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In the Planning and Environment Court
Held at: Brisbane

No 1594 of 2023

Between:	DOUGLAS SHIRE SUSTAINABILITY GROUP INC (ORGANISATION NO IA 34472)	First Appellant
	DAVID MCFADDEN	Second Appellant
	ROGER MOIR	Third Appellant
	RICHARD NORTHOVER	Fourth Appellant
	KAREN HARRISON	Fifth Appellant
	MADELINE KEEBLE	Sixth Appellant
	DARREN PLUNKETT	Seventh Appellant
	KEVIN ELDRIDGE	Eighth Appellant
	PAUL GILBY	Ninth Appellant
	SHANE MCKENZIE	Tenth Appellant
	CHARLOTTE RICHARDSON	Eleventh Appellant
	ORAZIA CAVALLARO	Twelfth Appellant
	ROSEY CUMMINGS	Fourteenth Appellant
	DOUGLAS MACFARLANE O'HARE	Fifteenth Appellant
	TINA GONSALVES	Sixteenth Appellant
And:	DOUGLAS SHIRE COUNCIL	Respondent
And:	NAUTILUS AVIATION PTY LTD (ACN 060 410 317) TRADING AS MORRIS AVIATION AUSTRALIA	Co-Respondent

JUDGMENT

Before: Her Honour Judge McDonnell
Date of Hearing: 15 July 2024
Date of Judgment: 15 July 2024

THIS MATTER having this day come on for hearing by way of Notice of Appeal filed 6 June 2023 against the Respondent's decision, contained in decision notice dated 2 May 2023, to approve subject to conditions the Co-Respondent's development application for a development permit for a material change of use for Air Services (Helicopter Base) and Caretakers Accommodation (the **Development Application**) in respect of land located at 35-39 and 22-33 Port Street, Port Douglas more particularly described as Lots 11 and 12 on SP273000 (easement only)



Filed on behalf of the Co-Respondent

Holding Redlich
Service Address
Level 1, 15 Lake Street
CAIRNS QLD 4870
Phone no. (07) 4230 0421
Email leeanne.bou-samra@holdingredlich.com

AND UPON HEARING Counsel for the Appellants, the solicitor for the Respondent and Counsel for the Co-Respondent

IT IS ADJUDGED, BY THE CONSENT OF THE PARTIES, THAT

1. The Appeal be allowed to the extent that the Respondent's decision is changed.
2. The Development application be approved subject to the amended conditions and plans of development at pages 1 to 14 in the development approval package attached hereto and marked "**A**"; and
3. Each party to bear its own costs of and incidental to the appeal.

Filed on: / /2024

Filed by: Holding Redlich
Leeanne Bou-Samra
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Ref: LEB 19840336

.....
Registrar

**‘A’
DEVELOPMENT APPROVAL PACKAGE**

Drawing / Report / Plan		Reference	Date
Site Plan		JB Design plan, Sheet WD02, Issue C	30 June 2021
Floor Plan – Office/Hangar		JB Design plan, Sheet WD03, Issue B	25 June 2021
Elevations		JB Design plan, Sheet WD04, Issue B	25 June 2021
Elevations		JB Design plan, Sheet WD05, Issue B	30 June 2021
Caretaker’s Residence		JB Design plan, Sheet WD05, Issue B	25 June 2021
Locality Plan & Indicative Flight Paths		JB Design plan, Sheet WD01, Issue F	16 May 2023
Figure 1 Report – W Moffitt on Terrestrial Ecology		Figure 1 – Issue date 18.03.24	19 March 2024
Assessment Manager Conditions & Advices			
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 the Council; (b) the following conditions of approval and the requirements of the Council’s Planning Scheme and the FNQROC Development Manual, except where modified by these conditions of approval.		
Timing of Effect			
2.	The conditions of approval must be effected prior to commencement of use, except where otherwise specified in the conditions, including where the conditions impose ongoing requirements.		
Amended Locality Plan and Indicative Flight Paths			
3.	The Locality Plan and Indicative Flight Paths drawing is to be amended as follows and provided to the Council’s Chief Executive Officer to form part of the approval:- (a) Rotate the outer perimeter of the north-western flight path clockwise by approximately 11 degrees so as to align with the north-western approach path described in Figure 1 of Mr Moffitt’s Separate Report dated 19 March 2024; (b) Mark in red the northern “Potential Shorebird Habitat” area depicted in Figure 1 of Mr Moffitt’s Separate Report, which would have the effect of prohibiting any flight below 1,000 feet in that locality.		
Satellite Tracking Records			
4.	The applicant must ensure that all of its aircraft operating from the site use satellite tracking technology that records both aircraft flightpath and altitude tracking and that		

	the data for all flights is retained for a period of no less than one year from the date of the approval.
Operations Limitation	
5.	A maximum of one (1) Airbus H130 (also identified as a Eurocopter EC130B4 & T2 Helicopter) and up to one (1) Robinson R44 helicopter may land and take off each hour between the hours of 8am to 6pm with the maximum number of daily flights not exceeding 11 and daily movements to and from the site not exceeding 22. Or: Up to three (3) Robinson R44 helicopters may land and take off each hour between the hours of 8am to 6pm providing the maximum number of flights per day does not exceed 11 and the maximum number of movements does not exceed 22.
Machine Type	
6.	The applicant must ensure that:- (a) the only helicopters to take off and land at the site are:- (i) Airbus H130 (also identified as an Eurocopter EC130B4 & T2 helicopter); (ii) Robinson 44; or (iii) other type/model of helicopters which have certified equivalent noise levels and a maximum all up weight no greater than 2,500kg (being the maximum all up weight of the H130 helicopter), and are endorsed by the Council's Chief Executive Officer prior to arriving at the site; (b) Performance Class 1 and Performance Class 2 helicopter operations are prohibited from being carried out at the site; and (c) the only dual engine helicopter operations permitted to be carried out at the site during times of emergency are limited to air ambulance or police operations.
Flight Path	
7.	All helicopter approach flight paths and departure flight paths are to be contained wholly within the green coloured area from the northwest to the southwest sectors as shown in the 'Locality Plan and Indicative Flight Paths' drawing.
8.	There are to be no overflights of the red coloured no fly zone by helicopters on approach or departure to the proposed helicopter landing site (HLS).
9.	When landing or taking off helicopters are to fly no further east than the location of the two landing pads on the site of the proposed HLS, i.e. when in the air for approach/departure at elevations of less than 1,000 feet, all flight tracks are to be to the west of the landing pads on the site.
10.	Any overflights of the red coloured no fly zone are to be made only at altitudes of 1,000 feet or higher in accordance with current CASA minimum overflight height requirements, or any higher altitude imposed under any subsequent amendment to CASA minimum overflight height requirements.

Take-off and Landing	
11.	The applicant must ensure that:- (a) the site is operated with one-way pads; (b) no departures to the East of the site are to occur; and (c) helicopters fly at a minimum altitude of 50 metres over mangroves.
12.	H130 aircraft must take-off and land from the northern helicopter pad shown on the Site Plan drawing and for all operations, all aircraft must utilise the northern helicopter pad whenever practicable.
Helicopter Operation	
13.	The applicant must ensure that:- (a) the place of take-off and landing meets the standards of the Civil Aviation Advisory Publication CAAP 92-2(2) dated February 2014 or any later version; and (b) landing and take-offs are undertaken in accordance with the Fly Neighbourly Guide, in particular, helicopters must reduce speed, observe low noise speed and descent settings, avoid sharp manoeuvres and use high take-off and descent profiles.
Noise	
14.	The applicant/owner must ensure that:- (a) noise (other than noise arising from the take-off, flight or landing of helicopters) does not emanate from the site to a degree that would, in the opinion of the Council's Chief Executive Officer, create an environmental nuisance having regard to relevant provisions of the Environmental Protection Act 1994, Environmental Protection Regulations 2019 and Environmental Protection (Noise) Policy 2019. (b) noise arising from take-off, flight or landing of helicopters on the site complies with the noise level criteria specified in section 3 of the Noise Testing Report dated 13 July 2022 prepared by Renzo Tonin and Associates.
Use Limitation	
15.	The applicant must ensure that:- (a) maintenance activity on site is limited to maintenance for the safe operation of helicopters, with the exception of making a helicopter airworthy for the purpose of flying to a maintenance facility; (b) use of the site for flight training is not permitted; (c) the site is only used for emergency flights in accordance with the <i>Planning Act 2016</i> and the <i>Disaster Management Act 2003</i> and subject to condition 6(c). In those circumstances conditions 5 to 15 do not apply; (d) the conditions of approval are included in a site induction for all pilots operating a helicopter to and from the site.

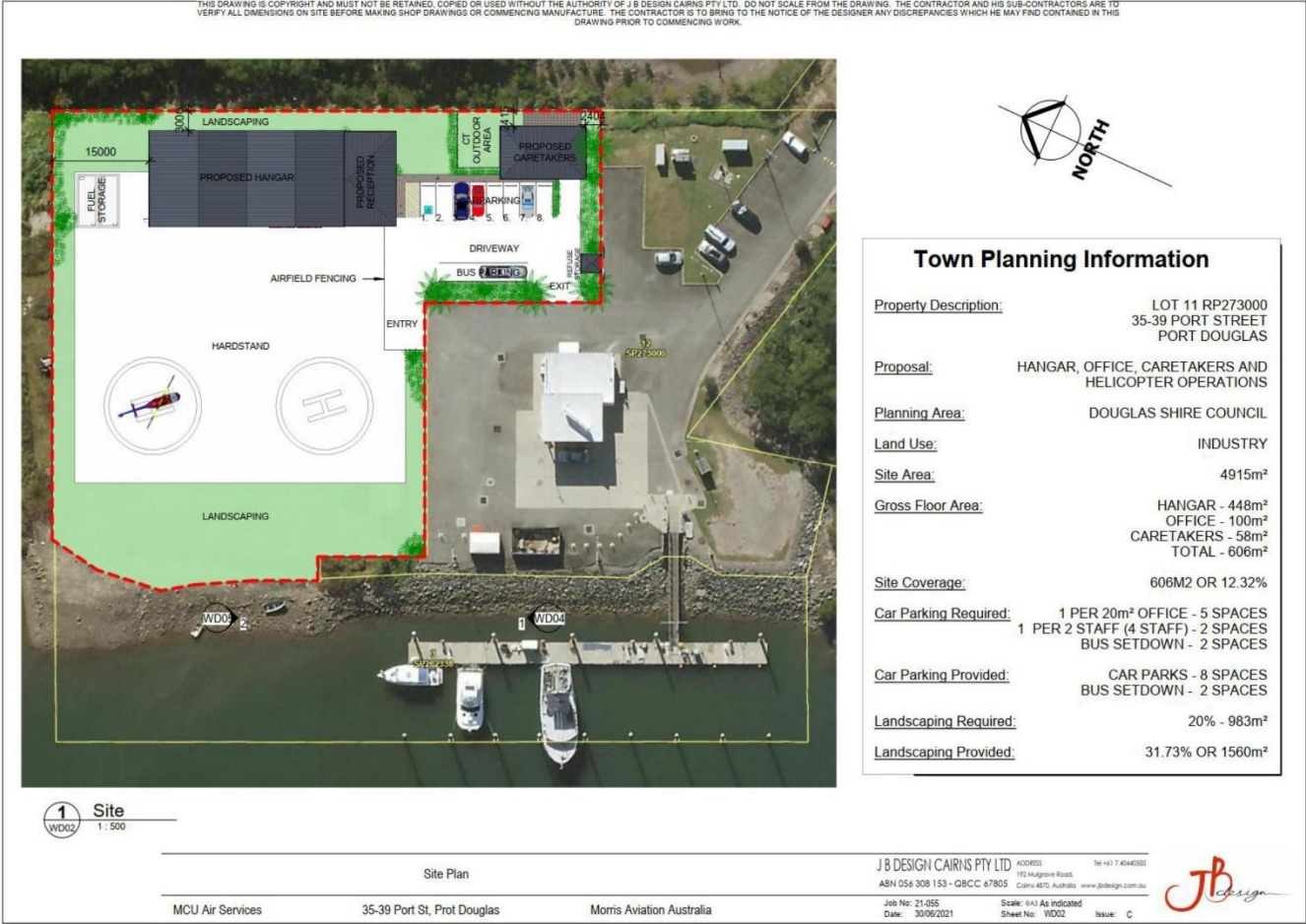
Water Supply	
16.	The site must be connected to the Council's reticulated water supply in accordance with the requirements of the FNQROC Development Manual.
Sewer Connection	
17.	The site must be connected to the private sewer main which terminates within Lot 12 on SP273000.
Vehicle Parking and Access	
18.	The applicant must ensure that:- (a) the site provides for eight (8) car parking spaces as detailed on the approved plans. In addition, one (1) covered space must be provided for the caretakers accommodation; (b) all car parking facilities are designed and constructed in accordance with Australian Standard AS1428 <i>Design for Access and Mobility</i> and Australian Standard AS2890.1 <i>Parking Facilities – Off Street Car Parking</i>; (c) all parking, driveway and vehicular manoeuvring areas are imperviously sealed, drained and line marked and maintained at all times.
Fuel Storage	
19.	The applicant must ensure that:- (a) all fuel storage is stored on-site in a self-bunded, aviation fuel tank and comply with AS1940:2017 <i>Storage and Handling of Flammable and Combustible Materials</i>. (b) fuel storage in excess of 10,000 litres is not permitted on the site.
20.	The finished floor level for the fuel storage area, hangar and any other location where petroleum products, lubricants and other contaminants are to be stored must be no less than 3.471m AHD.
21.	The applicant must:- (a) provide, for approval by the Council's Chief Executive Officer, a contaminant storage and management plan that appropriately deals with the risk of fuel spillage and leakage; and (b) then comply with the requirements of that plan.

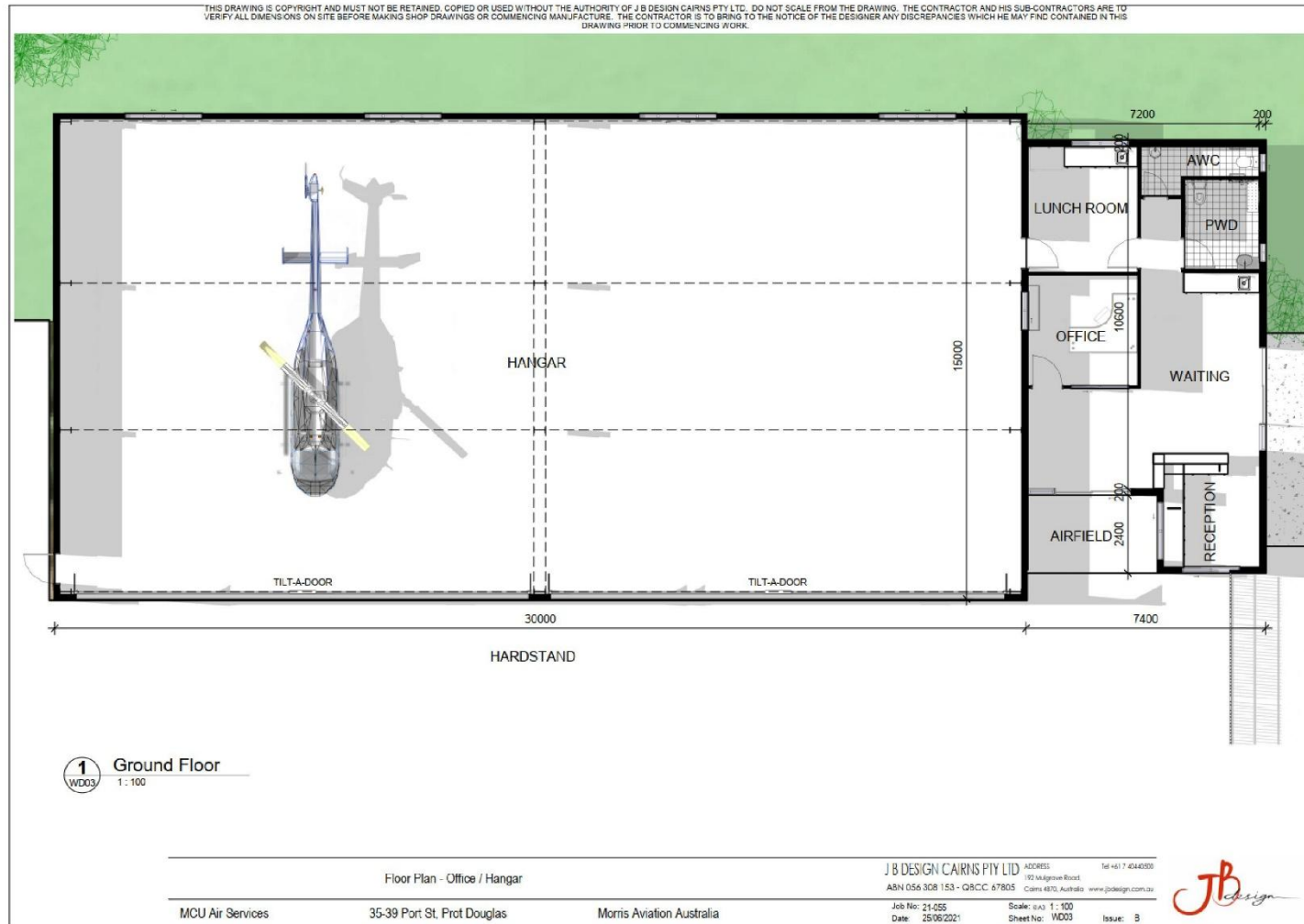
Sediment and Erosion Control	
22.	All earthworks must be carried out in accordance with section CP1.13 and D5 of the FNQROC Development Manual and must comply with the following:- (a) A copy of the contractor's Erosion and Sediment Control Plan (ESCP) is to be endorsed by the Council's Chief Executive Officer prior to the issue of a Development Permit for Building Work. (b) Measures nominated in the ESCP must be implemented prior to commencement of any earthworks. (c) The ESC Plan must address the Institution of Engineers Australia Guidelines for Soil Erosion and Sediment Control and the Environment Protection (Water) Policy and Clauses CP1.06, CP1.13 and D5.10 of the Council's FNQROC Development Manual.
Landscaping	
23.	The site must be landscaped in accordance with a landscaping plan prior to commencement of use. The plan must: (a) be prepared by a suitably qualified and experienced landscape designer and in conjunction with the Biotropica PLA21.12.01 Environmental Constraints Report dated January 2022; (b) be developed in accordance with Planning Scheme Policy SC6.7. (c) provide for remediation of areas on site currently overtaken by weeds and pest species. (d) comply with the recommendation from the Biotropica report to revegetate the area on site between the hardstand and the inlet in order to create additional habitat. Prior to the issue of a Development Permit for Building Work the landscape plan must be endorsed by the Council's Chief Executive Officer.
Fencing	
24.	Perimeter fencing must be established around the site, excluding the driveway access point, with the perimeter fencing to the south of the southern helipad and the west of the helipads, being of a horizontal louvre design to mitigate the off-site impacts of rotor downwash.
Finished Floor Levels	
25.	The finished floor level for the buildings inclusive of the fuel storage area, hangar and caretaker's accommodation must be no less than 3.471m AHD.
Caretaker's Accommodation Courtyard	
26.	The applicant must provide a section plan of the north-eastern boundary relevant to the caretaker's accommodation courtyard and building. The section must clearly demonstrate the relationship between the courtyard paving, caretaker's accommodation building, top of bank, toe of batter and detail the location of the property boundary. Any proposal to retain the batter or affect the batter with any earthworks must be detailed. The section or set of sections must be submitted and endorsed by the Council's Chief Executive Officer prior to the issue of a Development Permit for Building Works.

ADVISORY NOTES

Further Development Permits	
A.	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 <i>Plumbing and Drainage Act 2018</i>.
Currency Period for the Approval	
B.	This approval, granted under the provisions of the <i>Planning Act 2016</i>, shall lapse six (6) years from the day the approval takes effect in accordance with the provisions of Section 85 of the <i>Planning Act 2016</i>.

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





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2 East
WD04 1:100



1 South
WD04 1:100

Elevations

MCU Air Services

35-39 Port St, Port Douglas

Morris Aviation Australia

J B DESIGN CAIRNS PTY LTD
ADDRESS 102 Mulgrave Road,
Cairns 4870, Australia www.jbdesign.com.au
Job No: 21-055 Scale: 6A3 1:100
Date: 25/06/2021 Sheet No: WD04 Issue: B





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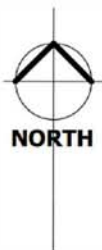


1 Ground Floor - Caretakers
WD06 1:100

Caretakers Residence			J B DESIGN CAIRNS PTY LTD		ADDRESS	Tel +61 7 40480300
			ABN 056 306 153 - QBCC 67805		193 Malgouren Road, Cairns 4870, Australia	www.jbdesign.com.au
MCU Air Services	35-39 Port St, Port Douglas	Morris Aviation Australia	Job No: 21-055	Scale: 1:100	Sheet No: WD06	Issue: 6
			Date: 25/06/2021			



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FLIGHT APPROACH AND
DEPARTURE PATHS ARE TO
OCCUR WITHIN THE GREEN
HATCHED AREA

HATCHED AREA DENOTES
EXTENT OF NO FLY ZONE
FOR AIRCRAFT ON
APPROACH OR DEPARTURE



1 Locality Plan & Indicative Flight Paths
WD01 1 : 10000

Locality Plan & Indicative Flight Paths

MCU Air Services

35-39 Port St, Port Douglas

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Job No: 21-055
Date: 16/05/2023

Scale: as indicated
Sheet No: WD01

Issue: F

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