

28 October 2021

Mills Oakley

ABN: 51 493 069 734

Your ref: MCUI2020_3211/1
Our ref: TLEB/RXNB/9288639

All correspondence to:
GPO Box 5247
BRISBANE QLD 4001
DX 40160 Brisbane Uptown

Chief Executive Officer
PO Box 723
Mossman Qld 4873
enquiries@douglas.qld.gov.au

Partner
Rayne Nelms +61 7 3010 8027
Email: rnelms@millsOakley.com.au

By Express Post and Email

Dear Sir / Madam,

Chiodo Corporation Operations Pty Ltd v Douglas Shire Council - Brisbane Planning and Environment Court Appeal No. 2827 of 2021

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

We **enclose**, by way of service, a Notice of Appeal filed in the Court on 28 October 2021.

Yours faithfully



RAYNE NELMS
PARTNER

encl.

No. of 2021

Appellant

Respondent

NOTICE OF APPEAL

Filed on: 28 October 2021
 Filed by: Mills Oakley
 Service address: Level 23, 66 Eagle Street, Brisbane Qld 4000
 Phone: (07) 3228 0400
 Fax: (07) 3012 8777
 Email: rnelms@millsoakley.com.au
 Reference: 9288639

CHIDO CORPORATION OPERATIONS PTY LTD (ACN 619 297 997) 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 decision contained in the Respondent's decision notice dated 5 October 2021 whereby the Respondent refused the Appellant's development application for a development permit for a material change of use for a resort complex (**Proposed Development**) in respect of land situated at 71-85 Port Douglas Road, Port Douglas and described as Lot 1 on SP150468 (**Development Application**) and seeks the following orders or judgment:

- a) the appeal be allowed;
- b) the Development Application be approved subject to conditions that are relevant to, but are not an unreasonable imposition on the Proposed Development or are reasonably required in respect of the Proposed Development;
- c) such further orders the Court deems appropriate.

The grounds of appeal are:

1. The land:
 - (a) is described as Lot 1 on SP150468 and is located at 71-85 Port Douglas Road, Port Douglas, Queensland;
 - (b) has a total area of 20,670m²; and
 - (c) is located in the Tourist Accommodation Zone of the Respondent's Planning Scheme, 2018 Douglas Shire Council Planning Scheme 1.0 (**Planning Scheme**).

NOTICE OF APPEAL

Filed on behalf of the Appellant

Form PEC-1

MILLS OAKLEY

Solicitors

Level 23, 66 Eagle Street

BRISBANE QLD 4000

Phone no. (07) 3228 0400

Fax no.(07) 3012 8777

Email: rnelms@millsoakley.com.au


Reference: 9288639

2. On or about 7 September 2020, the Appellant lodged the Development Application with the Respondent.
3. The Development Application was impact assessable under the Respondent's Planning Scheme.
4. The Development Application was publicly notified during the period of 13 May 2021 to 3 June 2021.
5. There were no properly made submissions received in respect of the Development Application during the public notification period.
6. The Department of State Development, Infrastructure, Local Government and Planning was triggered as a referral agency for the Development Application as a result of the proximity of the Proposed Development to:
 - (a) State transport infrastructure pursuant to Schedule 10, Part 9, Division 4, Subdivision 1, Table 1, Item 1 of the *Planning Regulation 2017* (Qld); and
 - (b) Transport corridors and future state transport pursuant to Schedule 10, Part 9, Division 4, Subdivision 2, Table 4, Item 1 of the *Planning Regulation 2017* (Qld).
7. On 21 May 2021, SARA notified conditions to be attached to any approval.
8. On 5 October 2021, the Respondent refused the Development Application on grounds of refusal set out in the Respondent's decision notice.
9. In the exercise of the Court's discretion, the Proposed Development should be approved having regard to the following:
 - (a) In respect of the first ground of refusal:
 - (i) The Proposed Development either complies with or can be conditioned to comply with the Strategic Intent 3.2.2.2 - *Reinforcing Douglas Shire's sense of place and identity*;
 - (ii) The Proposed Development does not represent over-scaled and over development of the subject site and has regard for the local context, character and topography of the site.
 - (b) In respect of the second ground of refusal:
 - (i) The Proposed Development either complies with or can be conditioned to comply with Strategic Framework: 3.7.1 - Theme 4 – *Strong communities and identity*;
 - (ii) The Proposed Development enhances the distinctive character and unique sense of place that represents Port Douglas.
 - (c) In respect of the third to the ninth grounds of refusal:
 - (i) The Proposed Development either complies with or can be conditioned to comply with the Tourist accommodation zone code through compliance with the purpose and overall outcomes or the performance outcomes of the code including, specifically:
 - (A) Overall outcomes OO(3)(a) to (f); and
 - (B) Performance criteria PO1, PO2, PO3, PO7 and PO9.
 - (ii) In compliance with the Purpose and Overall outcomes, the Proposed Development:
 - (A) will provide for short-term accommodation at a scale and density to service tourist needs;

- (B) will provide for tourist development of an appropriate scale that achieves an attractive built form which incorporates the character and natural attributes of the site and the surrounding area as integral features of the theme and design of the development;
 - (C) will facilitate opportunities for establishing tourist facilities and services within or adjacent to, tourist accommodation to complement the tourist accommodation and enhance the attractiveness of the tourist area;
 - (D) is designed to take into account the tropical climate by incorporating appropriate architectural elements and design features;
 - (E) incorporates landscaping of a high quality which contributes to the visual dominance of tropical vegetation and the local streetscape;
 - (F) will provide for community facilities, open space and recreational areas and appropriate infrastructure to support the needs of the local community.
- (iii) In compliance with the Performance outcomes:
- (A) The Proposed Development has an attractive built form which is in keeping with the character of the site and surrounding area.
 - (B) The height of the building and structures will not have a negative impact on the character of the area.
 - (C) The proposed setbacks will not have a negative impact on the character and amenity of the area.
 - (D) The proportions and scale of the Proposed Development will not have a negative impact on the character of the area and the local streetscape.
 - (E) The Proposed Development does not adversely affect the tropical, tourist and residential character and amenity of the area as a consequence of any traffic impacts.
 - (F) The Proposed Development includes ancillary services and facilities for the enjoyment of guests in terms of on-site car parking provision.
- (d) In respect of the tenth and eleventh grounds of refusal:
- (i) The Proposed Development either complies with or can be conditioned to comply with the Landscape values overlay code through compliance with the purpose and overall outcomes or the performance outcomes of the code including, specifically:
 - (A) Overall outcomes OO(2)(a) to (i); and
 - (B) Performance criteria PO3.
 - (ii) The Proposed Development is consistent with the prevailing landscape character of its setting as it is not visually dominant or intrusive but integrates into its surrounds through appropriate landscaping treatment.

- (iii) The Proposed Development has regard for its location in the scenic route buffer and view corridor area and does not have significant visual impacts on the setting and views as a result of its design which incorporates a scale, height and setbacks which are appropriate having regard to its context.
- (e) In respect of the twelfth ground of refusal:
 - (i) The Proposed Development either complies with or can be conditioned to comply with the Access, parking and servicing code through compliance with the purpose and overall outcomes or the performance outcomes of the code including, specifically:
 - (A) Overall outcomes OO(2)(a) to (f); and
 - (B) Performance criteria PO1.
 - (ii) The Proposed Development provides for sufficient onsite carparking.
 - (iii) The new vehicle access points of the Proposed Development do not conflict with the ultimate streetscape and character of the area and local character of the area.
- (f) In respect of the thirteenth ground of refusal there is no 'Vehicle Parking and Access code' in the Planning Scheme. If it is intended to be a reference to the Access, parking and servicing code, the Appellant says that the Proposed Development complies with or can be conditioned to comply with the code through compliance with the purpose and overall outcomes or the performance outcomes of the code including specifically
 - (i) Performance criteria PO1 of the Access, parking and servicing code;
 - (ii) the Proposed Development provides for sufficient onsite car parking onsite.
- (g) In respect of the fourteenth ground of refusal:
 - (i) The Proposed Development complies with or can be conditioned to comply with the Transport network overlay code through compliance with the purpose and overall outcomes or the performance outcomes of the code including, specifically Performance criteria PO4;
 - (ii) The Proposed Development does not compromise the intended role and function or safety and efficiency of major transport corridors.
- (h) In respect of the fifteenth to seventeenth grounds of refusal:
 - (i) The Proposed Development complies with or can be conditioned to comply with the Multiple dwelling, short term accommodation and retirement facility code through compliance with the purpose and overall outcomes or the performance outcomes of the code including, specifically:
 - (A) Overall outcomes OO(2)(a) to (e); and
 - (B) Performance criteria PO3 and PO14.
 - (ii) The Proposed Development will not adversely impact the intended form and character of the local area and immediate streetscape by proposing a considered built form.

- (iii) The Proposed Development facilitates casual surveillance to the street and provides a positive interface to the streetscape.
 - (iv) The Proposed Development is compatible with surrounding developments having regard to scale, bulk and streetscape patterns.
 - (i) In respect of the eighteenth ground for refusal the Proposed Development can be appropriately conditioned to overcome any non-compliance (which is not admitted) with the Strategic framework or assessment benchmarks that are relevant to the Proposed Development.
10. There are other relevant matters to support approval of the Proposed Development which include:
- (a) The Proposed Development will promote the indigenous cultural heritage of the area and employment opportunities, tourism ventures and cultural performance opportunities for the First Nation Peoples.
 - (b) The Proposed Development will provide a premium offering framed to highlight the quality and value available in respect of culture, unique nature and wildlife and pristine aquatic, coastal and rainforest attractions in the Port Douglas region.
 - (c) There is a need for the Proposed Development.
 - (d) The Proposed Development will provide for employment during construction and its operation.
 - (e) The Proposed Development will be economically beneficial and serve to:
 - (i) reinvigorate Port Douglas and generate tourism income in the local economy; and
 - (ii) create economic sustainability by dispersing tourism spending across regional Australia.
 - (f) The Proposed Development will promote the tropical tourism buzz and ensure that Port Douglas and the broader far north-Queensland region remains a premier tourist destination for international visitors and domestic travellers.
 - (g) The Proposed Development will improve the cultural, economic, physical and social wellbeing of the community.
 - (h) The Proposed Development provides for a well-considered design that maintains the unique environmental character, natural beauty, ecological processes and natural systems of the Port Douglas and Daintree region.
 - (i) The Proposed Development seeks to minimise the effects of development on the natural environment.
11. The appeal should be allowed, and the Development Application approved subject to reasonable and relevant conditions.


Mills Oakley
Solicitors for the Appellant
28 October 2021

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.