



Our Ref: LBS:180105

9 October 2018

Chief Executive Officer
Douglas Shire Council
PO Box 723
MOSSMAN QLD 4873

By Email: enquiries@douglas.qld.gov.au

**THOMSON & ORS v DOUGLAS SHIRE COUNCIL & ANOR
CAIRNS APPEAL NO 181 OF 2018**

We act for the appellants.

Pursuant to Chapter 6, Part 1, section 230(3)(a) of the *Planning Act 2016* we **enclose** by way of service Notice of Appeal 181 of 2018.

Yours faithfully
Miller Bou-Samra Lawyers

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In the Planning and Environment Court
Held at: CAIRNS

No 18 of 2018

Between:	DARREN THOMSON, PHILLIP WALKER, PAUL VOERMAN, MARK NORMAN, BERNIE LEEN	Appellants
And:	DOUGLAS SHIRE COUNCIL	Respondent
And:	HOMELESS ANIMAL SOCIETY & BOARDING KENNELS INC (PAWS & CLAWS)	Co-Respondent

NOTICE OF APPEAL

Filed on 8/10/2018.

Filed by:	Miller Bou-Samra Lawyers
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The appellants, care of 20-32 Lake Street, Cairns in the State of Queensland, appeal to the Planning and Environment Court at Cairns against the respondent's Negotiated Decision Notice dated 6 September 2018 giving the co-respondent a Development Permit for Material Change of Use – Animal Keeping (Dog & Cat Boarding Kennels) Primarily Indoors with Ancillary Facilities including Caretaker's Accommodation ["**application**"] over land located at 6-8 Teamsters Close, Craiglie and described as Lot 10 RP 804923 ["**land**"].

In lieu thereof, the appellants seek the following orders or relief:

- 1 The appeal be allowed and the application be refused;
- 2 Such further or consequential orders as the court may deem fit.



NOTICE OF APPEAL
Filed on behalf of the appellants
Form PEC-1

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BACKGROUND:

- A. On 14 June 2018, the co-respondent lodged the application with the respondent for assessment.
- B. The application:
 - a) was taken by the respondent to be properly made;
 - b) triggered impact assessment under the assessment table associated with the Industry Zone Code in the 2018 Douglas Shire Planning Scheme ["Scheme"];
 - c) had no referral agencies;
 - d) attracted 163 properly made submissions; and
 - e) was approved by the respondent by Negotiated Decision Notice dated 6 September 2018 ["Decision"].
- C. The appellants:
 - a) are owners and occupiers of premises in the locality in which the land is located;
 - b) made properly made submissions during the public notification period for the application; and
 - c) between 10 September 2018 and 17 September 2018 were given written notice of the respondent's Decision.
- D. The land:
 - a) Is contained in the Industry Zone and is part of the Port Douglas Craiglie Local Plan – Precinct 3.
 - b) has a total area of 2,027m² with road frontage to both Teamsters Close & Owen Street;
 - c) is located in a locality which includes commercial services, offices, accommodations, residences and caretaker's premises;
 - d) is located approximately:
 - i) 200m from existing accommodation development bound by the Captain Cook Highway and Downing Street, Plantation Resort;
 - ii) 260m from the residential dwelling located to the west of the Craiglie Industrial Estate;

- iii) 350m from residential development located on the eastern side of the Captain Cook Highway, south of Plantation Resort; and
- iv) 450m from residential dwellings in Downing Street and Dulku Close.

E. The proposed development, the subject of the application:

- a) seeks to repurpose an existing industrial building to house a dog and cat boarding facility operating primarily indoors on the land;
- b) seeks to convert an existing shed into a Caretaker's Accommodation as an ancillary use to the proposed boarding facility.

THE GROUNDS OF APPEAL are:

- 1 The proposed development is contrary to good town planning principles and contrary to the respondent's intention for future development in the Douglas Shire as set out in the Scheme.
- 2 Assessed against the assessment benchmarks contained in the relevant statutory planning instruments, the application should be refused for reasons including:
 - a) the proposed development is in conflict or inconsistent with the Scheme provisions set out in paragraphs 3 to 10 hereof;
 - b) the land the subject of the application is not suitable for the proposed development;
 - c) the proposed development should not be located in the industry zone;
 - d) the co-respondent has failed to provide an assessment of alternative sites;
 - e) the proposed development relies on significant mitigation and management measures to achieve an acceptable level of amenity impacts; deviations from these measures, over time, will lessen their effectiveness; and
 - f) development which requires such significant management and mitigation measures is demonstrably incompatible with a site or area.

Part 3 - Strategic Framework

- 3 The proposed development is:
- a) not industrial development and is not consistent with the respondent's planning intent for the Craiglie industrial area;
 - b) in conflict with and is contrary to the provisions of Part 3 Strategic Framework of the Scheme including:
 - i) Element-Urban Settlement Part 3.4.2(5);
 - ii) Element-Industrial Areas and Activities Part 3.4.4.1(1) and 3.4.4.1(5); and
 - iii) Element- Air and Acoustic Protection and Hazardous Material Part 3.5.6.

Part 6.2.5 Industry Zone Code

- 4 The proposed development is in conflict with the Industry Zone Code Purpose:
- a) 6.2.5.2(1) in that:
 - i) it is not an industrial use; and
 - ii) as a non-industrial use, it does not support the industrial activities located in the industry zone.
 - b) 6.2.5.2(2) in that it:
 - i) does not support the policy direction set out in the Strategic Framework;
 - ii) does not provide and protect land that is accessible and serviced for the location of industry; and
 - iii) will not maintain an industrial amenity and will not provide adequate separation to sensitive land use activities.
 - c) 6.2.5.2(3) and will not achieve the purpose of the code because the proposed development:
 - i) will not minimise impacts on adjacent non-industrial land;
 - ii) will not protect the viability of the existing and future activities from the intrusion of incompatible uses; and

- iii) is not adequately separated from sensitive land uses to minimise the likelihood of occurrence of environmental nuisance.

5 The proposed development is in conflict with the Industry Zone Code **Performance Outcomes**:

- a) PO2 in that as a result of its location the refuse structure, which is part of the proposed development, will have a detrimental effect on the Owen Street streetscape;
- b) PO10 in that the proposed development will, notwithstanding the contents of the Acoustic Report provided by the co-respondent, more likely than not lower the standard of amenity in terms of noise on land uses located outside of the industry zone; and
- c) PO10 in that the proposed development will, more likely than not, lower the standard of amenity in terms of odour on land uses located outside of the industry zone.

Part 7.2.5 Port Douglas Craiglie Local Plan Code – (Precinct 3)

6 The proposed development is in conflict with the Port Douglas Craiglie Local Plan Code (Precinct 3) **Performance Outcome** PO65 in that:

- a) it does not support the tourism and marine industries in Port Douglas; and
- b) it is not a small-scale commercial or light industry land use that supports the local economy.

Part 9.3.1 Animal Keeping Code

7 The proposed development is in conflict with the **Purpose** of the Animal Keeping Code Part 9.3.1.2 because it fails to achieve the overall outcome in Part 9.3.1.2(b).

8 The proposed development is in conflict with the Animal Keeping Code **Performance Outcomes** including:

- a) Table 9.3.1.3.a PO1 (f) because the land does not have sufficient area and frontage to accommodate the keeping of animals consistent with the amenity of adjoining and nearby properties including properties used for Caretaker's residences, Tourist Accommodation and residential dwellings; and
- b) Table 9.3.1.3.a PO1 (g) because the land does not have sufficient area and frontage to accommodate servicing requirements such as

waste and recyclable material storage facilities and collection areas; and

- c) Table 9.3.1.3.a PO1 (h) because the land does not have sufficient area and frontage to accommodate adequate separation between buildings, pens, waste disposal areas and other service facilities from wells or bores and adjoining sensitive receiving environments.

- 9 The proposed development is in conflict with Table 9.3.1.3.b in that it fails to meet the minimum setbacks of the code set out in Table 9.3.1.3.b.

Part 9.4.1 Access Parking and Servicing Code

- 10 The proposed development is in conflict with the PO9 of the Access Parking and Servicing Code,

Particulars

- a) Site Plan Rev F of the application identifies landscaping is proposed around the main building behind the area identified for car parking thereby reducing the manoeuvrability of vehicles on site;
- b) there is an insufficient area for loading bays and a manoeuvring path to allow single unit delivery trucks to ingress and egress in a forward gear.

Uncertainty and inadequacy of conditions of approval

- 11 The application has been approved subject to conditions contained in Schedule 1 of the Decision, including Condition B1 which is uncertain for the following reasons:

Particulars

- a) Condition B1 provides:

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.*

- b) the Planning Report, which forms part of the application, describes the proposed development:

- i) on page 6 as follows:

“The Facility’-:

Three (3) isolation pens;

Ten (10) pens for puppies;

Dog kennel area containing 38 kennels with pens;”

which adds up to 51 pens.

- ii) on page 7 – ‘Operation of the facility’

“The Facility is anticipated to operate between 70% and 100% boarding and rescue dogs will vary depending on the time of year. The Facility will be divided to cater for 20 Boarding dogs and 18 refuge dogs. This will allow change over pens for cleaning and maintenance. Three (3) separate Isolation pens will be used for new arrivals.”

which adds up to 41 pens.

- c) the application is unclear as to how many dogs will be accommodated per pen.
- d) as a result the nature and scale of the proposed development is uncertain and it is unclear as to the maximum number of dogs and cats to be housed in the proposed development.

12 The conditions of approval are:

- a) inadequate and lack certainty in that they fail to properly and adequately address essential aspects of the operation of the proposed development including:
- i) requisite monitoring of the proposed development;
 - ii) non-compliance with predicted outcomes and consequences of non-compliance;
 - iii) modification, by the operator of the proposed development, to the requisite noise levels and times of operation, in particular conditions 4 and 5 both of which allow the Chief Executive Officer to “otherwise approve” noise emissions and hours of outdoor runs.
- b) likely to require unreasonable supervision by the respondent;

- c) likely to be breached by the operator resulting in an unacceptable outcomes detrimental to the amenity of the area.

Relief sought

13 In the premises, the application should be refused.

Dated at Cairns this 8th day of October 2018



Solicitor for the appellants

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.