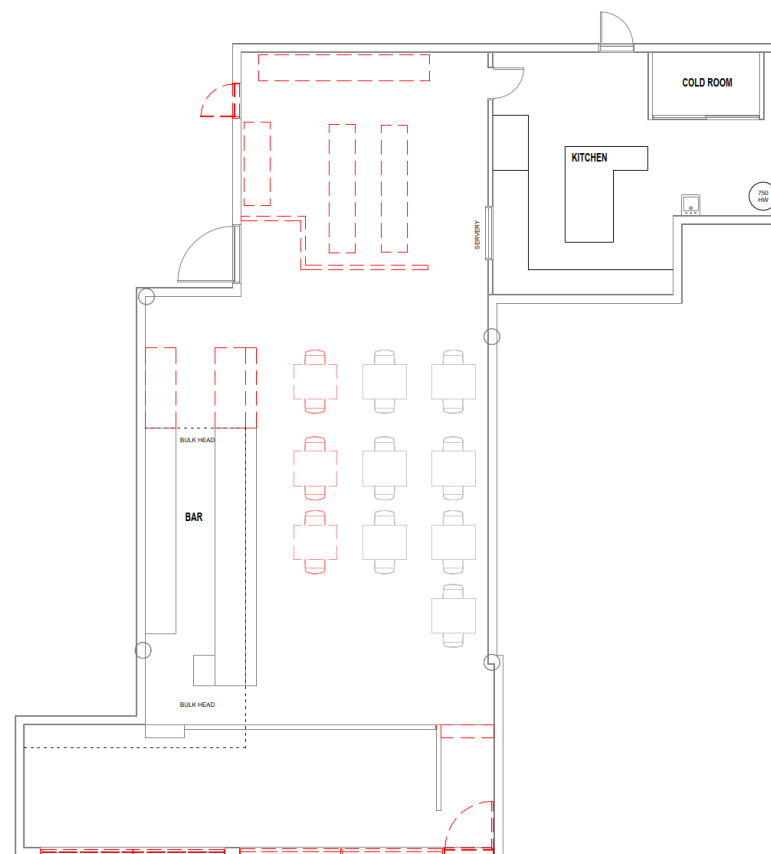
TO BE CERTIFIED BY THE  
BUILDING APPROVAL  
COMPANY

PLAN ISSUE: 26/02/2025 2:12:11 PM  
  
CONCEPT DESIGN  
NOT FOR CONSTRUCTION

PROJECT: THE COSMOPOLITAN  
PROJECT ADDRESS: 21/9 Grant St Port Douglas  
  
SHEET: COVER PAGE SCALE: AS SHOWN @ A3  
DESIGNED BY: JAYDEN CHADWICK  
DRAWN BY: JAYDEN CHADWICK  
PROJECT NUMBER: 190225  
SHEET: G01 REV: A



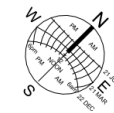
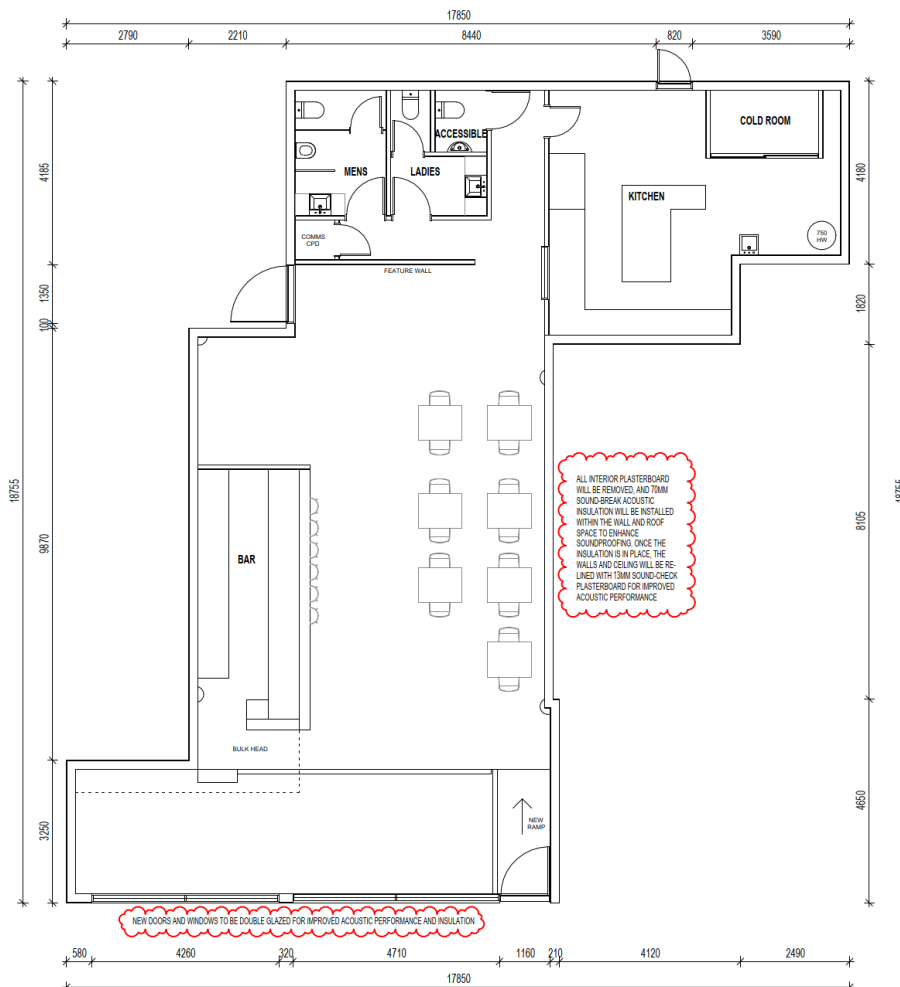
**EXISTING**  
1 : 100



**DEMO**  
1 : 100



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#### SUGGESTED MATERIALS & FINISHES (TBC)

- FLOORS :  
POLISHED CONCRETE
- WALLS :  
SELECT TIMBER CLADDING TO FEATURE WALLS  
INTERNAL WALLS : PLASTERBOARD GENERALLY, PAINT FINISH
- EXTERNAL WINDOWS & DOORS :  
POWDERCOAT ALUMINIUM - WHITE
- INTERNAL DOORS :  
PAINT FINISH GENERALLY
- CEILINGS :  
FLAT PLASTERBOARD

#### MATERIAL PALETTE 1 : 1

#### NEW 1 : 100

#### MATERIALS & FINISHES 1 : 1

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## Reasons for Decision

1. The reasons for this decision are:
  - a. Sections 60, 62 and 63 of the *Planning Act 2016*;
  - b. to ensure the development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme Version 1.0; and
  - c. 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 12 March 2025 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 assessment against the 2017 State Planning Policy and the 2018 Douglas Shire Planning Scheme Version 1.0 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 Centre 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. The Centre Zone is an appropriate zone in which the use can be developed.
    - ii. The use of Bar outside the Entertainment Precinct is impact assessable development requiring impacts to be contained to the land and not to detrimentally affect land and uses beyond the premises.
    - iii. The use proposes impacts be contained to the land, by way of acoustic attenuation features.
    - iv. Subject to conditions, the site can adequately contain the use with specific conditions requiring late night use to be behind closed windows and doors, and the development satisfactorily meets the Planning Scheme benchmarks.

The following are the benchmarks applying to the development.

Benchmarks applying for the development	Benchmark reference
Strategic Framework Centre Zone Code Port Douglas / Craiglie Local Plan Code Access, Parking and Servicing Code Environmental Performance Code	Douglas Shire Planning Scheme 2018 (V1.0) in effect 2 January 2018

## Non-Compliance with Assessment Benchmarks

Through the conditions of the approval the development complies with the planning scheme and no concerns are raised.



## Consideration of Grounds of Submission

Submission Ground	Consideration
<p><b>Support</b></p> <p>The development will contribute significantly to Port Douglas on multiple levels, supporting the ongoing growth and vitality of the local economy, employment opportunities, and community well-being. The venue promises will provide increased employment and enhanced services and will also boost Port Douglas' profile as a tourist destination. The development will provide a quality, modern Australian design, and the signature charm Port Douglas is known for. The establishment will offer both locals and visitors an elevated experience that aligns with Port Douglas' identity and future aspirations.</p>	<p>The development will contribute to the economic development of the Town Centre.</p>
<p><b>Environmental Performance: Noise and Amenity</b></p> <p>As long-term residents, who reside in the centre of town, we have no concerns regarding the nature of the patrons this venue will attract, nor do we anticipate issues such as noise, disruption, or any negative impact to the surrounding area. On the contrary, we believe it will enrich the already-vibrant Grant Street precinct, complementing existing businesses rather than competing with them. This addition will further support the 'Eat Street' atmosphere for which Grant Street is celebrated, while offering more diverse afternoon and evening entertainment options—something we've consistently heard as a need from guests of our Airbnb on Murphy Street.</p>	<p>The conditions of the approval require modifications to the premises, regarding acoustic attenuation, and limit of hours of service when the windows can be open and for outdoor dining to occur, limit impacts to the neighbourhood. The site has an approval for restaurant use and currently has windows than can open to the street. The conditions of the approval require late evening use to be contained to within the building, as also in instances when live music is provided.</p>
<p>The units above the premises have louvered window openings to Grant Street. The unit occupants are already impacted by bird noises in the neighbourhood. The proposed bar, with operating hours up to 12pm will cause excess noise to unit occupants. Noise from the bar will be worse than bird noise.</p> <p>Warners Street does have other businesses that offer food etc., but most are finished by 9 to 10pm. A closing time of 10pm would be supported, not 12pm.</p> <p>The proposed development is away from the main entertainment and dining facilities which are all based in Macrossan and Wharf Streets. The success rate in Grant St. which caters for a more family orientated clientele with its accommodation, its breakfast and lunch facilities, and lunch and dining facilities, with all dinner venues being closed by 9pm, works well.</p> <p>With the proposed development, there is the expectation that we will have noise problems in the evenings, even more so if there is the possibility of outside stools and tables in use. The thought of drunken and unruly behaviour on the site and possible damage to adjoining properties is concerning, along with smoking in the street, parking issues, together with late night closing, to name a few of the obvious problems.</p> <p>We believe a restaurant would be a better alternative as closing times would be earlier.</p>	<p>Conditions require the provision of the acoustic attenuations proposed by the developer.</p>

Submission Ground	Consideration
<p><b>Body Corporate Issue</b></p> <p>We are aware that a previous application for a nightclub on the corner of Macrossan and Grant Streets., for opening only Thursday to Sunday and closing at 11.30pm, was not successful.</p> <p>We are also aware that this is the second application lodged with the council for the current site. The first application was not properly made according to Douglas Shire Council and had to be resubmitted together with the approval of our Body Corporate. A discussion took place at the Body Corporate AGM held on 27th March where Ms. Angela Whittaker was present and stated that the opening times would be 12 noon until 12 pm. The site signage states the opening times as 10 am until 12 pm. She also made the statement and that our Body Corporate approval to the Council was no longer required.</p> <p>A motion was not tabled prior to the meeting, so the matter was not discussed at Body Corporate level.</p>	<p>A separate application on other land lapsed. That application has no relevance to the current application as it had regard to other land.</p> <p>Matters regarding the Body Corporate are not matters that are relevant to the application in this instance.</p> <p>Council has received copy of advice that the development is supported by the Body Corporate.</p>
<p><b>Need</b></p> <p>Concern raised with need for the use of bar as well as generally any more entertainment and dining commercial operators in the town area. Existing businesses are currently struggling. The additional bar will impact on the existing bar and restaurant revenue even more, putting all of us in even greater jeopardy of surviving.</p> <p>When the local economy picks up then I have no problems with applications like this, but the more bars and restaurants you add to a town where businesses are struggling to pay their bills and get people in the door is only going to put more of us out of business. Given these circumstances it will be incredibly difficult for any new businesses to survive.</p> <p>And as I'm sure you also know, it's not the quality of the businesses that is causing so many closures and bankruptcies (most recently my neighbour, Little Larder). It's because Port Douglas is a ghost town. There are hardly any tourists here at all. Everyone is saying it's the worst wet wet-season we've ever had. More revenue was achieved last year in the wake of Jasper! That's how bad it is. If this coming June we don't all have a great 'tourist' season, you're going to see so many more local, established businesses go belly-up.</p> <p>Other business owners in town are of the same opinion.</p>	<p>The Planning Scheme identifies particular commercial uses, such as shops and restaurants (and other commercial activities), as being self-assessable development in the Centre Zone and reflects the parameters of the General Business Zone under the original Scheme. Where commercial activities are to be established in new buildings, the use is at code assessable development.</p> <p>The previous Restaurant use is not considered to have been abandoned. The proposed bar utilises a vacant restaurant.</p> <p>The development does not seek any additional land in the Centre Zone, but a particular use on the land.</p> <p>The individual personal financial circumstance considerations of existing businesses are not matters Council can have regard to when considering the impact assessment of the development.</p>

## 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 assessment manager gives the applicant the decision notice for 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) If the applicant makes the change representations during the appeal period without giving a notice under subsection (2), the appeal period is suspended from the day the representations are made until—
- (a) the applicant withdraws the change representations by notice given to the assessment manager; or
  - (b) the assessment manager gives the applicant the decision notice for the change representations; or

- (c) 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.
- (6) Despite subsections (4) and (5), if the decision notice mentioned in subsection (4)(b)(ii) or (5)(b) is 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.

*Note—*

For the making of a change application for a development approval that was a PDA development approval, see also the *Economic Development Act 2012*, sections 51AM, 51AN and 51AO.

- (2) A change application must be made to the responsible entity for the application.

### **78A      Responsible entity for change applications**

- (1) The *responsible entity* for a change application is—
  - (a) if the change application is for a minor change to a development condition of a development approval stated in a referral agency's response for the development application or another change application for the approval—the referral agency; or



Planning Act 2016  
Chapter 6 Dispute resolution

[s 229]

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- (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 a decision of the Minister, under  
chapter 7, part 4, to amend the registration of premises  
to include additional land in the affected area for the  
premises—20 business days after the day a notice is  
published under section 269A(2)(a); or
  - (e) for an appeal against an infrastructure charges  
notice—20 business days after the infrastructure charges  
notice is given to the person; or
  - (f) 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
  - (g) 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) for an appeal against a failure to make a decision about an application or other matter under the *Plumbing and Drainage Act 2018*—at anytime after the period within which the application or matter was required to be decided ends; or
  - (iv) otherwise—20 business days after the day the notice is given; or
- (h) 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, section 316(2), 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—