

20 March 2024

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Dear Sir/Madam

**75 Port Douglas Road Pty Ltd -v- Douglas Shire Council –
Planning and Environment Court Appeal No. 762 of 2024**

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

We **enclose**, by way of service, a Notice of Appeal filed in Court on 20 March 2024.

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

Yours faithfully



RAYNE NELMS
PARTNER

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In the Planning and Environment Court
Held at: Brisbane

No. 762 of 2024

Between: **75 PORT DOUGLAS ROAD PTY LTD**
(ACN 630 681 926)

Appellant

And: **DOUGLAS SHIRE COUNCIL**

Respondent

NOTICE OF APPEAL

Filed on: 20 March 2024
Filed by: **MILLS OAKLEY**
Solicitors
Service address: Level 23, 66 Eagle Street, Brisbane Qld 4000
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Reference: 9380477

75 PORT DOUGLAS ROAD PTY LTD (ACN 630 681 926) 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 to refuse the Appellant's application made pursuant to section 86 of the *Planning Act 2016 (PA)* to extend the currency period of a development approval (**Extension Application**) for a development permit for a material change of use for 79 multiple dwellings (tourist), 127 accommodation premises (motel) and ancillary uses including gym, spa, relaxation lounge, retail, restaurant, cafe, bar, function centre, meeting rooms and administration facilities in respect of land located at 71-85 Port Douglas Road, Port Douglas and described as Lot 1 on SP150468 (**Development Approval**).

The Appellant seeks the following orders or Judgment:

- (a) the appeal be allowed;
- (b) the Extension Application be approved; and
- (c) such further or other orders as the Court deems appropriate.



NOTICE OF APPEAL

Filed on behalf of the Appellant

Form PEC-1

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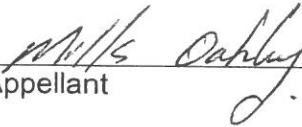
The grounds of appeal are:

1. The Land:
 - (a) is situated at 71-85 Port Douglas Road, Port Douglas;
 - (b) is described as Lot 1 on SP150468;
 - (c) has a total area of 20,670m²; and
 - (d) is located within the Tourist Accommodation Zone of the Respondent's Planning Scheme, 2018 Douglas Shire Council Planning Scheme 1.0 (**Planning Scheme**).
2. The Appellant is the owner of the land.
3. The Extension Application seeks an extension of 2 years to the currency period (until 30 January 2026).
4. The Development Approval was granted by way of decision notice dated 30 January 2008 under the Integrated Planning Act 1997 (**IPA**) and had a currency period of 4 years (until 30 January 2012) pursuant to section 3.5.21 of the IPA.
5. Oakstand Fund No 7 Pty Ltd (the owner of the land at the time), made a development application for operational works. On 20 January 2010, Council issued a decision notice approving the operational works development application subject to conditions. This approval had the effect of extending the Development Approval's currency period by 2 years to 20 January 2014.
6. Oakstand Fund No 7 Pty Ltd made a request to extend the currency period of the Development Approval. By way of Council's corrected advice request dated 29 July 2013, the Development Approval's currency period was extended for 4 years to 20 January 2018 (MCUC 041-07).
7. On 22 August 2017, Council approved a minor change to the Development Approval and extension to the currency period of the Development Approval for a further 4 years (until 30 January 2022) (MCUC 5148-2013).
8. The Development Approval benefited from the following extensions to its currency period which were granted under the PA by the Minister:
 - (a) extension notice 1 – declared that all development approvals that were current any time between 21 July 2020 to 31 October 2020 would receive a 6-month extension;
 - (b) extension notice 2 – declared that all development approvals that were current any time between 1 September 2021 to 30 September 2021 would receive a 6-month extension; and
 - (c) extension notice 3 – declared that all development approvals that were

current any time between 29 April 2022 to 24 June 2022 would receive a 12-month extension.

9. Since the Development Approval was current during the relevant period of extension notices 1, 2 and 3, it received the benefit of a total 24-month extension.
10. The currency period of the Development Approval was until 30 January 2024.
11. On or about 16 January 2024, the Appellant made the Extension Application to the Respondent.
12. By way of decision notice dated 27 February 2024, the Respondent refused the Extension Application.
13. The grounds of refusal contained in the Respondent's decision notice are stated below:
 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.*

14. The decision to refuse the Extension Application is erroneous, unreasonable, and unlawful having regard to the following:
 - (a) the Extension Application was made in accordance with s 86 of the PA with sufficient information to allow the Extension Application to be assessed and decided in accordance with s 87 of the PA;
 - (b) the approved land use remains consistent with the Tourist accommodation zoning of the land;
 - (c) the built form and associated parameters of the Development Approval are consistent with the requirements of the current planning scheme;
 - (d) there is no good town planning reason for the Development Approval to be the subject of a fresh assessment and decision;
 - (e) there is a need for the development associated with the Development Approval;
 - (f) the applicant has not acted on the Development Approval as it was pursuing an alternative development scheme for a resort complex which is the subject of Planning and Environment Court Appeal No. 2827 of 2021 (**Development Application**);
 - (g) a similar development over the land was publicly notified in 2020 as part of the Development Application and no properly made submissions were received;
 - (h) there are no significant adverse impacts associated with the Development Approval which would warrant a reassessment;
 - (i) there are planning and community benefits associated with implementing the Development Approval which includes providing employment opportunities in Port Douglas; and
 - (j) the Development Approval reflects the built form which Council advocated for in relation to the appeal the subject of the Development Application. It would be inconsistent with Council's own position to not extend the currency period of the Development Approval in those circumstances.
15. There is otherwise no sufficient ground to warrant refusal of the Extension Application.
16. The appeal should be allowed and the Extension Application should be approved.


Appellant

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.