

14 December 2021

Enquiries: Jenny Elphinstone
Our Ref: Minor Change MCUC 2010_3817/3 (Doc ID 1055666)
Your Ref: P72115

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

Deal Corporation
C/- Planz Town Planning
PO Box 181
EDGE HILL QLD 4870

Email: info@planztp.com

Attention Ms Nikki Huddy

Dear Madam

**Development Application for Request for Minor Change (Restaurant & Shopping Facilities) at 23-25 Macrossan Street and 20 Warner Street Port Douglas
On Land Described as Lots 1 and 2 on SP316373**

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

Please quote Council's application number: MCUC 2010_3817/3 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



For
Paul Hoyer
Manager Environment & Planning

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

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



Decision Notice

Approval (with conditions)

Given under section 79, 80, 81 and 81a of the Planning Act 2016

Applicant Details

Name: Deal Corporation

Postal Address: C/- Planz Town Planning
PO Box 181
EDGE HILL QLD 4870

Email: info@planztp.com

Property Details

Street Address: 23-25 Macrossan Street and 20 Warner Street Port Douglas

Real Property Description: Lots 1 and 2 on SP316373

Local Government Area: Douglas Shire Council

Details of Proposed Development

Development Permit for Minor change to a Development Approval for Material Change of Use for Restaurant and Shopping Facilities.

Decision

Date of Decision: 14 December 2021

Decision Details

Approved in part the application for a minor change to the Development Permit for material change of use for restaurant and shopping facilities on Lot 2 on SP316373 at 23-25 Macrossan Street, Port Douglas, to reduce onsite car parking associated with the approved development whereby:

1. **The table of Approved Drawings and/or Document(s) are amended as follows.**

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

A copy of the plans mentioned below are enclosed.
The term 'approved drawing(s) and/or document(s)' or other similar expression means:

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

Drawing or Document	Reference	Date
Site / Floor Plan	Drawing PO2 B C prepared by Wolveridge Architects (Council Ref No 2619363) dated 29 September 2021 and as amended by Condition 3.	9 September 2019 To be determined.
Elevations	Drawing P03-A Prepared by Wolveridge Architects (Council Ref No 2619363)	10 Feb 2010
Sections	Drawing P04-A Prepared by Wolveridge Architects (Council Ref No 2619363)	10 Feb 2010

2. Condition 3 is amended as follows:

Amendment to Design

3. The proposed development must be amended to accommodate the following changes:
- Remove the proposed on-street garden boxes;
 - Ensure that the proposed supports for the awnings are a minimum of 820mm from the invert of the kerb and channel; and
 - Ensure inclusion of a minimum of ten (10) car parking spaces in the allocation car parking area (with one of the ten spaces allocated as a disability driver car parking space).

Details of the above amendments must be endorsed by the Chief Executive Officer prior to issue of a Development Permit for Building Work.

3. Condition 14 is amended as follows.

Vehicle Parking

14. The amount of vehicle parking must be as specified in Council's Planning Scheme which is a minimum of 10 ~~42~~ car parking spaces (with one space allocated as a disability driver car parking space). 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 manoeuvring areas must be imperviously sealed, drained and line marked.

Existing Approval

A copy of the existing approval is enclosed.

Further Development Permits

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

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 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*.

A copy of the relevant appeal provisions is attached.

Approved Drawing(s) and/or Document(s) – Subject to amended plans required under condition 3.





PO Box 723 Mossman Qld 4873
www.douglas.qld.gov.au
enquiries@douglas.qld.gov.au
ABN 71 241 237 800

15 October 2019

Enquiries: Jenny Elphinstone
Our Ref: MCUC 2010_3817/2 (Doc ID 923490)
Your Ref: P71866

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

Scali Nominees & Second York Pty Ltd
C/- Planz Town Planning
PO Box 181
EDGE HILL QLD 4870

Email: 2208

Attention Ms Vanessa Lanskey

Dear Madam

Application for minor change for material change of use for restaurant & shopping facilities at 23-25 Macrossan Street Port Douglas on land described as Lot 1 on SP267838

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

Please quote Council's application number: MCUC 2010_3817/2 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
 - Approved Drawing(s) and/or Document(s)
 - Concurrence Agency Response
 - Reasons for Decision.
- Advice For Appeals (Decision Notice)



Decision Notice

Approval (with conditions)

Given under sections 81a and 83 of the Planning Act 2016

Applicant Details

Name: Scali Nominees and Second York Pty Ltd
Postal Address: C/- Planz Town Planning
PO Box 181
Edge Hill Qld 4870
Email: info@planztp.com

Property Details

Street Address: 23 - 25 Macrossan Street Port Douglas
Real Property Description: Lot 1 on SP267838
Local Government Area: Douglas Shire Council

Details of Proposed Development

Application for a minor change to the Development Permit for material change of use for restaurant and shopping facilities to reduce onsite car parking associated with the approved development.

Decision

Date of Decision: 15 October 2019
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 table of Approved Drawings and/or Document(s) are amended as follows.

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

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

Drawing or Document	Reference	Date
Site / Floor Plan	Drawing P02-A Prepared by Wolveridge Architects (Council Ref No 2619363) <u>Drawing PO2 B prepared by Wolveridge Architects.</u>	10 Feb 2010 <u>9 September 2019</u>
Elevations	Drawing P03-A Prepared by Wolveridge Architects (Council Ref No 2619363)	10 Feb 2010
Sections	Drawing P04-A Prepared by Wolveridge Architects (Council Ref No 2619363)	10 Feb 2010

Assessment Manager Conditions & Advices

Condition 14 is amended as follows.

Vehicle Parking

14. The amount of vehicle parking must be as specified in Council's Planning Scheme which is a minimum of 12 49 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 manoeuvring areas must be imperviously sealed, drained and line marked.

Further Development Permits

The development has been constructed and no further approvals are necessary for the approved change.

Concurrence Agency Response

The Department of Transport and Main Roads was a concurrence referral agency to the original approval and the application to change was referred under section 80 PA 2016. The Department has advised it has no concern with the application to change and finds the proposed plan as being consistent with the approved concurrence agency conditions. The agency's advice is enclosed.

Currency Period for the Approval

This approval does not change the currency period approved under the original approval. refer to the enclosed copy of the existing approval.

Rights of Appeal

The rights of 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.

[illegible]

Concurrence Agency Advice



Our ref: 214-650/102(3666.02)
Your ref: F819-118
Enquiries: Steven Zelenika

Department of
Transport and Main Roads

30 September 2019

Scall Nominees & Second York Pty Ltd
C/- Planz Town Planning
97 Anderson Street
Manunda Qld 4870

Email: info@planztp.com

Attention: Susie Lord

Dear Susie

Minor Change Application (Reduction of on-site carparking from 19 spaces to 12 spaces) over land at 23-25 Macrossan Street, Port Douglas described as Lot 1 SP267836

The Department of Transport and Main Roads (TMR) received a request on 18 September 2019 to provide confirmation that the proposed reduction in carparking from 19 spaces to 12 spaces is permissible in accordance with condition 1 'Unless otherwise approved in writing by TMR the development site layout must generally comply with Wolvenidge Architects drawing numbered P02, revision A, dated 10/02/2010' of the concurrence agency conditions, dated 7 September 2010.

TMR has reviewed the proposed change and as required by condition 1, TMR is satisfied that the change in carparking spaces is acceptable.

If you need any further information please contact Steven Zelenika, Senior Town Planner on 4045 7063.

Yours sincerely

Amod Rijal
Principal Engineer (Civil) (Corridor Management)

Infrastructure Management & Delivery
Program Delivery and Operations
Far North District, Project Planning & Corridor Management
Floor 5, 15 Lake Street
PO Box 6185, Cairns Qld 4870

Telephone +61 7 4045 7063
Website www.tmr.qld.gov.au
Email caims.office@tmr.qld.gov.au
ABN 35 407 690 251

Existing Approval

ENQUIRIES: Michelle Henderson
PHONE: (07) 4099 9457
FAX: (07) 4044 3836
YOUR REF:
OUR REF: 8/7/2006 (2956295)

2 December 2010

Deal Corporation
C/- RPS Australia East Pty Ltd
PO Box 1949
CAIRNS QLD 4870

Dear Sir/Madam

DECISION NOTICE UNDER S335 SUSTAINABLE PLANNING ACT 2009:
DEVELOPMENT APPLICATION FOR 25 MACROSSAN STREET PORT
DOUGLAS, 23-25 MACROSSAN STREET PORT DOUGLAS

With reference to the abovementioned Development Application which was determined under Instrument of Delegation on 2 December 2010 please find attached the relevant Decision Notice.

The notice includes extracts from the Act with respect to making representations about conditions, negotiated decisions, suspension of the appeal period, and lodging an Appeal.

Should you have any enquires in relation to this Decision Notice, please contact Michelle Henderson of Council's Development Assessment Team on telephone number (07) 4099 9457.

Yours faithfully

Kelly Reaston
Manager Development Assessment

Att.

40.2010.3817
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DECISION NOTICE DETAILS
SUSTAINABLE PLANNING ACT 2009

APPLICANT DETAILS

Deal Corporation
C/- RPS Australia East Pty Ltd
PO Box 1949
CAIRNS QLD 4870

ADDRESS

23-25 Macrossan Street Port Douglas

REAL PROPERTY DESCRIPTION

Lot 1 on PTD20930 & Lot 2 on RP745532

PROPOSAL

Restaurant and Shopping Facilities

DECISION

Approved subject to conditions (refer to approval package below).

DECISION DATE

2 December 2010

TYPE

Material Change of Use (Development Permit)

REFERRAL AGENCIES

(State Controlled Roads, Public Transport & Rail Safety & efficiency Matters)
Department of Transport and Main Roads
Far North Region (Cairns)
PO Box 6185
CAIRNS QLD 4870
Attention: Senior Planner

Ergon Energy
Chris Souter
PO Box 358
CAIRNS QLD 4870

SUBMISSIONS

There were no submissions for this application.

FURTHER DEVELOPMENT PERMITS REQUIRED

Development Permit for Building Works
Development Permit for Plumbing Works

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DECISION NOTICE DETAILS
SUSTAINABLE PLANNING ACT 2009

CODES TO COMPLY WITH FOR SELF-ASSESSABLE DEVELOPMENT

None

DOES THE ASSESSMENT MANAGER CONSIDER THE APPLICATION TO BE IN CONFLICT WITH APPLICABLE CODES, PLANNING SCHEME, STATE PLANNING POLICIES OR PRIORITY INFRASTRUCTURE PLAN (IF YES, INCLUDE STATEMENT OF REASONS)

Not in conflict

APPROVED DRAWING(S) AND/OR DOCUMENT(S)

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

Drawing or Document	Reference	Date
Site / Floor Plan	Drawing P02-A Prepared by Wolveridge Architects (Council Ref No 2619363)	10 Feb 2010
Elevations	Drawing P03-A Prepared by Wolveridge Architects (Council Ref No 2619363)	10 Feb 2010
Sections	Drawing P04-A Prepared by Wolveridge Architects (Council Ref No 2619363)	10 Feb 2010

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;
 - 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.

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Amendment to Design

3. The proposed development must be amended to accommodate the following changes:
 - a. Remove the proposed on-street garden boxes;
 - b. Ensure that the proposed supports for the awnings are a minimum of 820mm from the invert of the kerb and channel;

Details of the above amendments must be endorsed by the Chief Executive Officer prior to issue of a Development Permit for Building Work.

Water Supply Contributions

4. Pay a monetary contribution to Council in accordance with the Planning Scheme Policy towards the provision of water supply infrastructure.

Contributions must be paid at the rates applicable at time of payment. On the present method of calculation, the contributions are \$11,838.82 (1.78 ERAs).

Payment is required prior issue of a Development Permit for Building Work.

Wastewater Contributions

5. Pay a monetary contribution to Council in accordance with the Planning Scheme Policy towards the provision of sewerage infrastructure.

Contributions must be paid at the rates applicable at time of payment. On the present method of calculation, the contributions are \$6,635.74 (1.78 ERAs).

Payment is required prior issue of a Development Permit for Building Work.

Water Supply and Sewerage Works External

6. Undertake the following water supply and sewerage works external to the site to connect the site to existing water supply and sewerage infrastructure:-
 - a. Augment existing water supply infrastructure to the extent necessary such that the development does not adversely affect the water supply to adjacent properties and such that a water service connection can be provided at the lot frontage;
 - b. Augment existing sewers and pump station downstream of the site, to the extent required to accommodate the increased flows generated by the development.

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The external works outlined above constitute Operational Works. Three (3) copies of a plan of the works at A1 size and one (1) copy at A3 size must be endorsed by the Chief Executive Officer prior to commencement of such works. Such work must be constructed in accordance with the endorsed plan to the satisfaction of the Chief Executive Officer prior to Commencement of Use or approval and dating of the Building Format Plan, whichever occurs first

Water Supply and Sewerage Works Internal

7. Undertake the following water supply and sewerage works internal to the subject land:-

- a. The development must be serviced by a single internal water and sewerage connection made clear of any buildings or structures;
- b. Water supply sub-metering must be designed and installed in accordance with *The Plumbing and Drainage Act 2002 and the Water Supply (Safety and Reliability) Act 2008*;
- c. The existing sewer must be a minimum of 1.5 metres away from the building and clear of the zone of influence from the footings and foundations of any building/structure; or

Replace the existing sewer main under or within 1.5 metres of the building and within the zone of influence of the footings and foundations with uPVC sewer pipe class SN8;

- d. Any redundant sewer property connection and water connection shall be decommissioned and removed.

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

Three (3) copies of a plan of the works must be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Operational Works.

All works must be carried out in accordance with the approved plans, to the requirements and satisfaction of the Chief Executive Officer prior to Commencement of Use or approval and dating of the Building Format Plan, whichever occurs first.

Sewer Easement

8. Create an easement in favour of Council having a nominal width of 3 metres over any council sewer within the site to the requirements and satisfaction of the Chief Executive Officer. A copy of the easement document must be submitted to Council for the approval by Council's solicitors at no cost to Council.

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The approved easement document must be submitted at the same time as seeking approval and dating of the Building Format Plan and must be lodged and registered with the Department of Environment and Resource Management in conjunction with the Plan of Survey.

Inspection of Sewers

9. CCTV inspections of sewers must be undertaken both prior to commencement of works on site and at works completion. An assessment of the CCTV records must be undertaken by the developer's consultant and a report along with the footage submitted to Council for approval. Defects must be rectified to the satisfaction of the Chief Executive Officer at no cost to Council prior to Commencement of Use or approval and dating of the Building Format Plan, whichever occurs first.

Damage to Infrastructure

10. In the event that any part of Council's existing sewer/water infrastructure is damaged as a result of construction activities occurring on the site, including but not limited to, mobilisation of heavy earthmoving equipment, stripping and grubbing, the applicant/owner must notify Water & Waste immediately of the affected infrastructure and have it repaired or replaced by Water & Waste, at the developer's cost, prior to the Commencement of Use or approval and dating of the Building Format Plan, whichever occurs first.

Water Saving

11. All toilet devices in the development must be fitted with dual flush cisterns and showers and hand basins in the development must be fitted with flow control valves or similar water control devices to generally restrict flow to 9 litres of water per minute.

Refuse Storage

12. Refuse storage is required to service the site in accordance with Council requirements. Brochures on these requirements – 'Requirements for Refuse Storage' are available from CRC Water & Waste.

Liquid Waste Disposal

13. Trade waste discharge to sewer must meet the requirements of CRC Water and Waste's Trade Waste Environmental Management Plan (TWEMP). A report and detailed hydraulic plans demonstrating that the facility complies with the TWEMP must be submitted and be approved by Council prior to the issue of a Development Permit for Building Work.

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DECISION NOTICE DETAILS
SUSTAINABLE PLANNING ACT 2009

The applicant must have all measures for pre-treatment installed prior to commencement of use.

Vehicle Parking

14. 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 manoeuvring areas must be imperviously sealed, drained and line marked.

Protection of Landscaped Areas From Parking

15. Landscaped areas adjoining the parking area must be protected by a 150mm high vertical concrete kerb or similar obstruction. The kerb must be set back from the garden edge sufficiently to prevent vehicular encroachment and damage to plants by vehicles.

Parking Signage

16. Erect signs advising of the location of the off-street visitor parking area and access thereto. The signs must be erected prior to Commencement of Use. One sign must be located on the Warner Street frontage.

Bicycle Parking

17. Provide secured, on-site bicycle parking in accordance with Table 10-1 of AUSTROADS Guide to Traffic Engineering Practice Part 14 - Bicycles. Based on the provisions in Table 10-1 (page 133) the minimum number of parking spaces required for this development is 6 spaces. The bicycle parking area must be constructed prior to Commencement of Use.

Lighting

18. All lighting installed upon the premises including car parking areas must be certified by Ergon Energy (or such other suitably qualified person). The vertical illumination at a distance of 1.5 metres outside the boundary of the subject land must not exceed eight (8) lux measured at any level upwards from ground level.

External Works

19. Undertake the following works external to the land at no cost to Council:
 - a. Provision of a concrete crossover(s) and apron(s) in accordance with FNQROC Development Manual Standard Drawing 1015;

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DECISION NOTICE DETAILS
SUSTAINABLE PLANNING ACT 2009

- b. Make good the kerb(s) at redundant crossover(s);
- c. Repair any damage to existing kerb and channel, footway or roadway (including removal of concrete slurry from footways, roads, kerb and channel and stormwater gullies and drain lines) that may occur during and works carried out in association with the construction of the approved development.
- d. Linemark parking spaces in front of and adjacent to the subject land along Macrossan Street;

All works in the road reserve need to be properly separated from pedestrians and vehicles, with any diversions adequately signed and guarded. Particular attention must be given to providing safe passage for people with disabilities i.e. the provision of temporary kerb ramps if pedestrian diversions are necessary.

The external works outlined above constitute Operational Works. Three (3) copies of a plan of the works at A1 size and one (1) copy at A3 size must be endorsed by the Chief Executive Officer prior to commencement of such works. Such work must be constructed in accordance with the endorsed plan to the satisfaction of the Chief Executive Officer prior to Commencement of Use or approval and dating of the Building Format Plan, whichever occurs first.

Construction Access

- 20. Vehicular access to the site for construction and demolition purposes must be provided from Warner Street only, unless authorised by the Chief Executive Officer.

Stockpiling and Transportation of Fill Material

- 21. Soil used for filling or spoil from the excavation is not to be stockpiled in locations that can be viewed from adjoining premises or a road frontage for any longer than one (1) month from the commencement of works.

Transportation of fill or spoil to and from the site must not occur within:

- a. peak traffic times; or
- b. before 7am or after 6pm Monday to Friday; or
- c. before 7 am or after 1pm Saturdays; or
- d. on Sundays or Public Holidays.

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22. Dust emissions or other air pollutants, including odours, do not extend beyond the boundary of the site and cause a nuisance to surrounding properties.

Storage of Machinery & Plant

23. The storage of any machinery, material and vehicles must not cause a nuisance to surrounding properties, to the satisfaction of the Chief Executive Officer.

Landscaping Plan

24. The site must be landscaped in accordance with details included on a Landscaping Plan. The Landscaping Plan must show:
- a. Deep planting of setback areas, utilising species selected in accordance with the Plant Species Schedule in Planning Scheme Policy No 7 – Landscaping;
 - b. Inclusion of any other relevant conditions included in this Development Permit. A copy of this Development Approval must be given to the applicant's Landscape Architect/Designer.
 - c. A screen fence must be provided to the side and rear boundary of the subject land, to the satisfaction of the Chief Executive Officer. The fencing must be consistent in terms of design and materials with other fences in the locality. The fencing must be completed prior to the Commencement of Use.

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 issue of a Certificate of Classification or Commencement of Use whichever occurs. Landscaped areas must be maintained at all times to the satisfaction of the Chief Executive Officer.

Lawful Point of Discharge

25. All stormwater from the property must be directed to a lawful point of discharge such that it does not adversely affect surrounding properties or properties downstream from the development, all to the requirements and satisfaction of the Chief Executive Officer.

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Sediment and Erosion Control

26. Soil and water management measures must be installed/implemented prior to discharge of water from the site, such that no external stormwater flow from the site adversely affects surrounding or downstream properties (in accordance with the requirements of the *Environmental Protection Act 1994*, and the FNQROC Development Manual).

Details Of Development Signage

27. The development must provide clear and legible signage incorporating the street number for the benefit of the public.

Advertising Signage

28. All signage associated with the use must be approved by the Chief Executive Officer. The signage must comply with the Design and Siting of Advertising Devices Code contained within the Douglas Shire Planning Scheme and plans detailing the signage must be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Building Works or Commencement of Use, whichever occurs first.

Construction Signage

29. Prior to the commencement of any construction works associated with the development, a sign detailing the project team must be placed on the road frontage of the site and must be located in a prominent position. The sign must detail the relevant project coordinator for the works being undertaken on the site, and must list the following parties (where relevant, including phone contacts):-
- a. Developer;
 - b. Project Coordinator;
 - c. Architect / Building Designer;
 - d. Builder;
 - e. Civil Engineer;
 - f. Civil Contractor;
 - g. Landscape Architect

Crime Prevention Through Environmental Design

30. The applicant/owner must ensure that all lighting and landscaping requirements complies with Council's General Policy Crime Prevention Through Environmental Design (CPTED).

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Food Requirements

31. Premises intended to be used for the storage, preparation, handling, packing and/or service of food must comply with the requirements of the Food Act 2006 and the Food Standards Code.
32. Prior to construction or alteration of any premises used for storage, preparation, handling, packing and/or service of food, application for such must be made with Council's Public Health Unit.
33. Prior to operation of the food business, the operator must hold a current Food Licence issued by Council's Public Health Unit under the Food Act 2006. Every licensed food business is required to have a Food Safety Supervisor who has met specified competencies and is reasonably available at all times the business is operating. Contact the Council's Public Health Unit for further information.

General Requirements

34. Noise from air conditioning units, swimming and spa pool filters, service equipment or other mechanical equipment must not emanate from the subject land to a degree that would, in the opinion of the Chief Executive Officer, create an environmental nuisance having regard to the provisions of the *Environmental Protection Act 1994*, *Environmental Protection (Noise) Policy 1997* and *Environmental Protection Regulation 1998 (Part 2A - Environmental Nuisance)*.

Dangerous Goods Safety Management Requirements

35. The disused storage or handling system (above ground fuel tank & bowser) located on the property is to be disposed of or no longer used for the storage or handling of stated goods or combustible liquids; and
 - (i) The storage or handling system (above ground fuel tank & bowser) must be thoroughly cleaned so that the system is, as far as practicable, free from stated dangerous goods or combustible liquids; or
 - (ii) Otherwise be safe.
36. A certificate or documentation from a suitably qualified person verifying the disused storage or handling system has been rendered safe must be lodged with Council (as per Sec 26 of the 'Dangerous Goods Safety Management Regulation 2001') prior to the issue of a Development Permit for Building Works.

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DECISION NOTICE DETAILS
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Amalgamation Required

37. The applicant/owner is responsible for the reconfiguration (amalgamation) of Lot 2 on RP 745532 and Lot 1 on PLN 20930 into one lot. The Plan of Survey must be registered with the Department of Environment and Resource Management at the applicant's/owner's cost prior to Commencement of Use.

CONCURRENCE AGENCY CONDITIONS & REQUIREMENTS

Concurrency Agency	Concurrency Agency Reference	Date	Council Electronic Reference
Department of Transport and Main Roads	214/650/102/(3666.D2)	8 Sept 2010	2720203

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

FURTHER ADVICE

1. This approval, granted under the provisions of the *Sustainable Planning Act 2009*, shall lapse four (4) years from the day the approval takes effect in accordance with the provisions of Section 339 of the *Sustainable Planning Act 2009*.
2. 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.
3. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.
4. Headwork contribution calculations are attached as Appendix 3. Please note that the contributions must be paid at the rates applicable at the time of payment. Updated calculations must be requested prior to payment.
6. For information relating to the *Sustainable Planning Act 2009* log on to www.dip.qld.gov.au. To access Council's Development Manual, Local Laws and other applicable Policies log on to www.cairns.qld.gov.au.

RIGHTS OF APPEAL

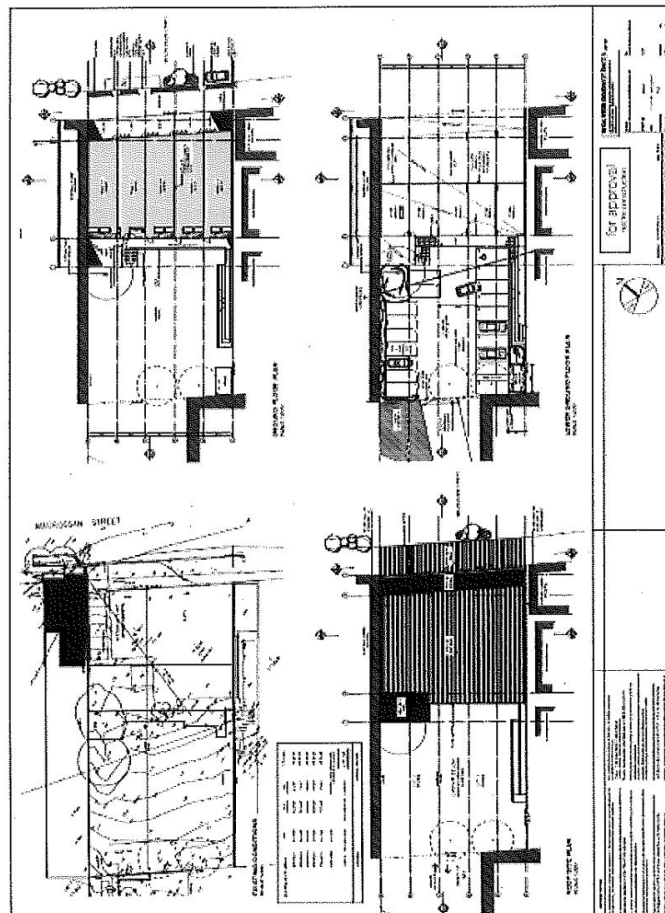
Attached

End of Decision Notice

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**DECISION NOTICE DETAILS
SUSTAINABLE PLANNING ACT 2009**

APPENDIX 1 APPROVED PLAN(S) & DOCUMENT(S)



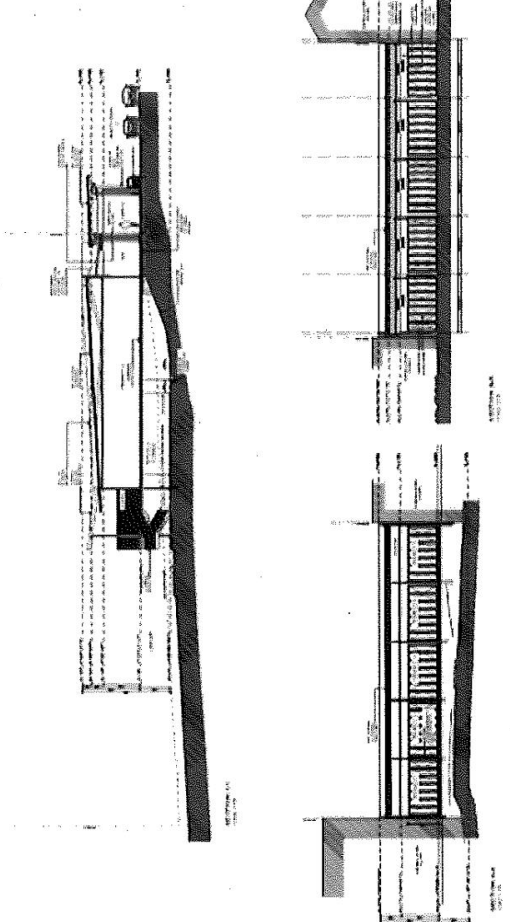
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DECISION NOTICE DETAILS
SUSTAINABLE PLANNING ACT 2009

<p>Architectural drawings showing a building facade with a gabled roof and multiple windows. The drawings include a section and an elevation.</p>	<p>Architectural drawings showing a building facade with a gabled roof and multiple windows. The drawings include a section and an elevation.</p>	<p>Architectural drawings showing a building facade with a gabled roof and multiple windows. The drawings include a section and an elevation.</p>	<p>for approval</p> <p>DATE: 14/02/2010</p> <p>TIME: 14:20</p> <p>1</p>
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40.2010.3817
14/20

DECISION NOTICE DETAILS
SUSTAINABLE PLANNING ACT 2009

		<p>BY SCOPE</p> <p>SCOPE OF WORK</p> <p>SCOPE OF WORK</p>
<p>40.2010.3817</p> <p>15/20</p>		<p>40.2010.3817</p> <p>15/20</p>

DECISION NOTICE DETAILS
SUSTAINABLE PLANNING ACT 2009

APPENDIX 2 CONCURRENCE AGENCY CONDITIONS & REQUIREMENTS

Council Ref: 87/2006

7 September 2010

Chief Executive Officer
Cairns Regional Council
PO Box 359
Cairns Qld 4870

Attention: Mr Leon Doure

Dear Mr Doure



Amended Referral Agency Response — s. 369 of the Sustainable Planning Act 2009 (Qld)

Applicant: Deal Corporation

Application: Material Change of Use (Restaurant and Shopping Facilities)

Location: Lot 1 on PTD20930 & Lot 2 on RP745532, Parish of Salisbury
23 - 25 Macrossan Street, Port Douglas

I refer to:

- The above application received at the Department of Transport & Main Roads (TMR) on 5 July 2010 requesting consideration of the above development,
- the TMR letter of conditions of development of 6 July 2010, and
- written representations from the applicant's consultant received at TMR on 23 August 2010, requesting a review of condition 4.

Pursuant to section 374 of the *Sustainable Planning Act 2009 (Qld)*, the Department, as a Concurrence Agency, has assessed the impact of the proposed development on the state-controlled road network and requires that Council include the attached amended conditions of development for the subject application.

Should you have any queries regarding this response please contact Byron Jones on 4040 6163.

Council is requested to reflect the amended conditions on its Rates Record, to ensure that the planning intentions of the conditions are secured.

A copy of this letter has been sent to the applicant.

Yours sincerely

Byron Jones

A/Senior Planner (Assets & Operations) Far North

Department of Transport and Main Roads
Assets and Operations
Far North Region's Cairns Office
Level 5 Cairns Corporate Tower
13 Lane Street Cairns Queensland 4870
PO Box 8183 CAIRNS Queensland 4870
ABN 29 401 090 291

Enquiries: Byron Jones
Office Tel: 214550102 / 4066021
Telephone: 4040 6303
Facsimile: 4052 6428
Website: www.dtr.qld.gov.au
Email: byron.jones@dtr.qld.gov.au

40.2010.3817
18/20



Amended Conditions of Development and Statement of Reasons
Concurrent Agency Response – Development impacting on a state-controlled road

Council Ref: 8/72006 Date: 7 September 2010
State-controlled road: Port Douglas Road (Macrossan Street)
Proposal: Material Change of Use (Restaurant & Shopping Facilities)
Real property description: Lot 1 on FTO 20930 & Lot on RP 745532, Parish of Salisbury
Site locality: 23-25 Macrossan Street, Port Douglas
Applicant: Deal Corporation

Conditions of Development	Reasons	Conditions
<p>Layout</p> <p>1. Unless otherwise approved in writing by TMS the development site layout must generally comply with: Volperidge Architects drawing numbered P01, revision A, dated 13/02/2010.</p> <p>Permitted Road Access Location</p> <p>2. Vehicular access between the state-controlled road (Macrossan Street) and the Subject Land shall be via Warner Street only, to the satisfaction of Cairns Regional Council.</p> <p>3. No direct vehicular access between the state-controlled road (Macrossan Street) and the Subject Land is permitted.</p>	<p>To ensure the development proceeds in accordance with the proposal</p> <p>TMS must ensure that access between the Subject Land does not adversely impact the safe and efficient operation of the state-controlled road</p>	<p>s. 62 Transport Infrastructure Act 1994 (Qld)</p>

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<p>Advertising</p>	<p>4. The signage shall be attached to the proposed building, located at Lot 1 on PTDP0010 and Lot 2 on 28°45'53", Maroonan Street, Port Douglas</p> <p>5. Yarnakab Posts (Signposts) are not permitted outside the property or within 4.5 m of the kerbside road edge line and must be set back 800mm from the back of the kerb.</p> <p>6. The planter boxes shall be designed and constructed so that if they are struck by a vehicle, they will not be dislodged and propelled into the pedestrian walkway.</p> <p>7. The Department accepts no responsibility for maintenance of private infrastructure within the state controlled road corridor.</p>	<p>DAR must ensure the proposed signage does not adversely impact the safe and efficient operation of the state-controlled road.</p> <p>Advertising devices may obscure signage and obscure manholes.</p> <p>Lack of on-site parking can cause vehicle queuing and conflict at an access to the state-controlled road.</p>	<p>s. 50 Transport Infrastructure Act 1994 (Qld)</p>
<p>Advertising</p>	<p>8. No advertising device for the proposed development is permitted within the state-controlled road reserve (Macrossan Street).</p>	<p>Advertising devices may obscure signage and obscure manholes.</p>	<p>s. 50 Transport Infrastructure Act 1994 (Qld)</p>
<p>Parking</p>	<p>9. No parking associated with the development is permitted within the state-controlled road reserve (Macrossan Street).</p>	<p>Lack of on-site parking can cause vehicle queuing and conflict at an access to the state-controlled road.</p>	<p>s. 50 Transport Infrastructure Act 1994 (Qld)</p>

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18/20

Section 482 of the Sustainable Planning Act 2009 requires that an applicant give notice of an appeal to a referred agency in certain circumstances. Where notice of an appeal is required to be given to the Department of Transport and Main Roads that notice may be given by any of the methods mentioned below.

By prepaid mail: Planning Legislation Unit
Integrated Transport Planning
The Department of Transport and Main Roads
GPO Box 213
Brisbane Qld 4001

By email: PLA.Approvals@transport.qld.gov.au

In person: Level 3
Torrice Place
140 Creek Street
Brisbane Qld 4000

40.2010.3817
19/20

APPENDIX 3 DEVELOPER CONTRIBUTION CALCULATIONS

2006 California State Planning Scheme Applications

DEVELOPERS HEADWORKS CONTRIBUTIONS

Deal Corporation			N/A			N/A		
DEVELOPER NAME			ESTATE NAME			CHACK		
23-26 Macarossa Street			Port Douglas			L1 PT209930, L2 RP745532		
STREET 1 No. & NAME			STREETING			LOT & RP No.		
MCU Shopping Facilities / Restaurant			8/7/2006			30-Jun-10		
DEVELOPER CITY			CITY & STATE			QUANTIFIED		
2992441			1			VALUED / ESTIMATED		
GRID No.			APPROXIMATE			This legend is to be used approximately only for payment made within the quoted period above.		
	DIST	1' ERA	NET ERA	ADJUSTMENT	AMOUNT PAID	AMOUNT PAID	RECEIPT NO.	
WATER								
Est	11	6,062.42 X	1.70	0.00	\$10,727.31		1,618	05974
Pro	11	5,904.03 X	1.70	0.00	\$1,062.51		1,618	06648
		Water rate total			\$11,814.82			
SEWERAGE								
Est	2	3,527.63 X	1.70	0.00	\$5,721.69		1,618	05965
Pro	2	495.11 X	1.70	0.00	\$861.65		1,618	05979
		Sewerage rate total			\$6,583.34			
Other								
Estimate				0	\$2.00		002	0
GRADING								
Estimate				None	\$0.00			
					\$0.00			
					\$0.00			
OPEN SPACE								
Estimate					\$0.00		1,611	510
ROADS								
Estimate					\$0.00			
Pro					\$0.00			
OTHER								
Estimate					\$0.00		001	000
Pro					\$0.00			
TOTAL					\$18,474.65			
Prepared by	M Henderson			on	28 Nov-10	Amount Paid		
Checked by	Julio Cisneros			on	28 Nov-10	Date Paid		
Attachments				Date		Receipt No.		
						Cashier		

- 1 The Receiver should confirm the details with the Accredited prior to accepting payment
- 2 The payment must update the details in the electronic receipt in real time
- 3 Accredited must update Receiver details with each day's change or variation to the Accredited figures
- 4 These details must be presented at time of payment
- 5 A photograph of Receiver details is to be included in the Accredited receipt payment is accepted
- 6 The status of these details to be broadcast to Finance Department on receipt of the payment is accepted
- 7 Payment details to be entered into Receiver Computer by Finance Dept

Reasons for Decision

The reasons for this decision are:

1. Sections 79, 80, 81 and 81a of the *Planning Act 2016*:
 - a. to ensure the development satisfies the benchmarks of the 2006 Douglas Shire Planning Scheme (as amended) and the 2018 Douglas Shire Planning Scheme Version 1.0; and
 - b. to ensure compliance with the *Planning Act 2016*.
2. Findings on material questions of fact:
 - a. the application for a minor amendment was properly lodged to the Douglas Shire Council 15 October 2019 under sections 79 and 80 of the *Planning Act 2016*;
 - b. the development application contained information from the applicant which Council reviewed together with Council's own assessment against the 2017 State Planning Policy, the 2006 Douglas Shire Planning Scheme (as amended) 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 Commercial Planning Area of the Port Douglas and Environs Locality;
 - b. Council undertook an assessment in accordance with the provisions of sections 80, 81 and 81a of the *Planning Act 2016*; and
 - c. the applicant's reasons have been considered and the following findings are made:
 - i. Subject to conditions, the development satisfactorily meets the Planning Scheme benchmarks having due regard to current Planning Scheme considerations.

In particular, under the 2006 Douglas Shire Planning Scheme (as amended) the respective car parking code required the provision of 19 car parking spaces, including 1 disabled space to meet the Acceptable Solution. This provision is provided onsite.

Where the onsite demand is not achieved, as measured by the Acceptable Solution, the respective Performance Criteria of the 2006 Planning Scheme reads as follows.

P1 Sufficient parking spaces are provided on the Site to accommodate the amount and type of vehicle traffic expected to be generated by the use or uses of the Site, having particular regard to:

- *the desired character of the area in which the Site is located;*
- *the nature of the particular use and its specific characteristics and scale;*
- *the number of employees and the likely number of visitors to the Site;*
- *the level of local accessibility;*
- *the nature and frequency of any public transport serving the area;*
- *whether or not the use involves the retention of an existing Building and the previous requirements for car parking for the Building;*

- *whether or not the use involves an identified Valuable Conservation Feature and Valuable Site; and*
- *whether or not the use involves the retention of significant vegetation.*

Having regard to the second point above, the proposed onsite provision is considered satisfactory as it meets the acceptable outcome for provision of onsite car parking as assessed against the 2018 Douglas Shire Planning Scheme Version 1.0.

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

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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.

Concurrence Agency Advice



Our ref 214/650/102(3666.02)
Your ref 72115
Enquiries Steven Zelenika

Department of
Transport and Main Roads

10 November 2021

Nikki Huddy (FPIA)
Director, Planz Town Planning
Registered Planner
Adjunct Senior Lecturer, Planning (JCU)
PO Box 181
Edge Hill QLD 4870

Attention: Nikki Huddy

Dear Nikki,

Combined Change Application (Minor Change) to Decision notice MCUC 2010_3817/1 for Restaurant and Shopping facilities and Reconfiguring a Lot (Boundary realignment and creation of an access easement at 20 Warner Street, and 23-25 Macrossan Street, Port Douglas

The Department of Transport and Main Roads (TMR) received a request on Friday 5 November 2021 to provide confirmation that the proposed reduction in carparking from 12 spaces to 9 spaces is permissible in accordance with condition 1 *'Unless otherwise approved in writing by TMR the development site layout must generally comply with Wolveridge Architects drawing numbered PO2, revision A, dated 10/02/2010'* of the concurrence agency conditions, dated 7 September 2010.

TMR has reviewed the proposed change and as required by condition 1, TMR is satisfied that the change in carparking spaces is acceptable.

If you need further information please contact Steven Zelenika, Senior Town Planner on 4045 7063.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'DS Harding-Smith'.

David Harding-Smith
Principal Engineer (Civil)

Telephone +61 7 4045 7063

Website www.tmr.qld.gov.au

Email steven.zelenika@tmr.qld.gov.au

ABN 39 407 690 291

Reasons for Decision

The reasons for this decision are:

1. Sections 79, 80, 81 and 81a of the *Planning Act 2016*:
 - a. to ensure the development satisfies the benchmarks of the 2006 Douglas Shire Planning Scheme (as amended) and the 2018 Douglas Shire Planning Scheme Version 1.0; and
 - b. to ensure compliance with the *Planning Act 2016*.
2. **Findings on material questions of fact:**
 - a. the application for a minor amendment was properly lodged to the Douglas Shire Council on 3 November 2021 under sections 79 and 80 of the *Planning Act 2016*;
 - b. the development application contained information from the applicant which Council reviewed together with Council's own assessment against the 2017 State Planning Policy, the 2006 Douglas Shire Planning Scheme (as amended) 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 Commercial Planning Area of the Port Douglas and Environs Locality;
 - b. Council undertook an assessment in accordance with the provisions of sections 80, 81 and 81a of the *Planning Act 2016*; and
 - c. the applicant's reasons have been considered and the following findings are made:
 - i. Subject to conditions, the development satisfactorily meets the Planning Scheme benchmarks having due regard to current Planning Scheme considerations.

Non-Compliance with Assessment Benchmarks

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 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, 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.