

27 February 2024

Enquiries: Jenny Elphinstone
Our Ref: MCUI 2013_5148/3 (Doc ID 1210567)
Your Ref: 9288639

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75 Port Douglas Road Pty Ltd
C/- Mills Oakley Lawyers
Level 23,
66 Eagle Street
BRISBANE QLD 4000

Email: teastwell@millsoakley.com.au

Attention Ms Taryn Eastwell

Dear Madam

**Development Application for Request to Extend Relevant Period
At 71-85 Port Douglas Road Port Douglas
On Land Described as Lot 1 on SP150468**

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

Council further resolved to advise that in respect to the development of a resort development and / or short-term accommodation with other uses on the land Council advise the Applicant that there remains opportunity to lodge an application for a Material Change of use under the current Scheme as the use is not prohibited development under the *Planning Act 2016*.

Council also resolved to advise that as there is no current Local Law approval for the site buildings and wire fence on the fence on the adjacent road reserve, these buildings and structures need to be immediately removed.

Please quote Council's application number: MCUI 2013_5148/3 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
- Advice For Appeals (Decision Notice)



Decision Notice Refused

Given under s 87 of the Planning Act 2016

Applicant Details

Name: 75 Port Douglas Road Pty Ltd
Postal Address: C/- Mills Oakley Lawyers
Level 23
66 Eagle Street
Brisbane Qld 4000
Email: teastwell@millsOakley.com.au

Property Details

Street Address: 71-85 Port Douglas Road Port Douglas
Real Property Description: Lot 1 on SP150468
Local Government Area: Douglas Shire Council

Details of Proposed Development

Extension application to the currency period for a further four years for the for the Material Change of Use for 79 Multiple Dwellings (Tourist) {of which, 47 were able to be used as Multiple Dwelling (Tourist) and Accommodation Premises (Motel) in a dual key arrangement and 3 are able to be temporarily used as a Display Home (Multiple Dwelling)}, 127 Accommodation Premises (Motel) and ancillary uses including Gym, Spa, Relaxation Lounge, Retail, Restaurant, Cafe, Bar, Function Centre, Meeting Rooms and Administration Facilities.

Decision

Date of Decision: 27 February 2024

Decision Details: Refused on the following reasons for decision.

1. Since the issue of the Development Permit the 1996 Douglas Shire Planning Scheme has been superseded by new planning controls. The assessment and determination of the original approval was dependant on particular provisions of a superseded Scheme. These considerations no longer apply;
2. The existing approval and the conditions there in are outdated having regard to current planning considerations;

3. The development approval under the Development Permit is inconsistent with the current planning considerations and the 2018 Planning Scheme;
4. The extension to the Development Permit is contrary to the expected community expectation that development should meet the current Planning Scheme and planning considerations;
5. Based on the information provided in the Applicant's request to extend the Relevant Period of the Development Permit it is not considered that the request has sufficient merit, having regard to section 87(1) of the *Planning Act 2016*, to support an extension to the relevant period. Having regard to the *Planning Act 2016* and the Council's 2018 Planning Scheme, the request is unable to be supported.
6. The conditions of the material change of use approval nominate that where the adjoining land is utilised as a point of stormwater discharge, a consent agreement must be achieved by that landowner. Council would normally now require this consent to be part of a properly made application for a new development. No consent of use of the neighbouring land was provided in the extension application. It is questionable whether the extension application is properly made having regard to this issue

Rights of Appeal

The rights of applicants to appeal to 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.

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) 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
- (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.

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- (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.