



6 June 2023

BY EXPRESS POST AND EMAIL

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Dear Sir/Madam

**Douglas Shire Sustainability Group Inc. & Ors v Douglas Shire Council & Anor
Planning & Environment Court Appeal No. 1594 of 2023**

We act on behalf of the Appellants with respect to this matter.

We **enclose**, by way of service, a Notice of Appeal filed in the Court on 6 June 2023.

If you have any questions or require further information please do not hesitate to contact Taryn Eastwell on +61 7 3228 0483 or teastwell@millsoakley.com.au.

Yours faithfully

RAYNE NELMS
PARTNER

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In the Planning and Environment Court

Held at: Brisbane

Between: **DOUGLAS SHIRE SUSTAINABILITY
GROUP INC. (ORGANISATION NO.
IA34472)**

No. 1594 of 2023

First Appellant

And: **DAVID MCFADDEN**

Second Appellant

And: **ROGER MOIR**

Third Appellant

And: **RICHARD NORTHOVER**

Fourth Appellant

And: **KAREN HARRISSON**

Fifth Appellant

And: **MADELINE KEEBLE**

Sixth Appellant

And: **DARREN PLUNKETT**

Seventh Appellant

And: **KEVIN ELDRIDGE**

Eighth Appellant

And: **PAUL GILBY**

Ninth Appellant

And: **SHANE MCKENZIE**

Tenth Appellant

And: **CHARLOTTE RICHARDSON**

Eleventh Appellant

And: **ORAZIA CAVALLARO**

Twelfth Appellant

And: **PORT DOUGLAS YACHT CLUB
(ORGANISATION NO. IA08707)**

Thirteenth Appellant

And: **ROSEY CUMMINGS**

Fourteenth Appellant

And: **DUGALD MACFARLANE O'HARE**

Fifteenth Appellant

And: **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

NOTICE OF APPEAL

Filed on: 6 June 2023
Filed by: **MILLS OAKLEY**
Solicitors

Service address: Level 23, 66 Eagle Street, Brisbane Qld 4000
Phone: (07) 3228 0400

NOTICE OF APPEAL

Filed on behalf of the Appellants

Form PEC-1

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DOUGLAS SHIRE SUSTAINABILITY GROUP INC. (ORGANISATION NO. IA34472), DAVID MCFADDEN, ROGER MOIR, RICHARD NORTHOVER, KAREN HARRISSON, MADELINE KEEBLE, DARREN PLUNKETT, KEVIN ELDRIDGE, PAUL GILBY, SHANE MCKENZIE, CHARLOTTE RICHARDSON, ORAZIA CAVALLARO, PORT DOUGLAS YACHT CLUB (ORGANISATION NO. IA08707), ROSEY CUMMINGS, DUGALD MACFARLANE O'HARE, TINA GONSALVES c/- Mills Oakley, Level 23, 66 Eagle Street, Brisbane in the State of Queensland appeals to the Planning and Environment Court at Brisbane against the Respondent's decision dated 26 April 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 in respect of land located at 22-33 and 35-39 Port Street, Port Douglas in the State of Queensland and properly described as Lots 11 and 12 on SP273000 (**Development Application**).

The Appellants seek the following orders or Judgment:

- (a) the appeal be allowed;
- (b) the Development Application be refused; and
- (c) such further orders that the Court deems appropriate.

The grounds of appeal are:

1. The Land is:
 - (a) described as Lots 11 and 12 on SP273000;
 - (b) situated at 22-33 and 35-39 Port Street, Port Douglas in the State of Queensland;
 - (c) approximately 4,915m²;
 - (d) located in the:
 - (i) Industry zone; and
 - (ii) Port Douglas/Craigie Local Plan Code,of the of the Respondent's planning scheme, the Port Douglas Shire Council Planning Scheme 2018 version 1.0 (**Planning Scheme**);
 - (e) is affected by a number of overlays including:
 - (i) Acid sulfate soils; and
 - (ii) Coastal environment overlay code.
2. The Development Application was properly made on 14 February 2023.
3. The Development Application was subject to impact assessment.
4. The Development Application did not trigger referral to any referral agencies.
5. During the public notification period, the Appellants lodged properly made submissions in response to the Development Application.

6. By Decision Notice dated 2 May 2023, notification of the decision was provided to the submitters to the Development Application (Decision Notice).
7. The Appellants contend that the decision to approve the Development Application should be set aside and a decision should be made refusing the Development Application for the reasons that follow.

Inappropriate Use of Land

8. The proposed development being for air services is inconsistent with the zoning of the land. In that regard, the proposed development results in non-compliances with the following provisions of the Planning Scheme:
 - (a) Strategic framework:
 - (i) Theme 5 – Economy
 - Element – Tourism – Specific outcomes
 - (A) 3.8.3.1(1).
 - (b) Industry zone code:
 - (i) Purpose 2(a)(ii) and (iii), 2(b) and 2(c);
 - (ii) Overall outcome 3(d);
 - (iii) Performance outcome PO9; and
 - (iv) Table 6.2.5.3.b.
 - (c) Port Douglas/Craiglie local plan code: overall outcome: 3(c).

Noise

9. It has not been properly demonstrated the operation of the proposed development will have acceptable impacts on surrounding residents, tourism uses or terrestrial environments as required by the following provisions of the Planning Scheme:
 - (a) Strategic framework:
 - (i) Theme 2 – Environment and landscape values
 - Element – Air and acoustic protection and hazardous materials – Specific outcomes
 - (A) 3.5.6.1(1); and
 - (B) 3.5.6.1(2).
 - (b) Environmental performance code:
 - (i) Overall outcomes 2(a) and (b); and
 - (ii) Performance outcome PO2.
 - (c) Industry zone code: performance outcome PO10.

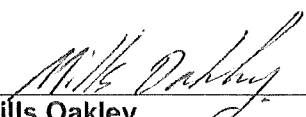
Environmental Impacts

10. The material submitted to Council does not consider the offsite impacts of the proposed development. It has therefore not been demonstrated that the proposed development will have acceptable offsite environmental impacts as a consequence of noise impacts and wind impacts associated with the operation of helicopters, as required by the following provisions of the Planning Scheme:
 - (a) Strategic Framework:

- (i) Theme 3 – Natural resource management
Element – Land and catchment management
 - (A) 3.6.2(1);
 - (B) Specific outcome 3.6.2.1(1); and
 - (C) Specific outcome 3.6.2.1(2).
 - (ii) Theme 5 – Economy
Element – Economic growth and diversification – Specific outcomes
 - (A) 3.8.2.1(1)(i).
 - (b) Environmental performance code: performance outcomes PO2 and PO3.
 - (c) Port Douglas/Craigie Local Plan Code: performance outcome PO53.
11. It has not been demonstrated that the proposed development will have acceptable impacts as a consequence of the storage and use of hazardous materials on the Land, as required by the following provisions of the Planning Scheme:
- (a) Industry zone code: performance outcome PO8.
 - (b) Port Douglas/Craigie local plan code: performance outcome PO53.

Relevant Matters

- 12. The development conditions imposed by the Respondent are not adequate to address the issues identified above and otherwise include conditions which are vague, uncertain and not final.
- 13. There is no need for the proposed development.
- 14. There is a need to protect industrial land.
- 15. There are no matters which warrant approval of the Development Application.
- 16. The Development Application is inconsistent with community expectations in relation to:
 - (a) the type of use that would reasonably be expected to occur in the Industry zone;
 - (b) the location of the land use - being in close proximity to Dickson's Inlet, the Marina and other tourist areas, residential areas and environmental areas;
 - (c) the noise levels that would reasonably be expected in the area;
 - (d) the Development Application is a clear departure of the intent of the planning scheme to:
 - (i) utilise industrial land for industrial purposes; and
 - (ii) not have unacceptable environmental impacts.
- 17. Non-compliance with the above matters in paragraphs 8 to 11 each separately and cumulatively warrant refusal.
- 18. The Development Application ought to be refused.


Mills Oakley
 Solicitors for the Appellants

If you are named as a respondent in this notice of appeal and wish to be heard in this appeal you must:

- a) within 10 business days after being served with a copy of this Notice of Appeal, file an Entry of Appearance in the Registry where this notice of appeal was filed or where the court file is kept; and**
- b) serve a copy of the Entry of Appearance on each other party.**

The Entry of Appearance should be in Form PEC – 5 for the Planning and Environment Court.

If you are entitled to elect to be a party to this appeal and you wish to be heard in this appeal you must:

- a) within 10 business days of receipt of this Notice of Appeal, file a Notice of Election in the Registry where this Notice of Appeal was filed or where the court file is kept; and**
- b) serve a copy of the Notice of Election on each other party.**

The Notice of Election should be in Form PEC – 6 for the Planning and Environment Court.