

2 May 2023

Enquiries: Daniel Lamond
Our Ref: MCUI 2023_5269/1 (1153614)
Your Ref: P82301

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

Morris Aviation Australia
C-/ Planz Town Planning Pty Ltd
PO Box 181
EDGE HILL QLD 4870

Dear Sir/Madam

**Development Application for Material Change of Use- Air Services (Helicopter base and
Caretakers accommodation)
At 35-39 Port Street PORT DOUGLAS and 23-33 Port Street Port Douglas
On Land Described as LOT: 11 SP: 273000 and LOT: 12 SP: 273000**

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

Please quote Council's application number: MCUI 2023_5269/1 in all subsequent correspondence relating to this development application.

Should you require any clarification regarding this, please contact Daniel Lamond on telephone 07 4099 9444.

Yours faithfully



For
Paul Hoyer
Manager Environment & Planning

encl.

- Decision Notice
 - Approved Drawing(s) and/or Document(s)
 - Reasons for Decision – non-compliance with assessment benchmarks, response to properly made submissions.
- Advice For Making Representations and Appeals (Decision Notice)
- Adopted Infrastructure Charges Notice
- Advice For Making Representations and Appeals (Infrastructure Charges)



Decision Notice

Approval (with conditions)

Given under s 63 of the Planning Act 2016

Applicant Details

Name: Morris Aviation Australia
Postal Address: C-/ Planz Town Planning Pty Ltd
PO Box 181
EDGE HILL QLD 4870
Email: info@planztp.com

Property Details

Street Address: 35-39 Port Street PORT DOUGLAS and 23-33 Port Street PORT DOUGLAS
Real Property Description: LOT: 11 SP: 273000 and LOT: 12 SP: 273000
Local Government Area: Douglas Shire Council

Details of Proposed Development

Development Permit: Material Change of Use- Air Services (Helicopter base) and Caretakers accommodation

Decision

Date of Decision: 26 April 2023
Decision Details: Approved (subject to conditions)

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

Copies of the following plans, specifications and/or drawings are enclosed.

Drawing	Reference	Date
Site Plan	JB Design plan, Sheet WD02, Issue C	30 June 2021
Floor Plan- Office/ Hangar	JB Design plan, Sheet WD03, Issue B	25 June 2021
Elevations	JB Design plan, Sheet WD04,	25 June 2021

	Issue B	
Elevations	JB Design plan, Sheet WD05, Issue B	30 June 2021
Caretakers Residence	JB Design plan, Sheet WD05, Issue B	25 June 2021

Assessment Manager Conditions & Advices

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.

Operations Limitation

3. A maximum of one (1) Airbus H130 (also identified as a Eurocopter EC130B4 & T2 Helicopter) and up to one (1) Robinson R44 helicopter may land and take off each hour between the hours of 8am to 6pm with the maximum number of daily flights not exceeding 11 and daily movements to and from the site not exceeding 22.
 Or:
 Up to three (3) Robinson R44 helicopters may land and take off each hour between the hours of 8am to 6pm providing the maximum number of flights per day does not exceed 11 and the maximum number of movements does not exceed 22.

Machine Type

4. The applicant must ensure that the only helicopters taking off and landing at the site are:
 - a. Airbus H130 (also identified as an Eurocopter EC130B4 & T2 helicopter);
 - b. Robinson 44; or
 - c. Other type/model of helicopters with certified equivalent noise levels that are endorsed by the Chief Executive Officer prior to arriving at the site.

Flight Path

5. The approach flight path must be amended so that the helicopters do not traverse the watercourse at Dickson Inlet other than to cross the watercourse. Prior to the issue of a Development Permit for Building Work a new flight path approach and departure plan must be endorsed by the Chief Executive Officer.

Take-off and Landing

6.
 - a. The site must be operated with one-way pads;
 - b. No departures to the East of the site are to occur; and
 - c. Helicopters must fly at a minimum altitude of 50 metres over mangroves.

Helicopter Operation

7.
 - a. The applicant must ensure that the place of take-off and landing meets the standards of the Civil Aviation Advisory Publication CAAP 92-2(2) dated February 2014 or any later version; and
 - b. Landing and take-off must be undertaken in accordance with the Fly Neighbourly Guide and in particular helicopters must reduce speed, observe low noise speed and descent settings, avoid sharp maneuvers and use high take-off and descent profiles.

Noise

8.
 - a. The applicant/owner is to ensure that noise (other than noise arising from the take-off, flight or landing of helicopters) must not emanate from the site to a degree that would, in the opinion of the Chief Executive Officer, create an environmental nuisance having regards to the provision of the Environmental Protection Act 1994, Environmental Protection Regulations 2019 and Environmental Protection (Noise) Policy 2019.
 - b. Noise arising from take-off, flight or landing of helicopters on the site must comply with the noise level criteria specified in section 3 of the Noise Testing Report dated 13 July 2022 prepared by Renzo Tonin and Associates.

Use Limitation

9.
 - a. Maintenance activity on site must be limited to maintenance for the safe operation of helicopters, with the exception of making a helicopter airworthy for the purpose of flying to a maintenance facility.
 - b. Use of the site for flight training is not permitted.
 - c. The site may be used for emergency flights in accordance with the Planning Act 2016 and the Disaster Management Act 2003, in which conditions 3,4,5,6,7 and 8 may not apply.
 - d. The conditions of this development approval must be included in a site induction for all pilots operating a helicopter to and from the site.

Water Supply

10. The site must be connected to Councils reticulated water supply via in accordance with the requirements of the FNQROC Development Manual.

Sewer Connection

11. The site must be connected to the private sewer main which terminates within Lot 12 on SP273000.

Vehicle Parking and Access

12. The site must provide for eight (8) car parking spaces as detailed on the approved plans. In addition one (1) covered space must be provided for the caretakers accommodation. All car parking facilities must be designed and constructed in accordance with Australian

Standard AS1428 *Design for Access and Mobility* and Australian Standard AS2890.1 *Parking Facilities- Off Street Car Parking*. All parking, driveway and vehicular maneuvering areas must be imperviously sealed, drained and line marked and maintained at all times.

Fuel Storage

13. a. All fuel storage must be secured and bunded and comply with AS1940:2017 *Storage and Handling of Flammable and Combustible Materials*.
- b. Fuel storage in excess of 10,000 litres is not permitted on the site.

Sediment and Erosion Control

14. All earthworks must be carried out in accordance with section CP1.13 and D5 of the FNQROC Development Manual and must comply with the following:
 - a. A copy of the contractors Erosion and Sediment Control Plan (ESCP) is to be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Building Work.
 - b. Measures nominated in the ESCP must be implemented prior to commencement of any earthworks.
 - c. The ESC Plan must address the Institution of Engineers Australia Guidelines for Soil Erosion and Sediment Control and the Environment Protection (Water) Policy and Clauses CP1.06, CP1.13 and D5.10 of Council's FNQROC Development Manual.

Landscaping

15. The development must be landscaped in accordance with a landscaping plan prior to commencement of use. The plan must;
 - a. Be prepared by a suitably qualified and experienced landscape designer and in conjunction with the Biotropica PLA21.12.01 Environmental Constraints Report dated January 2022;
 - b. Be developed in accordance with Planning Scheme Policy SC6.7.
 - c. Provide for remediation of areas on site currently over taken by weeds and pest species.
 - d. Comply with the recommendation from the Biotropica report to revegetate the area on site between the hardstand and the inlet in order to create additional habitat.

Prior to the issue of a Development Permit for Building Work the landscape plan must be endorsed by the Chief Executive Officer.

Finished floor levels

16. The finished floor level for the buildings inclusive of the fuel storage area, hangar and Caretaker's Accommodation must be no less than 3.471m AHD.

Caretaker's Accommodation Court Yard

17. Provide a section plan of the north-eastern boundary relevant to the caretaker's accommodation courtyard and building. The section must clearly demonstrate the relationship between the courtyard paving, caretaker's accommodation building, top of bank, toe of batter and detail the location of the property boundary. Any proposal to retain the batter or affect the batter with any earthworks must be detailed. The section or set of

sections must be submitted and endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Building Work.

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*.

Properly Made Submissions

Name of Principal Submitter	Residential or Business Address	Electronic Address
Kevin Eldridge	9/9 Craven Close, Port Douglas QLD 4877	kevin@kstartours.com.au
Kate Jordan	3/15 Craven Close, Port Douglas QLD 4877	ktj1506@gmail.com
Roger Moir	6/32 Mudlo Street, Port Douglas QLD 4877	roger@moirassociates.com.au
Michael and Helen Gwilliams	91 Davidson Street, Port Douglas QLD 4877	info@mango-tree-port-douglas.com
Nicola Hatt	6/48 Mudlo Street, Port Douglas QLD 4877	nikhatt@hotmail.com
Matthew Wild	10/9 Craven Close, Port Douglas QLD 4877	matthew@matthewwild.com
Tina Gonsalves	10/9 Craven Close	info@artistshouses.com
David and Mary McFadden	2/3 Port Street, Port Douglas QLD 4877	mrydvd@bigpond.com
Shane McKenzie	8/9 Craven Close, Port Douglas QLD 4877	tahmon7@gmail.com
Tom Quealy	1-7 Craven Close, Port Douglas QLD 4877	info@coralbeachlodge.com
Yvonne Lonsdale	77 Davidson Street, Port Douglas QLD 4877	
Douglas Sustainability Group	PO Box 762, Mossman QLD 4873	sustainabilitydouglas@gmail.com

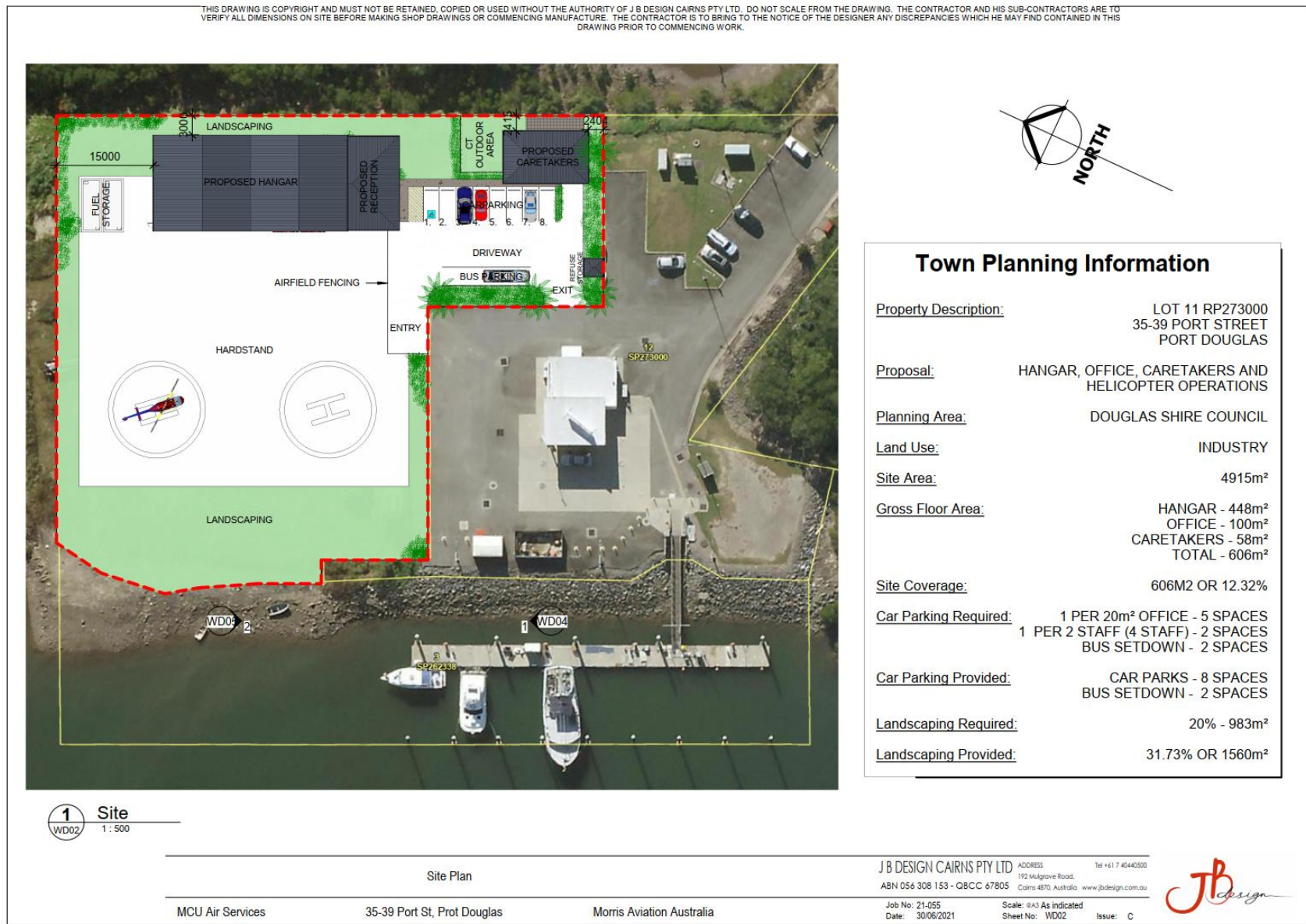
Richard Northover	11/9 Craven Close, Port Douglas QLD 4877	richard@tropicdesign.com.au
Andrea Collisson	2-6 Reynolds Rd, Oak Beach QLD 4877	chillinutmeg@yahoo.com.au
Charlotte Richardson	5/9 Craven Close, Port Douglas QLD 4877	cmrichardson111@gmail.com
Francis Gonsalves	6/9 Craven Close, Port Douglas QLD 4877	gonsalvesfrank20@gmail.com
Jim Doyle	3/9 Craven Close, Port Douglas QLD 4877	jimdoyle@hotmail.com
Orazia Cavallaro	PO Box 98, Mossman QLD 4873	grace@kentlen.com.au
Port Douglas Yacht Club	PO Box 256, Port Douglas QLD 4877	ed@masongreensolicitors.com.au
Roisin Allen	10 Daintree Horizon Drive, Mossman QLD 4877	roisin.a@internode.on.net
Rosey Cummings	33 Oak Street, Oak Beach QLD 4877	kernotsh@bigpond.net.au
Sarah Williams	9 Craven Close, Port Douglas QLD 4877	balconyapartment@yahoo.com.au
Graham & Mardi Colrain	4/9 Craven Close, Oak Beach QLD 4877	gramardi@bigpond.com
Darren Plunkett	63-65 Davidson Street	dplun@tpg.com.au
Paul Gilby	608/228 The Avenue, Parkville, VIC 3052	paulrgilby@gmail.com
Dugald Macfarlane O'Hare	6/13 Craven Close, Port Douglas QLD 4877	Dug.Ohare@hfgplc.com
Grant and Karen Harrisson	13 Craven Close, Port Douglas QLD 4877	karenharrisson7@gmail.com
Jason Moore	47-49 Davidson Street, Port Douglas QLD 4877	jason@freestyleportdouglas.com.au
Mandy Stephens	1/60 Mudlo Street, Port Douglas QLD 4877	mandystephens088@gmail.com
Maddy Keeble	60 Mudlo Street, Port Douglas QLD 4877	maddykeeble@live.com.au
Shane Baisden	9 Craven Close, Port Douglas QLD 4877	shane@baisden.net

Rights to make Representations & Rights of Appeal

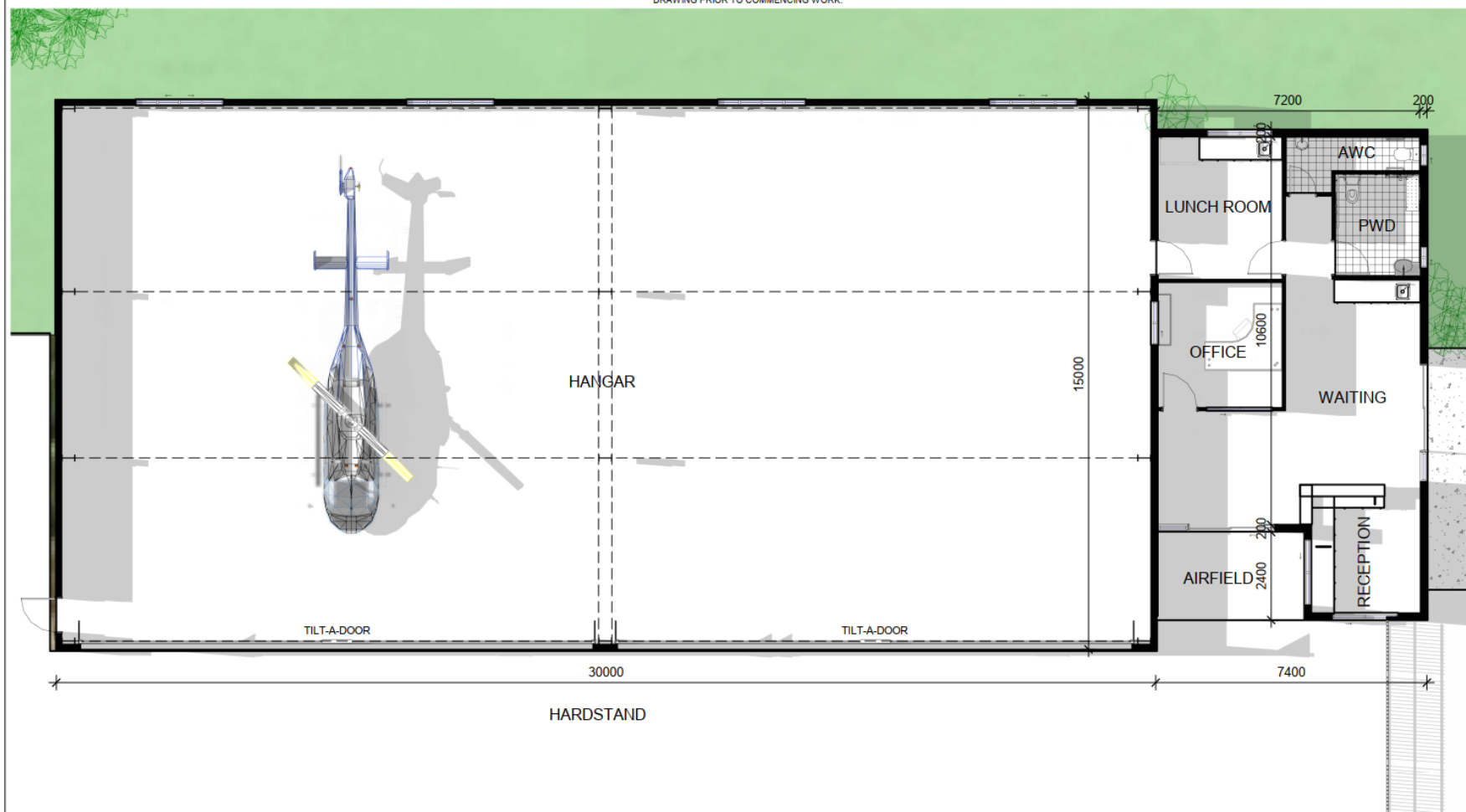
The rights of applicants to make representations and rights to appeal to a Tribunal or the Planning and Environment Court against decisions about a development application are set out in Chapter 6, Part 1 of the *Planning Act 2016*.

A copy of the relevant appeal provisions are attached.

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



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1 Ground Floor
WD03 1:100

Floor Plan - Office / Hangar

MCU Air Services

35-39 Port St, Port Douglas

Morris Aviation Australia

J B DESIGN CAIRNS PTY LTD
ABN 056 308 153 - QBCC 67805

ADDRESS
192 Mulgrave Road,
Cairns 4870, Australia www.jbdesign.com.au

Tel +61 7 40440500

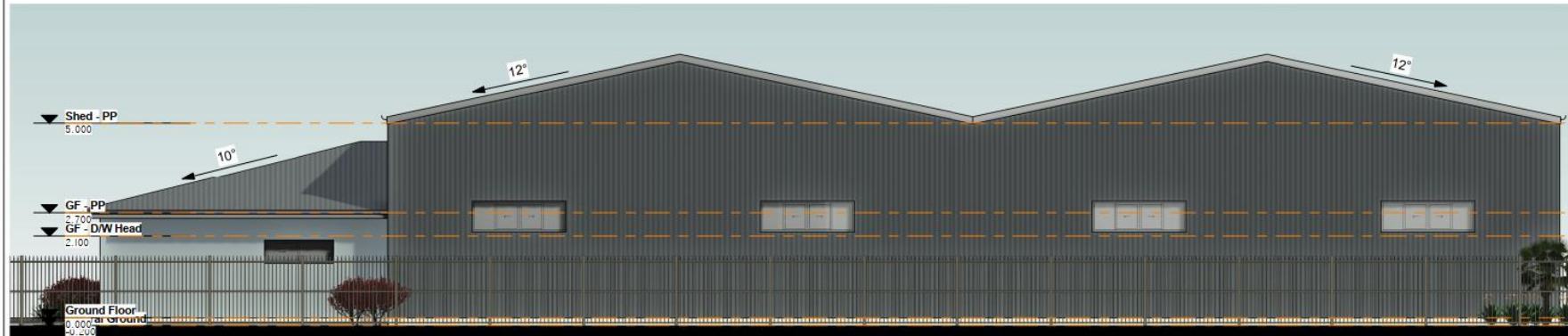
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Sheet No: WD03

Issue: B

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2 East
WD04 1:100



1 South
WD04 1:100

Elevations

MCU Air Services

35-39 Port St, Port Douglas

Morris Aviation Australia

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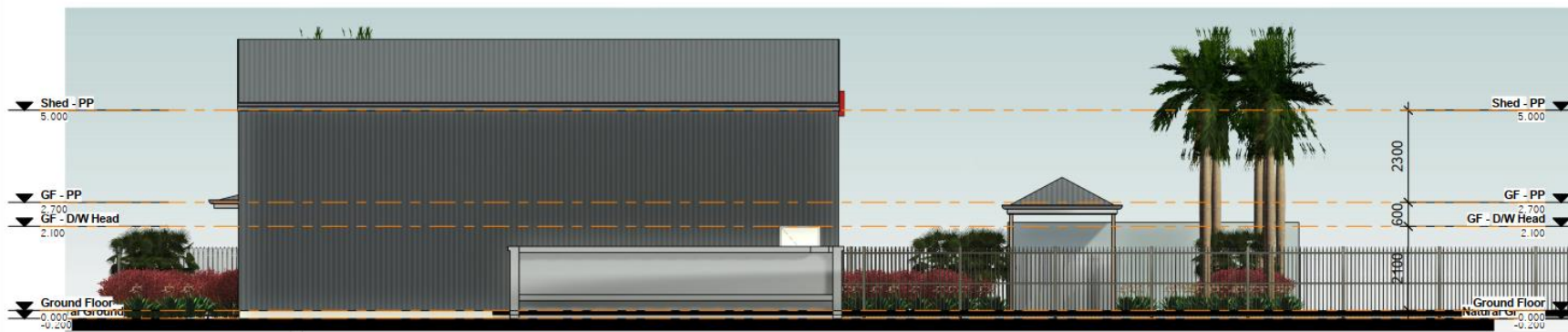
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Date: 25/06/2021

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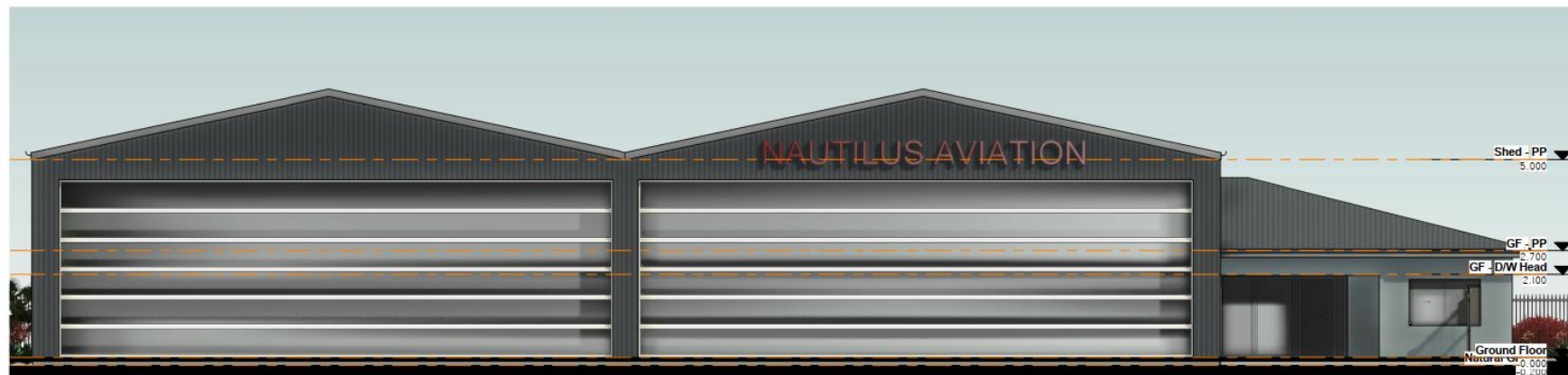
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2 North
WD05 1:100



1 West
WD05 1:100

Elevations

MCU Air Services

35-39 Port St, Port Douglas

Morris Aviation Australia

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ABN 056 308 153 - QBCC 67805 Cairns 4870, Australia www.jbdesign.com.au

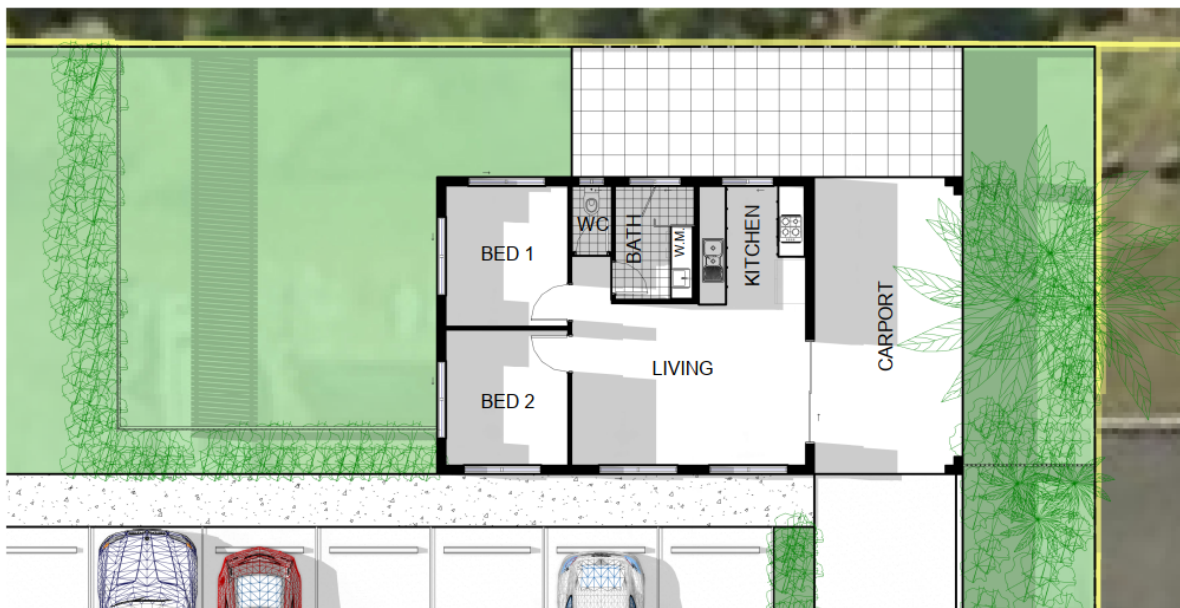
Job No: 21-055
Date: 30/06/2021

Scale: B3 1:100
Sheet No: WD05

Issue: C

JB design

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1 Ground Floor - Caretakers
WD06 1:100

Caretakers Residence			J B DESIGN CAIRNS PTY LTD		ADDRESS	Tel +61 7 40440500
MCU Air Services			ABN 056 308 153 - QBCC 67805		192 Mulgrave Road, Cairns 4870, Australia	www.jbdesign.com.au
35-39 Port St, Prot Douglas			Job No: 21-055		Scale: A3 1:100	Issue: B
Morris Aviation Australia			Date: 25/06/2021		Sheet No: WD06	



Reasons for Decision

1. The reasons for this decision are:
 - a. Sections 60, 62 and 63 of the *Planning Act 2016*;
 - b. to ensure the development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme Version 1.0; and
 - c. to ensure compliance with the *Planning Act 2016*.
2. Findings on material questions of fact:
 - a. the development application was properly lodged to the Douglas Shire Council 14 February 2023 under section 51 of the *Planning Act 2016* and Part 1 of the Development Assessment Rules;
 - b. the development application contained information from the applicant which Council reviewed together with Council's own assessment against the 2017 State Planning Policy and the 2018 Douglas Shire Planning Scheme Version 1.0 in making its assessment manager decision.
 - c. 31 properly made submissions were received.
3. Evidence or other material on which findings were based:
 - a. the development triggered assessable development under the Assessment Table associated with the Industry Zone Code;
 - b. Council undertook an assessment in accordance with the provisions of sections 60, 62 and 63 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 and address the grounds raised in the submissions.
 - ii. The noise impact report accompanying the development application demonstrates that the proposal will not create an unreasonable impact on the amenity of the surrounding sensitive land uses subject to compliance with its recommendations. The suite of conditions adequately regulates and minimises noise impacts from the site and the operation of helicopters.
 - iii. The potential for detrimental impacts on flora and fauna at the site and surrounding the site is limited and is minimized by the suite of conditions imposed and the nature of the proposal itself. The recommendations made by the environmental constraints report which are made conditions of approval represent a net environmental gain for the site and immediate area surrounding given the site it is vacant with no vegetation or habitat.
 - iv. The site is an appropriate location for the use and all relevant material has been provided in the development application in support of this. Namely, the application was accompanied by a noise impact assessment and an environmental constraints report. Council must assess and decide an application based on its merit and not a perception of future higher and better land uses.
 - v. Safety of the public and patrons at the site and surrounding the site is regulated by the Civil Aviation Safety Authority (CASA) and is a matter for the applicant. All land uses are inclusive of a level of risk. Fuel storage is in accordance with the

relevant Australian Standard.

- vi. Any proposed change to frequency by the applicant will trigger a change application which is publicly notifiable. Council must assess and decide any change application and has the ability to refuse the application if it does not meet the necessary benchmarks.
- vii. The proposal services and strengthens the tourism industry in the locality and advances the purpose Port Douglas/ Craiglie Local Plan Code.
- Viii. The proposal achieves compliance with the strategic framework within the 2018 Douglas Shire Planning Scheme.

Assessment Benchmarks

Table 1. Benchmarks applying to the development.

Benchmarks applying for the development	Benchmark reference
Strategic Framework Industry zone code Coastal environment overlay code Flood and storm tide hazard overlay code Natural areas overlay code Transport network overlay code Access, parking and servicing code Environmental performance code Filling and excavation code Infrastructure works code Landscaping code	Douglas Shire Planning Scheme 2018 (V1.0) in effect 2 January 2018

Compliance with Assessment Benchmarks

The development complies with the benchmarks as per the summary provided in Reasons For Decision in particular Item 3c.

Summary of Matters Raised in Submissions and Response in Making a Decision.

Noise Nuisance

The primary concern raised in the submissions was objection due to perceived noise nuisance impacts on sensitive land uses being houses, dwelling units and accommodation premises'. The frequency, duration, unique pitch and effect on health were nominated as common themes within the submissions relating to noise nuisance.

Most submissions noted that helicopters must take-off into the wind, and that the prevailing wind at the site is a south-easterly. To the south and east of the site lies Craven Close where a concentration of sensitive land uses exists. Mudlo Street is also close to the site with a number of residences established.

Response

The acoustic assessments prepared by Renzo Tonin and Associates submitted in support of the application demonstrate that the helicopter operations to and from the site create the same impact on neighbouring sensitive land uses as the helicopter operation in Mission Beach approved by the Planning and Environment Court on 28 February 2022 (Court Reference No. 43 of 2021).

During the noise testing trials held between the applicant and Council, the applicant demonstrated that they can take-off facing Craven Close, but then immediately bank south (right turn) while elevating. This was demonstrated three times to Council officers on site on 8 September 2022 where conditions were a SSE 9km/h (4.86 knot) wind. This means that the helicopters are essentially taking-off into the wind but are not moving forward toward the east past the property boundary, meaning they do not need to travel toward Craven Close past their boundary.

Officers obtained advice from a licensed helicopter pilot, unaffiliated with Nautilus Aviation, to review the proposed flight paths and claims made by the applicant and it was determined that the proposed in-flight impact mitigation measures were easily achievable in terms of take-off and landing. If wind speed increases, the general rule is that the helicopter can elevate faster without the need to travel forward upon take-off.

A condition has been imposed on the approval to require that the helicopters do not traverse East of the site and the applicant has agreed to comply with this and has demonstrated this is safe and practical even in periods of very low wind.

A condition has been imposed to require a new flight path plan to be submitted for endorsement by the Chief Executive Officer which changes the approach so that the arrivals path does not follow Packers Creek over the Yacht Club. The condition pushes the arrivals path further east over the mangroves limiting impact on the Yacht Club patrons and the Dickson Inlet and Packers Creek users. Other conditions regulating noise impacts include the requirement for pilots to be inducted with the set of conditions on the development approval, limited hours of operation and compliance with the fly neighbourly guide.

Impact on Ecology

The majority of submissions nominated the environmental impact on ecology at the site and surrounding area as a point of concern. The general theme in the submissions is that there will be an impact due to downdraft and noise on flora and fauna. The other general theme in the submissions relating to potential impact on ecology was the risk imposed by fuel storage spill.

Response

The development application is inclusive of an Environmental Constraints Report which included an ecology survey of flora and fauna. The report concluded that the site has no ecological value as it is made up of a gravel substrate built from imported fill with no vegetation existing. This provides no habitat. The construction of the site will have no material impact on the ecological values of the site or surrounding area as long as the general environmental duty is complied with. Conditions have been imposed to require that the site is remediated in unused areas and that a sediment and erosion control plan is prepared and established.

Down-draught from a helicopter can have impacts on the mangrove ecosystem. Nesting birds can be affected for example. This was raised as a concern given the site is constrained on most sides by mangroves. Officers discussed this with the author of the ecology report. The flight path allows for relatively minimal exposure of down draught to the mangrove community but for elimination of doubt, a condition has been imposed to require that before crossing the mangroves, helicopters must fly at a minimum altitude of 50 metres. This is the altitude where downdraught ceases to have effect. Noise is not a particular concern for ecologists in the waterway particularly as it is heavily used by power boats.

Fuel storage and the potential for spills was nominated as a risk to the environment surrounding the site. The applicant proposes to limit fuel storage on site to 10,000 litres at a time. This is because the two helicopter model types use different fuel from one another, therefore 5000 litres of

each type is considered practical. The fuel is proposed to be stored within industry standard bunded and sealed tanks which comply with the Australian Standard for fuel storage. Potential impacts are considered negligible however a condition has been imposed to regulate the storage of the fuels and the volume of the fuel stored on site.

Inappropriate Location

Many submissions stated that a better use for the land is marine industry as it is the last vacant waterfront site on the river and is relatively unconstrained. Claims were made about the need for a slip way for vessel maintenance in the event that the existing facility ceases to operate. The submitters nominated that the site should be left vacant for this use as it provides greater public benefit.

The existing Nautilus Aviation sites known as Paddy's Air Park and the Sheraton Mirage pad were nominated by the submitters as appropriate areas where the use should remain.

Response

The site remains in private ownership and dictation by Council for a particular land use is unreasonable.

The assessment of a development application is limited to the assessment of the proposed use at the proposed site, not an assessment of suitability of other sites within the locality as a cost-benefit weigh-up. Council must assess the merits of the proposal at the site that the applicant has applied over.

Heightened Risk to Human Safety

Danger to patrons of the use was a common theme across the submissions in the event of a helicopter crash. This was nominated due to the volume of fuel proposed to be kept on site (10,000L) and the co-location of the use with the existing fuel station adjoining the land.

Response

It is perceived that the risk is higher here than at other locations because of the volume of fuel being stored on site in close proximity to the pads and the nature of the adjoining land use being a fuel station. The Civil Aviation Safety Authority (CASA) regulates helicopter flying and heliports. The site is separated by considerable distance to residences and the landing and departure routes do not fly over residences. Fuel stations are usually located alongside major highways subject to often thousands of vehicle and heavy truck movements per day. The Australian Transport Safety Bureau (ATSB) statistics for all of Australia show that between 2010-2019 commercial joyflight/sightseeing charters recorded no fatal accidents. The increase in risk to patrons cannot be substantiated.

Potential for Change to the Approval

There is a perception among the submissions that once the approval for the use is obtained, the applicant will come back to Council to increase the number of daily flights and hours of operation which will have detrimental impacts on the amenity of the surrounding sensitive land uses.

Response

Any change to the frequency of the operation outside the conditions imposed constitutes a trigger for a formal change application to be considered by Council. This would not constitute a minor change. In accordance with the *Planning Act 2016*, this will require public notification to be

undertaken by the applicant. Council has the opportunity to consider all impacts this would cause and Council has the ability to refuse the application upon technical review.

Impact on Amenity to residents of yachts in Dickson Inlet and Packers Creek

Unreasonable Impacts from helicopters to residents on yachts in the waterway adjacent to the site was mentioned within a number of submissions. Noise nuisance and down draught were the two main concerns. No submitters claimed to be residents of the waterway.

Response

Living in a vessel is not a land use. Vessels in Packers Creek and Dickson Inlet are unable to be used lawfully as a residence. The Council controlled pile moorings are regulated by Local Law No. 1 which does not allow permanent occupation. Outside the use of the pile moorings unlawful anchorage is a known occurrence further upstream. However, the frequency and duration of the helicopter operations allow for a relatively low impact on vessels in the waterway. The heat of the day is more likely to drive people to land than 22 helicopter movements in peak season.

Planning Act 2016
Chapter 3 Development assessment

[s 74]

Division 2 Changing development approvals

Subdivision 1 Changes during appeal period

74 What this subdivision is about

- (1) This subdivision is about changing a development approval before the applicant's appeal period for the approval ends.
- (2) This subdivision also applies to an approval of a change application, other than a change application for a minor change to a development approval.
- (3) For subsection (2), sections 75 and 76 apply—
 - (a) as if a reference in section 75 to a development approval were a reference to an approval of a change application; and
 - (b) as if a reference in the sections to the assessment manager were a reference to the responsible entity; and
 - (c) as if a reference in section 76 to a development application were a reference to a change application; and
 - (d) as if the reference in section 76(3)(b) to section 63(2) and (3) were a reference to section 83(4); and
 - (e) with any other necessary changes.

75 Making change representations

- (1) The applicant may make representations (*change representations*) to the assessment manager, during the applicant's appeal period for the development approval, about changing—
 - (a) a matter in the development approval, other than—
 - (i) a matter stated because of a referral agency's response; or

-
- (ii) a development condition imposed under a direction made by the Minister under chapter 3, part 6, division 2; or
 - (b) if the development approval is a deemed approval—the standard conditions taken to be included in the deemed approval under section 64(8)(c).
- (2) If the applicant needs more time to make the change representations, the applicant may, during the applicant's appeal period for the approval, suspend the appeal period by a notice given to the assessment manager.
- (3) Only 1 notice may be given.
- (4) If a notice is given, the appeal period is suspended—
- (a) if the change representations are not made within a period of 20 business days after the notice is given to the assessment manager—until the end of that period; or
 - (b) if the change representations are made within 20 business days after the notice is given to the assessment manager, until—
 - (i) the applicant withdraws the notice, by giving another notice to the assessment manager; or
 - (ii) the applicant receives notice that the assessment manager does not agree with the change representations; or
 - (iii) the end of 20 business days after the change representations are made, or a longer period agreed in writing between the applicant and the assessment manager.
- (5) However, if the assessment manager gives the applicant a negotiated decision notice, the appeal period starts again on the day after the negotiated decision notice is given.

76 Deciding change representations

- (1) The assessment manager must assess the change representations against and having regard to the matters that

- must be considered when assessing a development application, to the extent those matters are relevant.
- (2) The assessment manager must, within 5 business days after deciding the change representations, give a decision notice to—
- (a) the applicant; and
 - (b) if the assessment manager agrees with any of the change representations—
 - (i) each principal submitter; and
 - (ii) each referral agency; and
 - (iii) if the assessment manager is not a local government and the development is in a local government area—the relevant local government; and
 - (iv) if the assessment manager is a chosen assessment manager—the prescribed assessment manager; and
 - (v) another person prescribed by regulation.
- (3) A decision notice (a *negotiated decision notice*) that states the assessment manager agrees with a change representation must—
- (a) state the nature of the change agreed to; and
 - (b) comply with section 63(2) and (3).
- (4) A negotiated decision notice replaces the decision notice for the development application.
- (5) Only 1 negotiated decision notice may be given.
- (6) If a negotiated decision notice is given to an applicant, a local government may give a replacement infrastructure charges notice to the applicant.

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.

- (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.

2 May 2023

Enquiries: Daniel Lamond
Our Ref: MCUI 2023_5269 (1153614)
Your Ref: P82301

Morris Aviation Australia
C-/ Planz Town Planning Pty Ltd
PO Box 181
EDGE HILL QLD 4870

Dear Sir/Madam

**Adopted Infrastructure Charge Notice
For Development Application for Material Change of Use- Air Services (Helicopter base) and
Caretakers Accommodation
At 35-39 Port Street PORT DOUGLAS, 23-33 Port Street PORT DOUGLAS
On Land Described as LOT: 11 SP: 273000, LOT: 12 SP: 273000**

Please find attached the Adopted Infrastructure Charges Notice issued in accordance with section 119 of the *Planning Act 2016*.

The amount in the Adopted Infrastructure Charges Notice has been calculated according to Council's Adopted Infrastructure Charges Resolution.

Please also find attached extracts from the Act regarding the following:

- your right to make representations to Council about the Adopted Infrastructure Charges Notice; and
- your Appeal rights with respect to the Adopted Infrastructure Charges Notice.

Please quote Council's application number: MCUI 2023_5269 in all subsequent correspondence relating to this matter.

Should you require any clarification regarding this, please contact Daniel Lamond on telephone 07 4099 9444.

Yours faithfully



**For
Paul Hoyer
Manager Environment & Planning**

encl.

- Adopted Infrastructure Charges Notice
- Rights to Make Representations and Appeals Regarding Infrastructure Charges

Adopted Infrastructure Charges Notice

DOUGLAS SHIRE COUNCIL		2018 Douglas Shire Planning Scheme version 1.0 Applications				
ADOPTED INFRASTRUCTURE CHARGES NOTICE						
Morris Aviation Australia DEVELOPERS NAME		0 ESTATE NAME	0 STAGE			
23-33 Port Street and 35-39 Port Street STREET No. & NAME		Port Douglas SUBURB	11SP273000 and 12SP273000 LOT & RP No.s			
Air Services and Caretakers Accommodation DEVELOPMENT TYPE		MCUI2023_5269 COUNCIL FILE NO.	157832 PARCEL No.			
1148956 DSC Reference Doc. No.		1 VERSION No.	6 VALIDITY PERIOD (year)			
Payment before commencement of use for MCU						
Infrastructure Charges as resolved by Council at the Ordinary Meeting held on 23 February 2021 (Came into effect on 1 March 2021)						
Proposed Demand	Charge per Use	\$ Rate	Floor area/No.	Amount	Amount Paid	Receipt Code & GL Code
Residential Caretakers_accommodation	\$_per_2_bedroom_dwelling	20,795.09	1	\$20,795.09		
Industry Transport_Depot	\$_per_m²_GFA	51.63	541	\$27,931.83		
Total Demand				\$48,726.92		
Credit						
Existing land use						
3 or more bedroom dwelling 1 lot	\$_per_3_or_more_bedroom_dwelling	25,314.98	1	\$25,314.98		
Total Credit				\$25,314.98		
Required Payment or Credit				TOTAL	\$23,411.94	
Prepared by	D Lamond		29-Mar-23	Amount Paid		
Checked by	N Beck		29-Mar-23	Date Paid		
Date Payable	MCU - prior to the commencement of use					
Amendments			Date	29-Mar-23	Receipt No.	
					Cashier	

Note:
The Infrastructure Charges in this Notice are payable in accordance with Sections 119 and 120 of the *Planning Act 2016* as from Council's resolution from the Ordinary Meeting held on 23 February 2021.

Charge rates under the Policy are subject to indexing.
Any Infrastructure Agreement for trunk works must be determined and agreed to prior to issue of Development Permit for Operational Work.

Charges are payable to: Douglas Shire Council. You can make payment at any of Council's Business Offices or by mail with your cheque or money order to Douglas Shire Council, PO Box 723, Mossman QLD 4873. Cheques must be made payable to Douglas Shire Council and marked 'Not Negotiable.' Acceptance of a cheque is subject to collection of the proceeds. Post dated cheques will not be accepted.

Any enquiries regarding Infrastructure Charges can be directed to the Development & Environment, Douglas Shire Council on 07 4099 9444 or by email on enquiries@douglas.qld.gov.au

Subdivision 5 Changing charges during relevant appeal period

124 Application of this subdivision

This subdivision applies to the recipient of an infrastructure charges notice given by a local government.

125 Representations about infrastructure charges notice

- (1) During the appeal period for the infrastructure charges notice, the recipient may make representations to the local government about the infrastructure charges notice.
- (2) The local government must consider the representations.
- (3) If the local government—
 - (a) agrees with a representation; and
 - (b) decides to change the infrastructure charges notice;the local government must, within 10 business days after making the decision, give a new infrastructure charges notice (a *negotiated notice*) to the recipient.
- (4) The local government may give only 1 negotiated notice.
- (5) A negotiated notice—
 - (a) must be in the same form as the infrastructure charges notice; and
 - (b) must state the nature of the changes; and
 - (c) replaces the infrastructure charges notice.
- (6) If the local government does not agree with any of the representations, the local government must, within 10 business days after making the decision, give a decision notice about the decision to the recipient.
- (7) The appeal period for the infrastructure charges notice starts again when the local government gives the decision notice to the recipient.

126 Suspending relevant appeal period

- (1) If the recipient needs more time to make representations, the recipient may give a notice suspending the relevant appeal period to the local government.
- (2) The recipient may give only 1 notice.
- (3) If the representations are not made within 20 business days after the notice is given, the balance of the relevant appeal period restarts.
- (4) If representations are made within the 20 business days and the recipient gives the local government a notice withdrawing the notice of suspension, the balance of the relevant appeal period restarts the day after the local government receives the notice of withdrawal.

Division 3 Development approval conditions about trunk infrastructure

Subdivision 1 Conditions for necessary trunk infrastructure

127 Application and operation of subdivision

- (1) This subdivision applies if—
 - (a) trunk infrastructure—
 - (i) has not been provided; or
 - (ii) has been provided but is not adequate; and
 - (b) the trunk infrastructure is or will be located on—
 - (i) premises (the *subject premises*) that are the subject of a development application, whether or not the infrastructure is necessary to service the subject premises; or
 - (ii) other premises, but is necessary to service the subject premises.

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
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 - (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
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- (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.

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 - (b) succinctly states the grounds of the appeal.
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- (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.
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- (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
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- (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—
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- (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.