



Cairns Office

135 Abbott Street, PO Box 1919, Cairns QLD Australia 4870

T +61 7 4031 1336 F +61 7 4031 2942 E cairns@rpsgroup.com.au W rpsgroup.com/au

Our Ref: 62830/DAF/KK/L68468
Council Ref: 8/38/2
Date: 15 November 2010

Attn: Mr Luke Jackson
Chief Executive Officer
Cairns Regional Council
PO Box 359
CAIRNS QLD 4870

Via: Mail

Dear Sir

RE: Request to Extend Relevant Period in accordance with s383 of the Sustainable Planning Act 2009 in relation to Decision Notice for Material Change of Use (Shopping Facilities and Business Facilities) over land at 63 Front Street, Mossman, Land Described as Lot 101 on SP186233

Council ref: 8/38/2

RPS Australia East Pty Ltd ('RPS') acts on behalf of Town and Country Limited (the 'Applicant') in relation to the above described Development Approval.

In support of our client's request, we **enclose** a signed copy of the Land Owners Consent, **attached as Appendix A and Cheque** to the amount of **\$2,589.30** being the fee payable to Cairns Regional Council for the "Request to Extend a Relevant Period", prescribed by Council's 2010/11 Schedule of Fees and Charges.

We also provide the following background relating to the approved development and grounds in support of the requested extension of time to facilitate Council's consideration of the request.

BACKGROUND

RPS records confirm the Development Permit for the Material Change of Use (Shopping Facilities and Business Facilities) was issued by the former Douglas Shire Council on the 8 August 2007, refer to **Appendix B**. The current Cairns Regional Council later issued an Amended Decision Notice on 12 May 2009 as a result of changes sought by the applicant in relation to the approved site plan (refer to copy in **Appendix C**). For the purpose of calculating the relevant period, the Development Approval is taken to have commenced on or around 8 August 2007.

RPS records indicate since receipt of the original Decision Notice, Council has not issued a related approval (i.e. Operational Works or Building Works) and therefore it is submitted that the Decision Notice for the Material Change of Use (Shopping Facilities and Business Facilities) has a currency of up to at least 8 August 2011.

Further, in relation to the status of the approval, RPS sought acceptance from Cairns Regional Council that a number of additional minor modifications to the approved Site Plan were considered 'generally in accordance' with the approved plans. The proposed changes merely reflected a minor modification to the building design which in part reflects existing development on-site and in part is consistent with or reverts to the original approved building design and site layout and Council responded on 27 October 2010, accepting the modified Site Plan (Drawing 07125-DA100B) (refer to copy in **Appendix D**).

In order now to allow sufficient time for the applicant to obtain the required related approvals and for the construction of the facility, on behalf of the Applicant, RPS seeks an extension to the relevant period.

To facilitate Council's consideration of the request, the following is provided:

Request and Grounds in Support

The applicant requests that the relevant period for the Material Change of Use (Shopping Facilities and Business Facilities) approval be extended for a period of 4 years commencing from 8 August 20011, to allow the Applicant to deliver the development.

We provide the following grounds in support of the request:

- The Material Change of Use Development Permit remains current up to or around **8 August 2011**. This period does not allow sufficient time for the Applicant to gain necessary subsequent approvals (i.e. Operational Works, Building Works etc.) and construct the approved facility;
- The applicant's intent was to develop the site within the statutory timeframes, however the viability of the project and the need to improve vehicle and pedestrian movements within the site has necessitated a number of redesigns which has deferred commencement of the project to date. Council's recent acceptance of the most recent modified plans, now provides the opportunity for the Applicant to arrange funding and associated approvals and to commence construction however as indicated above, additional time is required to permit these stages to occur and final construction to be completed.
- A review of the current Douglas Shire Planning Scheme indicates the site remains within the 'Commercial Planning Area' ensuring that the subject development remains largely consistent with the intent of the Planning Scheme. A review of the existing approval reveals that it is unlikely that any significant changes would arise from a further development assessment process; and
- The development is unlikely to have any significant impacts on the infrastructure, environment or community of the surrounding area that have not already been considered under Council's previous assessment process.

In accordance with s388 of the *Sustainable Planning Act 2009*, when deciding the request Council must only have regard to the views of any concurrence agency for the approval; the communities current awareness of the development approval; and the consistency of the approval, including its conditions, with the current laws and policies applying to the development.

The following sections demonstrate the consistency of the approved development with these requirements.

Concurrence Agencies

The Decision Notice issued **8 August 2007** confirms the former Department of Main Roads was the sole Concurrence Agency in relation to the original Development Application and as such a copy of this submission has been forwarded to the current Department of Transport and Main Roads for consideration.

Community Awareness

The original Material Change of Use approval over the site required Code Assessment only. RPS has reviewed the current Planning Scheme provisions and confirms a Development Application for Shopping Facilities and Business Facilities remains Code Assessable within the 'Commercial Planning Area' and therefore does not require Public Notification.

Current Laws and Policies

The original Development Approval was issued under the now superseded Douglas Shire Planning Scheme 2006, however we submit the development continues to remain consistent with development outcomes sought under the Douglas Shire Planning Scheme 2008. We highlight for your consideration the following comparison between the 2006 and 2008 schemes identifying only the notable Planning Scheme provisions.

Planning Scheme Provisions	Douglas Shire Planning Scheme 2006	Douglas Shire Planning Scheme 2008
Mossman and Environs Locality Code		
Building Height	A1.1 The maximum Height of Buildings/structures is 6.5 metres and 2 Storeys. In addition, the roof or any ancillary roof features do not exceed a maximum Height of 3.5 metres.	No change to planning scheme requirements.
Plot Ratio	A6.2 Land designated High Scale in the Town Centre has a base Plot Ratio of 0.5:1 and a maximum Plot Ratio of 0.9:1.	No change to planning scheme requirements.
Commercial Planning Area Code		
Setbacks	A2.2 Buildings/structures are constructed to the side and rear boundaries. OR Where the Site adjoins land in a residential planning area or where the Site adjoins land developed partially or wholly, for a residential or tourist accommodation purpose: <ul style="list-style-type: none"> • the Building/structure is Setback from the common boundary 1.5 metres or an average of half the Height of the wall of the Building, whichever is the greater; and • a 1.8 metre high solid screen fence is established along the length of the common boundary. 	No change to planning scheme requirements.
Landscaping	A4.2 Where a Building is not built to the side or rear boundary the setback from the side and rear boundary is landscaped with Deep Planting. A4.3 Where the Building is setback and the Site adjoins land in a residential planning area or where the Site adjoins land developed partially or wholly, for residential or tourist accommodation uses a 1.5 metre wide Setback of Dense Planting is provided to the common boundary with that land in accordance with all the relevant requirements of the Landscaping Code.	No change to planning scheme requirements.
Vehicle Parking and Access Code		
Car Parking	Schedule 1 – Business Facilities and Shopping Facilities: 1 space per 25sqm NLA	No change to planning scheme requirements.

Developer Contributions

It is submitted that 'Condition 12: Contributions' remains consistent despite changes to the Douglas Shire Planning Scheme in 2008. The EDC calculations for Water Supply (21.8EDC's) and Sewerage (21.8 EDC's) remain unchanged. We confirm contributions for Water Supply and Sewerage will be paid at the current rate in accordance with the original Decision Notice.

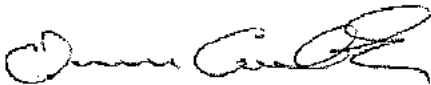
CONCLUSION

We hereby respectfully request that Cairns Regional Council, in accordance with s383 of the *Sustainable Planning Act 2009*, extend the currency/relevant period relating to the subject Material Change of Use approval for an additional four (4) years up to and including **8 August 2015**.

We await your confirmation of receipt and assessment of this submission, however, should you require any further details or clarification, please do not hesitate to contact Mr Daniel Favier in our Cairns office.

Yours sincerely

RPS



Owen Caddick-King
Principal – Planning

cc: Town & Country Limited
2 Mill Street
Mossman, QLD 4873
Attn: Ms. Debbie Bender

Department of Transport and Main Roads
PO Box 6185
Cairns, QLD 4870
Attn: Mr. Malcom Hardy

enc: **Appendix A:** Land Owners Consent
Appendix B: Douglas Shire Council Decision Notice (ref: MCUC 007/07 dated 8 August 2007)
Appendix C: Cairns Regional Council Amended Decision Notice (ref: 8/38/2 dated 12 May 2009)
Appendix D: Council's response, dated 27 October 2010, accepting the modified Site Plan (Drawing 07125-DA100B).



A p p e n d i x A

Executed Land Owners Consent

Company owner's consent to the making of a development application under the *Sustainable Planning Act 2009*

I, Debbie-Anne Bender – CEO & Company Secretary

Director / Legal Representative of the below mentioned company of:

Town and Country Limited

as owner of premises identified as follows:

63 Front Street, Mossman, land described as Lot 101 on SP186233


consent to the making of a development application under the *Sustainable Planning Act 2009* by:

RPS Australia East Pty Ltd

on the premises described above for the purposes of:

Seeking an Extension to the Relevant Period for current Development Approval for Material

Change of Use (Shopping Facilities and Business Facilities)

 CEO & Company Secretary [signature of Director]

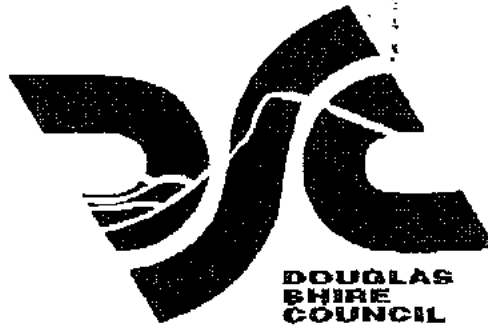
signed on the Ninth _____ day of November 2010 _____



A p p e n d i x B

Decision Notice

Douglas Shire Council (ref: MCUC 007/07)



ENQUIRIES: Mrs Natalie Clark Planning Officer
 DEPARTMENT: Planning Services Section - ☎ (07) 4099 9456
 EMAIL: planning@dsc.qld.gov.au

OUR REF: MCUC 007/07
 YOUR REF:

Town & Country Limited
 C/- Jenny Elphinstone Pty Ltd
 PO Box 1098
 MOSSMAN QLD 4873

8 August 2007

**INTEGRATED PLANNING ACT
 DECISION NOTICE**

DEVELOPMENT APPLICATION

Applicant's Name : Town & Country Limited
Owner's Name : Town & Country Limited
Proposal : Material Change of Use for the purpose of Shopping
 Facilities and Business Facilities
Application Number : MCUC 007/07
Site Address : 63 Front Street, Mossman
Property Description : Lot 101 on SP186233, Parish of Victory, County of Solander

A. Decision: **Decision Date: 2 August 2007**

Approved subject to Conditions

B. Type of Development Approval:

Material Change of Use Development Permit

.../2.

-2-

C. Referral Agency:

Department of Main Roads
 Peninsular District
 PO Box 6185
 CAIRNS QLD 4870

D. Conditions**Plan of Development**

1. The approved development and the conduct of the approved use, the carrying out of any works on the premises and the construction of any buildings on the premises associated with the development must generally be in accordance with the details of the application and the following approved Plan/s of Development:

Title	Plan No.	Date
Site Plan	CO650 - DA 01	Jan 2007
Elevations	CO650	Jan 2007
Main Roads Concept Layout	GCS06 - 194	06/05/07
DMR Option Concept Layout	GCS06 - 194	06/05/07

Except where such plans are modified by the terms of this approval.

Currency Period

2. This development approval lapses four (4) years after the day that the development approval takes effect, unless extended under Section 3.5.22 of the Integrated Planning Act 1997.

Landscaping

3. The following amendments are to be made to the landscaping plan, titled Landscape Concept Planting Design, numbered LCPP-0001 and dated 7 Feb 2007, submitted with the proposed development:
- (a) The landscaping area along the rear western boundary is to be increased to 1.5 m wide to allow for dense screening vegetation;
 - (b) Golden Penda's or a similar native shade tree is to be incorporated into the landscaped area along the road frontage at 4 metre centres to provide shade to the car parking area directly adjacent.

.../3.

-3-

The amended plan is to be submitted to Council prior to obtaining a building permit/operational works permit.

4. A Landscaping Maintenance Schedule for a period of three (3) years is to be provided to Council with the amended landscaping plan. The Maintenance Schedule is to be accompanied by a \$10,000.00 performance bond. The bond is refundable at the completion of the scheduled period on the provision the landscaping is established and maintained in accordance with the Schedule.
5. The owner/developer shall be responsible for all maintenance work for a period of three (3) years. Council will not accept the landscaping off maintenance until it meets the requirements of Council's Engineering Services.
6. Irrigation for external landscaping shall be transferred to Council's reticulated water system prior to landscaping being accepted as off maintenance.

Water Supply

7. The plans and specifications of the internal water supply must be submitted to Council at Operational Works application stage for this development for review.

This system must make provision for services to the boundaries of all lots, including main works; envelope pipes at cross street services and valve and hydrant markers and be designed in accordance with the requirements of Planning Policy No.6 "Planning Scheme Policy No.6 "INQROC Development Manual".

Sewerage

8. No additional external structural loads are permitted to be applied to Council's existing sewer as a consequence of the approved development. Plans and specifications for the internal sewer and connection to Council's sewerage system are to be submitted to Council with the application for Operational Works.

Electricity and Telephone Services

9. All electrical lines along the full frontages of the subject site (Front Street) are to be placed underground. These works are to be undertaken by Ergon Energy at the developers/owners expense and are to be completed prior to commencement of the approved use.

.../4.

Stormwater

10. All stormwater run-off from non-permeable surfaces and roof areas occurring on the site must be collected within the premises and discharged to the legal and practical point of discharge which has been nominated as Front Street. The applicant is required to extend the existing underground stormwater (from the existing surge pit located adjacent current entrance) for the full frontage of the allotment. In addition the applicant is to extend the existing kerb and channel for the full frontage of the allotment and undertake the necessary widening of Front Street. Plans and specifications for the control of stormwater (including design of discharge outlet, layout of kerb and channel and widening of Front Street) must be submitted to Council with the application for Operational Works. The approved use must not:
 - a) Interfere with the natural flow of stormwater;
 - b) Cause ponding of stormwater on adjoining properties.

11. The developer/owner is required to place pollution control devices in stormwater drains in accordance with the requirements of Planning Policy No.6 "Planning Scheme Policy No.6 "FNQROC Development Manual". The design and location of these devices must be submitted at Operational Works application stage.

Contributions

12. The developer/owner shall pay to the Council headworks contributions for water supply and sewerage in accordance with Council's Planning Scheme Policy No. 11 - Water Supply and Sewerage Headworks and Works External Contributions (The Policy). The contribution shall be calculated at the rate per Equivalent Domestic Connection (EDC) applicable at the time of payment in accordance with the policy.

The current number of EDC's for the approved use are:

Water Supply	21.8
Sewerage	21.8

-5-

Flooding and Drainage

13. Plans of the filling and excavation are to be designed in accordance with the FNQROC Development Manual and be submitted at Building Work stage and must not:
- (a) Pond water on the site, adjacent site or impact on the adjacent State-controlled road;
 - (b) Result in an increase in the flow of water across a site or any other land or the adjacent State-controlled road; and
 - (c) In an increase in the volume of water or concentration of water in a watercourse and overland flow paths;

Car parking

14. A car parking area with a minimum of three hundred and thirty (330) spaces shall be constructed, sealed, drained and line marked in accordance with the relevant Australian Standard and the approved plan of development and maintained thereafter.
15. The developer/owner is to provide an amended plan of development prior to obtaining a Building Permit, showing nine (9) designated Disabled Car Parking spaces in accordance with the provisions of the Douglas Shire Planning Scheme.

Refuse

16. There is to be provided within the development an area for the storage and washing of all refuse containers in accordance with the *Environmental protection (Interim Waste) Regulation 1996*. Such area is to be:
- a) sufficient in size to be able to house all mobile garbage (wheelie) bins including recycling bins
 - b) situated so as not to cause an odour nuisance to any adjacent properties; and
 - c) imperviously paved and drained to a suitable silt trap; and
 - d) discharged to sewer to the satisfaction of the General Manager Engineering Services; and
 - e) provided with a suitable hose cock with backflow prevention device and hose ; and
 - f) roofed or provided with a suitable automatic diversion valve (or other approved method) designed to prevent the ingress of stormwater to sewer.

.../6.

-6-

Advertising Devices

17. The developer/owner is to provide each Business/Shopping Facility with a blank "Below Awning Sign" with the following dimensions:
 - (a) Maximum height of 0.6 metres;
 - (b) Maximum width of 0.3 metres;
 - (c) Maximum length of 2.5 metres and does not project beyond the awning.

The blank sign can then be designed by the occupant of the facility when confirmed.

Environmental Management Plan

19. The Developer is to submit with the application for approval of Operational Works, an Environmental Management Plan (EMP) in accordance with the requirements of Planning Scheme Policy No.10 "Reports and Information the Council may Request". This EMP must detail the controls to be utilised to ensure that no environmental harm or nuisance is caused from the construction of the works and must include a Stormwater Management Plan.

Compliance

20. All conditions shall be complied with prior to the occupancy of the building for the approved use or commencement of the approved use on the land. Any developer security, associated with this approval will not be released until all conditions of approval are complied with.

Security

21. To guarantee the satisfactory completion of the landscaping and to ensure payment of headworks contributions, the developer shall lodge with the Council a Cash Bond or Guarantee to the value of \$194,957.00. Such guarantee shall be lodged prior to the issue of a Building Work Permit. The Council may call up this Guarantee to complete all or any part of the works mentioned herein in accordance with the conditions of this approval, should the developer fail to do so prior to issuing a permit for Building Work.

-7-

Advice

Should any future business wish to utilise a Chalk Board or A Frame Advertising Device; registration is required through Council's Environmental Health Services.

An application for an Operational Works Permit for an Advertising Device will be required to be submitted and approved by Council prior to the installation of any proposed Tenancy Sign or other advertising sign assessable against the Planning Scheme.

E. Further Development Approvals Required:

Operational Work
Building Permit

Development Permit
Development Permit



Paul Trotman
General Manager - Development & Environment

Appendix B – Department of Main Roads conditions

18 June 2007

Ms Julie Leu

A/ Chief Executive Officer

Douglas Shire Council

PO Box 357

Mossman Qld 4873

DOUGLAS SHIRE COUNCIL	
RECEIVED	
FILE NAME	MEL
DOCUMENT	
18 JUN 2007	
ATTENTION	NAC
INFORMATION	

Queensland
Government

Department of Main Roads

Dear Ms Leu

Douglas Shire : Capital Cook Highway (Front Street)
Situated at Town & Country Shopping Centre, Front Street, Mossman
Lot 101 on SP 88523, Parish of Victory
Town & Country Limited
Proposed Material Change of Use (Shopping Facilities & Business Facilities) Application
Concurrence Agency's Response (conditions apply)

I refer to the above application received at the Department 15 February 2007, 20 February 2007 and 11 May 2007 requesting consideration of the above development.

A. CONDITIONS OF DEVELOPMENT

Pursuant to the *Integrated Planning Act 1997*, the Queensland Department of Main Roads, as a Concurrence Agency, has assessed the impact of the proposed development on the State-controlled road network and requires that Council include the following conditions of development for the subject application:

1. Permitted Road Access Location

- (i) Access between Front Street and the proposed development shall be via:
 - the existing access located opposite the Harper Street intersection, and
 - a new access located at the southern side boundary of the subject land.
- (ii) No additional direct access between Front Street and the proposed development is permitted.

2. Road Access Works

- (i) Road access works at the permitted road access locations are required, and shall be constructed in accordance with:
 - the Department of Main Roads *Road Planning and Design Manual* and
 - current Department of Main Roads standards.

Office of the Deputy Director General
Pursued District
Level 4, Corner Coppin Street, 16 Lark Street
Canberra, Queensland 4300
PO Box 5985 Canberra Queensland 4370
ATN 67 696 727 711

On call 45264104 (10.04)
Your call MC/UC 60707
Enquiries Malcolm Hardy
Telephone +61 7 4050 8311
Facsimile +61 7 4050 5656
Website www.pursued.qld.gov.au

- 2 -

A recent site inspection indicates that the required road access works are as follows:

- a channelised right turn treatment (CHR) at the new access,
- an auxiliary left turn treatment (AUL) at the new access,
- provision of a concrete splitter median in the new access
- concrete island left in, left out only, arrangement at the existing access,
- an auxiliary left turn treatment with a short turn slot [AUL(S)] at the existing access
- a channelised right turn treatment with a short turn slot [CHR(S)] into Harper Street,
- a concrete pedestrian refuge in Front Street north of Harper Street

Category V3 lighting is required for this project.

Lighting standards have changed in recent times. The lighting installation will need to comply with the following:

- The Electrical Safety Act and regulations 2002
- Australian Standards (AS1158.1.1 2005 Lighting for roads and public spaces, AS3000 2000 Australian wiring rules for electrical installations)
- DMR Road Planning & Design Manual (RP&DM) Chapter 17
- MR specifications MRS11.91, MRS11.92, MRS11.94 and MRS11.95
- MR Standard Drawings
- District specific standards, notes and drawing details (made available on request)

RPEQ (electrical) certification is mandatory.

Any necessary relocation of Council water mains, Telstra and electrical services are to be undertaken at no cost to DMR and works completed to the service provider's satisfaction. No existing water mains within 3.0 m. of the new sealed shoulder edge shall be permitted.

- (ii) The landowner/ applicant shall submit design drawings prepared by a suitably qualified Registered Professional Engineer Queensland (RPEQ) for approval of the Cairns office of the Department of Main Roads prior to commencing works within the State-controlled road reserve (i.e. Front Street).
- (iii) All required road access works shall be completed to the satisfaction of the Director-General of the Department of Main Roads prior to the commencement of the approved use on the subject land.

3. Hydraulic Considerations

To protect the existing flood immunity of the State-controlled road (i.e. Front Street), the landowner/ applicant shall seek the approval of the Director-General of the Department of Main Roads prior to any works commencing on the subject land which may result in changes to the existing water flows, efflux levels and/ or hydraulic structures along, under or over Front Street.

4. Visual Amenity Treatments

The applicant/landowner shall provide a minimum 3m wide landscaped strip and building alignment setback along the subject land's frontage to Front Street to screen the on-site carparking provision and vehicular circulation. The landscaping shall be designed and planted such that when the landscaping matures, it provides a minimum 1m high screening and complementary screen trees approximately 6m tall at 7m spacings.

The species of plants used in the landscaping works shall be in accordance with Council's standards. If Council does not have standards, then the only requirements are that the species are native, low maintenance species that are effective at providing the necessary screening specified above and do not create a safety risk (i.e. no thorns, poisonous fruits or berries or large nuts).

All landscaping works shall be completed prior to the commencement of the approved use, to the satisfaction of the Director-General of the Department of Main Roads and the Douglas Shire Council.

5. Provision of Pedestrian/Bicycle Path

(i) The applicant/landowner shall provide a 2m wide concrete pedestrian/bicycle path along the full Front Street frontage, with links into the proposed development north and south of the existing road access location, subject to the approval of the Department of Main Roads.

(ii) The applicant/landowner shall construct the pedestrian/bicycle path to the requirements of the Douglas Shire Council prior to the commencement of the approved use on the subject land.

6. Parking

When calculating carparking requirements associated with the proposed development, no allowance shall be made for parking within the State-controlled road reserves (i.e. Front Street).

7. Advertising

No advertising device for the proposed development on the subject land is permitted within the State-controlled road reserves (i.e. Front Street).

Reasons

The reasons and information used in the setting of conditions detailed above include:

- Department of Main Roads Access Policy;
- Department of Main Roads Involvement in Development Application Referrals and Assessment Guide; and
- Douglas Shire Planning Scheme.

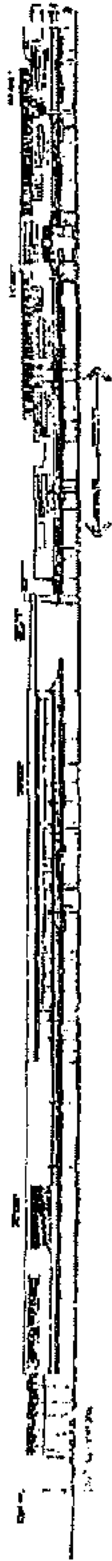
Appendix A - Plans of Development



Project No.	00555
Sheet No.	0
Date	
Scale	
Author	
Check	
Drawn	
Approved	

SLIPPER NG CENTRE
 PROJECT NO. 00555
 SHEET NO. 0
 DATE 21/08/07
 SCALE
 AUTHOR
 CHECK
 DRAWN
 APPROVED

ELEVATIONS



Scale	1/4" = 1'-0"
Project No.	0355
Sheet No.	0

SHIPPING CENTER
 BRIDGE DEVELOPMENT
 200 S. 4th St.
 ALBANY, N.Y.

ELEVATION



A p p e n d i x C

Amended Decision Notice

Cairns Regional Council (ref: 8/38/2)



ENQUIRIES: Luke Jackson
PHONE: (07) 4044 3240
FAX: (07) 4044 3836
YOUR REF: 62830/BCS/NAC/L65095
OUR REF: 8/38/2 (2051791)

12 May 2009

Town & Country Limited
C/- CONICS Pty Ltd
PO BOX 355
MOSSMAN QLD 4873

17 5 MAY 2009

Dear Sir/Madam

**DECISION NOTICE TO CHANGE AN EXISTING APPROVAL FOR
DEVELOPMENT APPLICATION FOR 63 FRONT STREET MOSSMAN**

With reference to the above request to Change an Existing Approval, please find attached the relevant Decision Notice which was determined under Instrument of Delegation on 12 May 2009.

The notice includes extracts from the Act with respect to making representations about conditions, negotiated decisions, suspension of the appeal period, and lodging an Appeal.

Should you have any enquires in relation to this Decision Notice, please contact Luke Jackson of Council's Development Assessment Team on telephone number (07) 4044 3240.

Yours faithfully

Simon Clarke
Manager Development Assessment

Att.

40.2009.3102
1/19



DECISION NOTICE DETAILS
(SECTION 3.5.15 INTEGRATED PLANNING ACT 1997)

APPLICANT DETAILS

Town & Country Limited
C/- Conics Pty Ltd
PO BOX 355 MOSSMAN QLD 4870

ADDRESS

63 Front Street MOSSMAN

REAL PROPERTY DESCRIPTION

Lot 101 on SP186233

PROPOSAL

Shopping Facilities & Business Facilities - Request for Minor Change to Conditions of Approval

DECISION

Approved subject to conditions (refer to approval package below).

DECISION DATE

12 May 2009

TYPE

Material Change of Use (Development Permit)

REFERRAL AGENCIES

Department of Main Roads
Cairns District
PO Box 6185
CAIRNS QLD 4870

SUBMISSIONS

There were no submissions for this application.

FURTHER DEVELOPMENT PERMITS REQUIRED

Development Permit for Building Works
Development Permit for Plumbing Works
Development Permit for Operational Works

CODES TO COMPLY WITH FOR SELF-ASSESSABLE DEVELOPMENT

None

40.2009.3102
2/19

**DECISION NOTICE DETAILS
(SECTION 3.5.15 INTEGRATED PLANNING ACT 1997)**

DOES THE ASSESSMENT MANAGER CONSIDER THE APPLICATION TO BE IN CONFLICT WITH APPLICABLE CODES, PLANNING SCHEME, STATE PLANNING POLICIES OR PRIORITY INFRASTRUCTURE PLAN (IF YES, INCLUDE STATEMENT OF REASONS)

Not in conflict

That Council approve the development application for a Material Change of Use (Code) for the purpose of Shopping Facilities and Business Facilities over land described as Lot 101 SP186233, located at 63 Front Street, Mossman, subject to the following conditions:

1. That Condition 1 be amended to read as follows:

Plan of Development

1. The approved development and the conduct of the approved use, the carrying out of any works on the premises and the construction of any buildings on the premises associated with the development must generally be in accordance with the details of the application and the following approved Plan/s of Development:

Title	Plan No.	Date
Site Plan <u>Proposed Site Plan</u>	GO650-DA01 07125-DA100B	Jan-2007 Jan 2009
Elevations <u>Proposed Elevations</u>	GO650 07125 - DA101B	Jan-2007 Jan 2009
Main Roads Concept Layout	GCS06 - 194	06/05/07
DMR Option Concept Layout	GCS06 - 194	06/05/07

Except where such plans are modified by the terms of this approval.

2. That Condition 14 be amended to read as follows:

Car Parking

14. A Car parking area with a minimum of ~~three hundred and thirty (330)~~ spaces two hundred and eighty-five (285) shall be constructed, sealed, drained and line marked in accordance with the relevant Australian Standard and the approved plan of development and maintained thereafter.
3. That condition 15 be deleted.
 4. All other conditions of the Decision Notice approved by Council on 8 August 2007 remain unchanged.

DECISION NOTICE DETAILS
(SECTION 3.5.15 INTEGRATED PLANNING ACT 1997)

Note: This decision does not include the proposed licensed dining area which requires a separate development assessment.

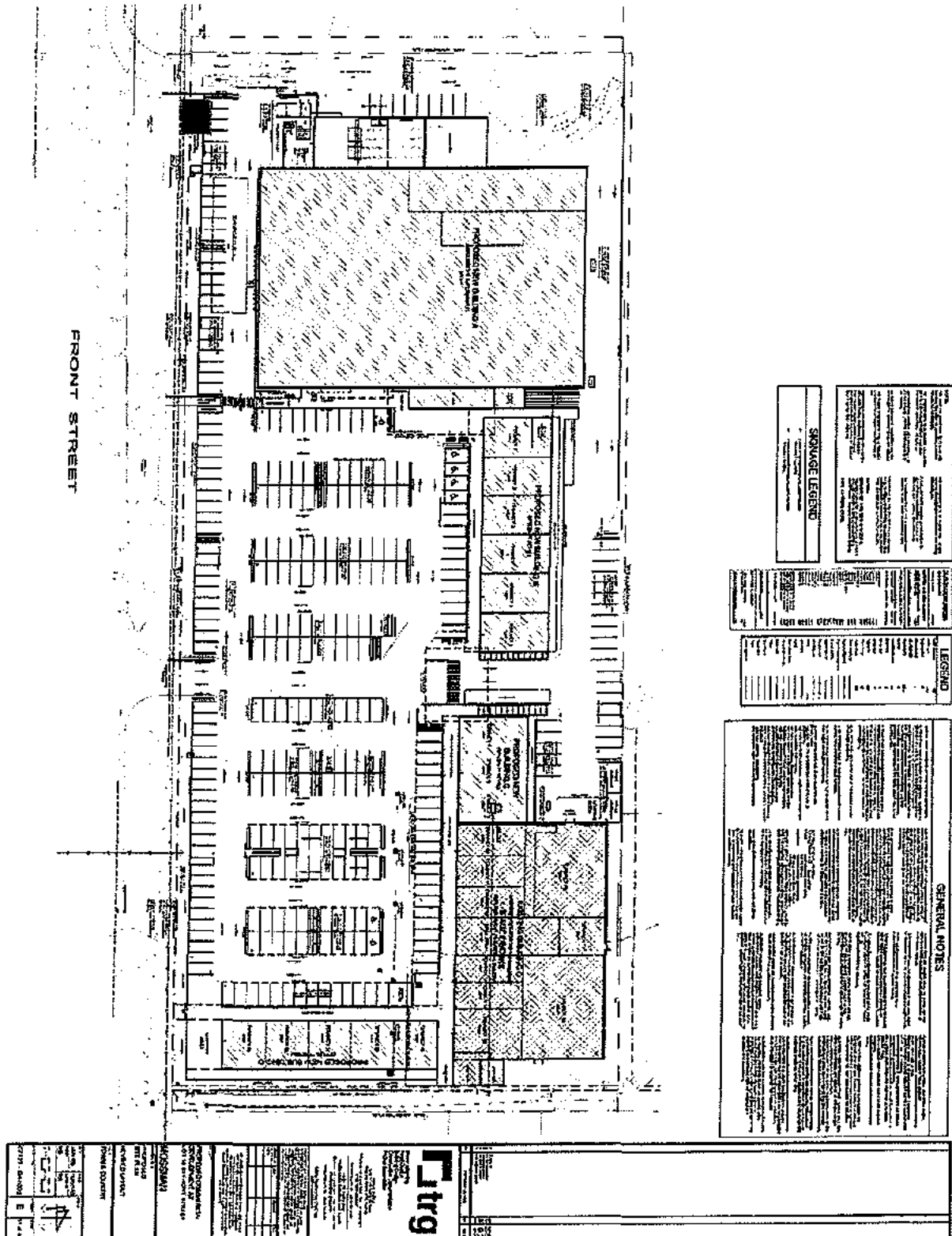
RIGHTS OF APPEAL

Attached

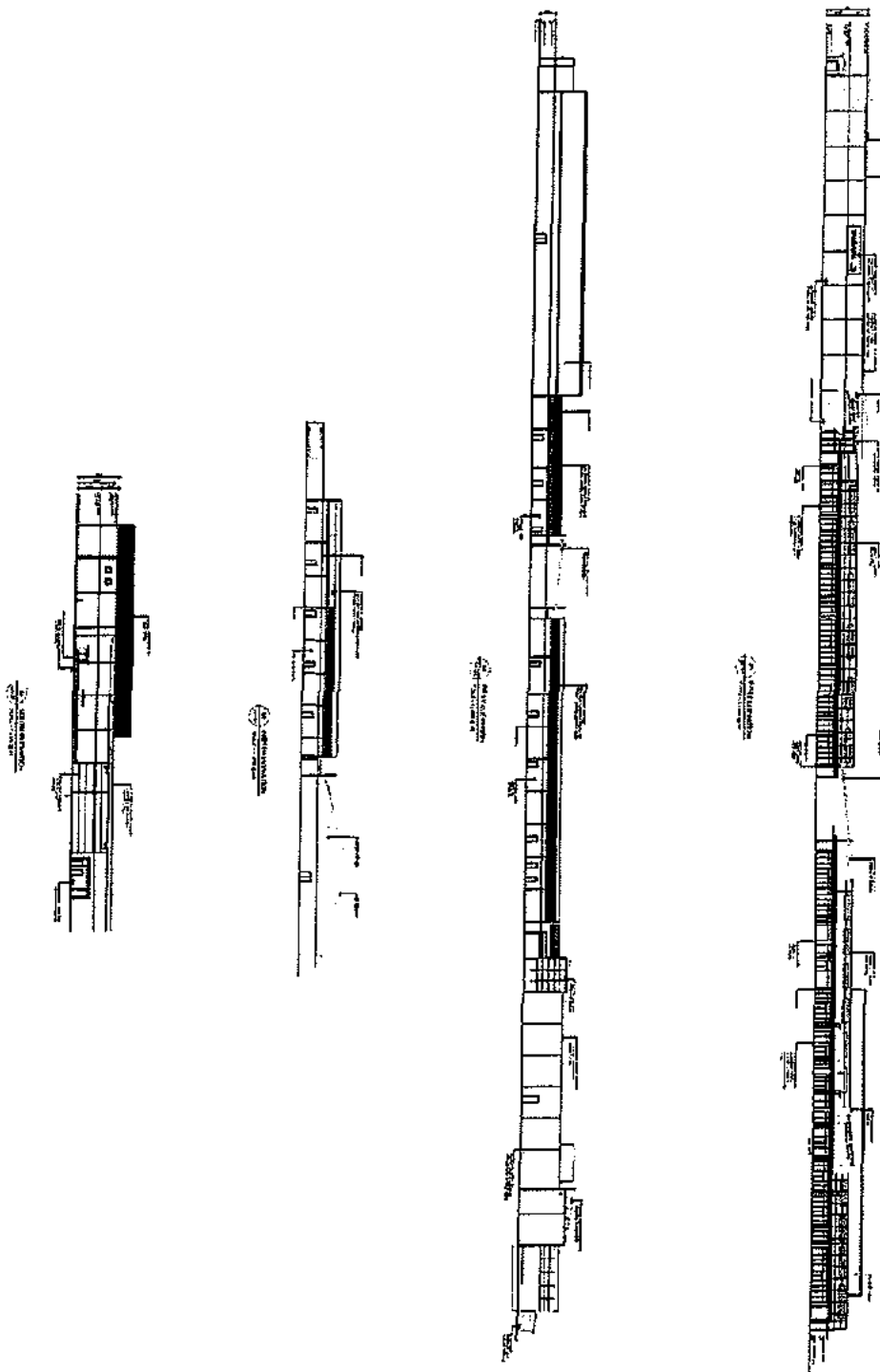
End of Decision Notice

**DECISION NOTICE DETAILS
(SECTION 3.5.15 INTEGRATED PLANNING ACT 1997)**

Appendix 1



**DECISION NOTICE DETAILS
(SECTION 3.5.15 INTEGRATED PLANNING ACT 1997)**



		THE CITY OF MELBOURNE DEPARTMENT OF PLANNING AND BUILDING 100 COLLEGE AVENUE MELBOURNE VIC 3006 TEL: (03) 9595 5000 FAX: (03) 9595 5001 WWW.CITYOFMELBOURNE.VIC.GOV.AU	
PROJECT NO: 40.2009.3102 DRAWING NO: 6/19		DATE: 15/06/2010 SCALE: AS SHOWN	
PROJECT TITLE: [REDACTED]		CLIENT: [REDACTED]	
ARCHITECT: [REDACTED]		ENGINEER: [REDACTED]	
CONSULTANTS: [REDACTED]		APPROVED BY: [REDACTED]	
CHECKED BY: [REDACTED]		DATE: [REDACTED]	

**DECISION NOTICE DETAILS
(SECTION 3.5.15 INTEGRATED PLANNING ACT 1997)**

Appendix 2

Mrs Natalie Clark – Planning Officer
Planning Services Section - ☎ (07) 4099 9456
planning@dsc.qld.gov.au

MCUC 007/07

Town & Country Limited
C/- Jenny Elphinstone Pty Ltd
PO Box 1098
MOSSMAN QLD 4873

8 August 2007

**INTEGRATED PLANNING ACT
DECISION NOTICE**

DEVELOPMENT APPLICATION

Applicant's Name : Town & Country Limited
Owner's Name : Town & Country Limited
Proposal : Material Change of Use for the purpose of Shopping
Facilities and Business Facilities
Application Number : MCUC 007/07
Site Address : 63 Front Street, Mossman
Property Description : Lot 101 on SP186233, Parish of Victory, County of Solander

A. Decision: **Decision Date:** 2 August 2007

Approved subject to Conditions

B. Type of Development Approval:

Material Change of Use Development Permit

.../2.

DECISION NOTICE DETAILS
(SECTION 3.5.15 INTEGRATED PLANNING ACT 1997)

-2-

C. Referral Agency:

Department of Main Roads
Peninsular District
PO Box 6185
CAIRNS QLD 4870

D. Conditions

Plan of Development

1. The approved development and the conduct of the approved use, the carrying out of any works on the premises and the construction of any buildings on the premises associated with the development must generally be in accordance with the details of the application and the following approved Plan/s of Development:

Title	Plan No.	Date
Site Plan	CO650 - DA 01	Jan 2007
Elevations	CO650	Jan 2007
Main Roads Concept Layout	GCS06 - 194	06/05/07
DMR Option Concept Layout	GCS06 - 194	06/05/07

Except where such plans are modified by the terms of this approval

Currency Period

2. This development approval lapses four (4) years after the day that the development approval takes effect, unless extended under Section 3.5.22 of the Integrated Planning Act 1997.

Landscaping

3. The following amendments are to be made to the landscaping plan, titled Landscape Concept Planting Design, numbered LCPP-0001 and dated 7 Feb 2007, submitted with the proposed development:
 - (a) The landscaping area along the rear western boundary is to be increased to 1.5 m wide to allow for dense screening vegetation;
 - (b) Golden Penda's or a similar native shade tree is to be incorporated into the landscaped area along the road frontage at 4 metre centres to provide shade to the car parking area directly adjacent.

.../3.

**DECISION NOTICE DETAILS
(SECTION 3.5.15 INTEGRATED PLANNING ACT 1997)**

-3-

The amended plan is to be submitted to Council prior to obtaining a building permit/operational works permit.

4. A Landscaping Maintenance Schedule for a period of three (3) years is to be provided to Council with the amended landscaping plan. The Maintenance Schedule is to be accompanied by a \$10,000.00 performance bond. The bond is refundable at the completion of the scheduled period on the provision the landscaping is established and maintained in accordance with the Schedule.
5. The owner/developer shall be responsible for all maintenance work for a period of three (3) years. Council will not accept the landscaping off maintenance until it meets the requirements of Council's Engineering Services.
6. Irrigation for external landscaping shall be transferred to Council's reticulated water system prior to landscaping being accepted as off maintenance.

Water Supply

7. The plans and specifications of the internal water supply must be submitted to Council at Operational Works application stage for this development for review.

This system must make provision for services to the boundaries of all lots, including main works; enveloper pipes at cross street services and valve and hydrant markers and be designed in accordance with the requirements of Planning Policy No.6 "Planning Scheme Policy No.6 "FNQROC Development Manual".

Sewerage

8. No additional external structural loads are permitted to be applied to Council's existing sewer as a consequence of the approved development. Plans and specifications for the internal sewer and connection to Council's sewerage system are to be submitted to Council with the application for Operational Works.

Electricity and Telephone Services

9. All electrical lines along the full frontages of the subject site (Front Street) are to be placed underground. These works are to be undertaken by Ergon Energy at the developers/owners expense and are to be completed prior to commencement of the approved use.

.../4.

DECISION NOTICE DETAILS
(SECTION 3.5.15 INTEGRATED PLANNING ACT 1997)

-4-

Stormwater

10. All stormwater run-off from non-permeable surfaces and roof areas occurring on the site must be collected within the premises and discharged to the legal and practical point of discharge which has been nominated as Front Street. The applicant is required to extend the existing underground stormwater (from the existing surge pit located adjacent current entrance) for the full frontage of the allotment. In addition the applicant is to extend the existing kerb and channel for the full frontage of the allotment and undertake the necessary widening of Front Street. Plans and specifications for the control of stormwater (including design of discharge outlet, layout of kerb and channel and widening of Front Street) must be submitted to Council with the application for Operational Works. The approved use must not:
- a) Interfere with the natural flow of stormwater;
 - b) Cause ponding of stormwater on adjoining properties.
11. The developer/owner is required to place pollution control devices in stormwater drains in accordance with the requirements of Planning Policy No.6 "Planning Scheme Policy No.6 "FNQROC Development Manual". The design and location of these devices must be submitted at Operational Works application stage.

Contributions

12. The developer/owner shall pay to the Council headworks contributions for water supply and sewerage in accordance with Council's Planning Scheme Policy No. 11 – Water Supply and Sewerage Headworks and Works External Contributions (The Policy). The contribution shall be calculated at the rate per Equivalent Domestic Connection (EDC) applicable at the time of payment in accordance with the policy.

The current number of EDC's for the approved use are:

Water Supply	21.8
Sewerage	21.8

..15.

**DECISION NOTICE DETAILS
(SECTION 3.5.15 INTEGRATED PLANNING ACT 1997)**

-5-

Flooding and Drainage

13. Plans of the filling and excavation are to be designed in accordance with the FNQROC Development Manual and be submitted at Building Work stage and must not:
- (a) Pond water on the site, adjacent site or impact on the adjacent State-controlled road;
 - (b) Result in an increase in the flow of water across a site or any other land or the adjacent State-controlled road; and
 - (c) In an increase in the volume of water or concentration of water in a watercourse and overland flow paths;

Car parking

14. A car parking area with a minimum of three hundred and thirty (330) spaces shall be constructed, sealed, drained and line marked in accordance with the relevant Australian Standard and the approved plan of development and maintained thereafter.
15. The developer/owner is to provide an amended plan of development prior to obtaining a Building Permit, showing nine (9) designated Disabled Car Parking spaces in accordance with the provisions of the Douglas Shire Planning Scheme.

Refuse

16. There is to be provided within the development an area for the storage and washing of all refuse containers in accordance with the *Environmental protection (Interim Waste) Regulation 1996*. Such area is to be:
- a) sufficient in size to be able to house all mobile garbage (wheelie) bins including recycling bins
 - b) situated so as not to cause an odour nuisance to any adjacent properties: and
 - c) imperviously paved and drained to a suitable silt trap; and
 - d) discharged to sewer to the satisfaction of the General Manager Engineering Services; and
 - e) provided with a suitable hose cock with backflow prevention device and hose ; and
 - f) roofed or provided with a suitable automatic diversion valve (or other approved method) designed to prevent the ingress of stormwater to sewer.

.../6.

**DECISION NOTICE DETAILS
(SECTION 3.5.15 INTEGRATED PLANNING ACT 1997)**

-6-

Advertising Devices

17. The developer/owner is to provide each Business/Shopping Facility with a blank "Below Awning Sign" with the following dimensions:
- (a) Maximum height of 0.6 metres;
 - (b) Maximum width of 0.3 metres;
 - (c) Maximum length of 2.5 metres and does not project beyond the awning.

The blank sign can then be designed by the occupant of the facility when confirmed.

Environmental Management Plan

19. The Developer is to submit with the application for approval of Operational Works, an Environmental Management Plan (EMP) in accordance with the requirements of Planning Scheme Policy No.10 *"Reports and Information the Council may Request"*. This EMP must detail the controls to be utilised to ensure that no environmental harm or nuisance is caused from the construction of the works and must include a Stormwater Management Plan.

Compliance

20. All conditions shall be complied with prior to the occupancy of the building for the approved use or commencement of the approved use on the land. Any developer security, associated with this approval will not be released until all conditions of approval are complied with.

Security

21. To guarantee the satisfactory completion of the landscaping and to ensure payment of headworks contributions, the developer shall lodge with the Council a Cash Bond or Guarantee to the value of \$194,957.00. Such guarantee shall be lodged prior to the issue of a Building Work Permit. The Council may call up this Guarantee to complete all or any part of the works mentioned herein in accordance with the conditions of this approval, should the developer fail to do so prior to issuing a permit for Building Work.

.../7.

DECISION NOTICE DETAILS
(SECTION 3.5.15 INTEGRATED PLANNING ACT 1997)

-7-

Advice

Should any future business wish to utilise a Chalk Board or A Frame Advertising Device; registration is required through Council's Environmental Health Services.

An application for an Operational Works Permit for an Advertising Device will be required to be submitted and approved by Council prior to the installation of any proposed Tenancy Sign or other advertising sign assessable against the Planning Scheme.

E. Further Development Approvals Required:

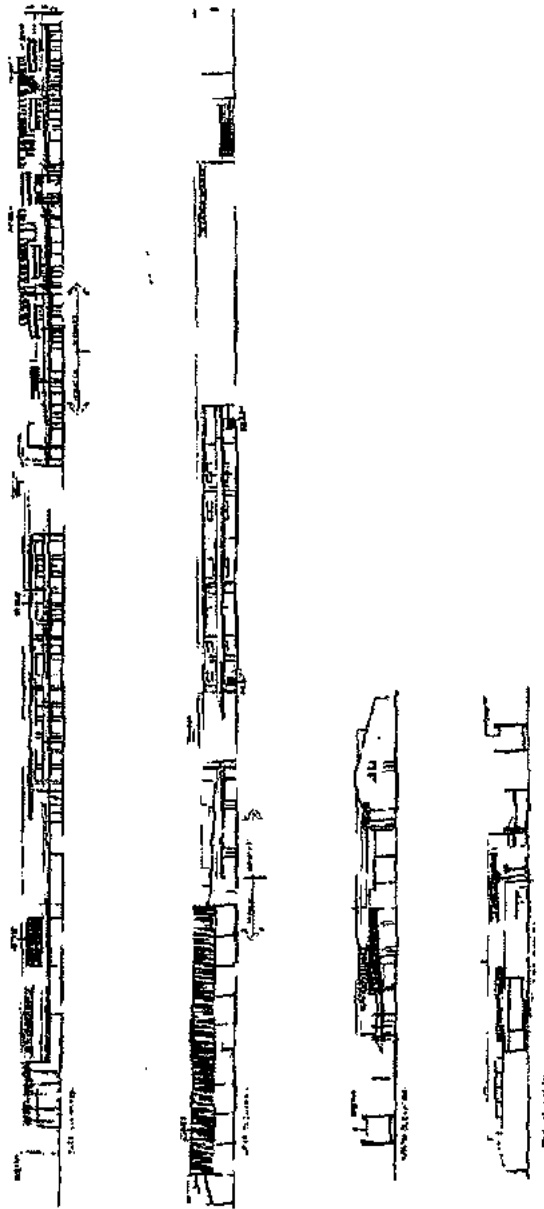
Operational Work
Building Permit

Development Permit
Development Permit

Paul Trotman
General Manager – Development & Environment

**DECISION NOTICE DETAILS
(SECTION 3.5.15 INTEGRATED PLANNING ACT 1997)**

Appendix A – Plans of Development



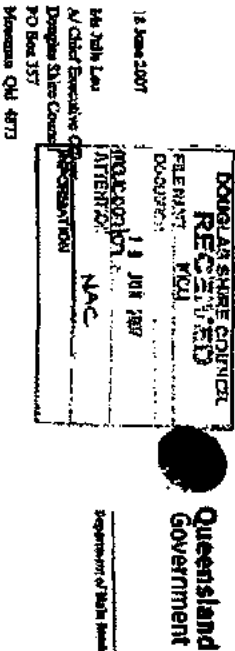
DATE	2009/03/14
BY	ALLEGRA
NO.	00000
REV.	00000
APP.	00000
REV.	00000

ALLEGRA CONSULTANTS
 100/100 RIVER STREET
 SYDNEY NSW 2000
 TEL: (02) 9212 1234
 FAX: (02) 9212 1235
 WWW.ALLEGRA.COM.AU

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DECISION NOTICE DETAILS
(SECTION 3.5.15 INTEGRATED PLANNING ACT 1997)

Appendix B - Department of Main Roads conditions



13 June 2007
Ms John Law
M/Chief Executive Officer
Douglas Shire Council
PO Box 357
Mussouri QLD 4873

Dear Ms Law

Douglas Shire : Cynthia Clark Highway (Great Street)
Situated at Town & Country Shopping Centre, Great Street, Mussouri
Lot 101 on SR 15013, Pyralis of Victory
Town & Country Limited
Proposed Potential Change of Use (Shopping Facilities & Business Facilities) Application
Construction Agency's Response (conditions apply)

I refer to the above application received at the Department 15 February 2007, 20 February 2007 and 11 May 2007 regarding construction of the above development.

A. CONDITIONS OF DEVELOPMENT

Pursuant to the Integrated Planning Act 1997, the Queensland Department of Main Roads, as a Conveyancing Agency, has assessed the impact of the proposed development on the State-controlled road network and requires that Council include the following conditions of development for the subject application:

1. **Proposed Road Access Location**
 - (1) Access between Great Street and the proposed development shall be via:
 - the existing access located opposite the Burger Street intersection, and
 - a new access located at the southern side boundary of the subject land.
 - (2) No additional direct access between Great Street and the proposed development is permitted.

1. Road Access Works

- (1) Road access works at the proposed road access locations are required, and shall be constructed in accordance with:
 - the Department of Main Roads Road Planning and Design Manual and
 - current Department of Main Roads standards.

Office of the Deputy Commissioner
Main Roads
Level 4, Glass
Centre, Queensland 4002
PO Box 9000, Brisbane, QLD 4002
A/N: 61 001 00 111

Dear
Mr/Ms
Name
Telephone
Facsimile
Mobile
48864198 (cell)
1300 0000
1300 0000
61 7 622 1111
61 7 622 1111
enquiries@mainroads.qld.gov.au

DECISION NOTICE DETAILS
(SECTION 3.5.15 INTEGRATED PLANNING ACT 1997)

- 2 -

A recent site inspection indicates that the required road access works are as follows:

- a channelised right turn treatment (CHR) at the new access,
- an auxiliary left turn treatment (AULT) at the new access,
- provision of a concrete splitter median in the new access
- concrete island left in, left out only, arrangement at the existing access,
- an auxiliary left turn treatment with a short turn slot (AULT(S)) at the existing access
- a channelised right turn treatment with a short turn slot (CHR(S)) into Harper Street,
- a concrete pedestrian refuge in Front Street north of Harper Street

Category V3 lighting is required for this project.

Lighting standards have changed in recent times. The lighting installation will need to comply with the following:

- The Electrical Safety Act and regulations 2002
- Australian Standards (AS1158.1.1 2005 Lighting for roads and public spaces, AS3000 2000 Australian wiring rules for electrical installations)
- DMR Road Planning & Design Manual (RP&DM) Chapter 17
- MTR specifications MRS11.91, MRS11.92, MRS11.94 and MRS11.95
- MTR Standard Drawings
- District specific standards, notes and drawing details (made available on request)

RPEQ (electrical) certification is mandatory.

Any necessary relocation of Council water mains, Telstra and electrical services are to be undertaken at no cost to DMR and works completed to the service provider's satisfaction. No existing water mains within 3.0 m. of the new sealed shoulder edge shall be permitted.

- (f) The landowner/ applicant shall submit design drawings prepared by a suitably qualified Registered Professional Engineer Queensland (RPEQ) for approval of the Cairns office of the Department of Main Roads prior to commencing works within the State-controlled road reserves (i.e. Front Street).
- (ii) All required road access works shall be completed to the satisfaction of the Director-General of the Department of Main Roads prior to the commencement of the approved use on the subject land.

3. Hydraulic Considerations

To protect the existing flood immunity of the State-controlled road (i.e. Front Street), the landowner/ applicant shall seek the approval of the Director-General of the Department of Main Roads prior to any works commencing on the subject land which may result in changes to the existing water flows, afflux levels and/ or hydraulic structures along, under or over Front Street.

**DECISION NOTICE DETAILS
(SECTION 3.5.15 INTEGRATED PLANNING ACT 1997)**

- 3 -

4. Visual Amenity Treatments

The applicant/landowner shall provide a minimum 3m wide landscaped strip and building alignment setback along the subject land's frontage to Front Street to screen the works, carparking provision and vehicular circulation. The landscaping shall be designed and planted such that when the landscaping matures, it provides a minimum 1m high screening and complementary screen trees approximately 6m tall at 7m spacings.

The species of plants used in the landscaping works shall be in accordance with Council's standards. If Council does not have standards, then the only requirements are that the species are native, low maintenance species that are effective at providing the necessary screening specified above and do not create a safety risk (i.e. no thorns, poisonous fruits or berries or large nuts).

All landscaping works shall be completed prior to the commencement of the approved use, to the satisfaction of the Director-General of the Department of Main Roads and the Douglas Shire Council.

5. Provision of Pedestrian/Bicycle Path

(i) The applicant/landowner shall provide a 2m wide concrete pedestrian/bicycle path along the full Front Street frontage, with links into the proposed development north and south of the existing road access location, subject to the approval of the Department of Main Roads.

(ii) The applicant/landowner shall construct the pedestrian/bicycle path to the requirements of the Douglas Shire Council prior to the commencement of the approved use on the subject land.

6. Parking

When calculating carparking requirements associated with the proposed development, no allowance shall be made for parking within the State-controlled road reserves (i.e. Front Street).

7. Advertising

No advertising device for the proposed development on the subject land is permitted within the State-controlled road reserves (i.e. Front Street).

Reasons

The reasons and information used in the setting of conditions detailed above include:

- * Department of Main Roads Access Policy;
- * Department of Main Roads Involvement in Development Applications Referrals and Assessment Guide; and
- * Douglas Shire Planning Scheme.

DECISION NOTICE DETAILS
(SECTION 3.5.15 INTEGRATED PLANNING ACT 1997)

- 4 -

B. GENERAL DISCUSSION

Council is requested to reflect the above conditions on its Rates Record, to ensure that the planning intentions of the conditions are secured.

This Department would appreciate a copy of Council's decision notice regarding the application.

A copy of this letter has been sent to the applicant.

Yours sincerely



David Huber
MANAGER (TRANSPORT PLANNING) PENINSULA

OPERATIONAL WORKS RECEIPTING CHECKLIST

(To be completed by Consulting Engineer making the application)

Name of Council: **CAIRNS REGIONAL COUNCIL**

Development Name and Location:

Planning Permit No/Council File No:/...../.....

DESIGN SUBMISSION

CHECK

COMMENT

- | | | |
|---|--------------------------|--|
| 1. Completed 'Statement of Compliance' form.
(FNQROC - AP1 – Appendix A) | <input type="checkbox"/> | |
| 2. IDAS Forms A ,E & IDAS Assessment Checklist
(Available from www.ipa.qld.gov.au) | <input type="checkbox"/> | |
| 3. Payment of Engineering Application Fees
(Copy of receipt to be attached)
(Available from www.cairns.qld.gov.au) | <input type="checkbox"/> | |
| 4. Copy of Decision Notice for Development Application
Conditions, inc. <u>explanation of how each condition
is to be addressed (Statement of Compliance)</u> | <input type="checkbox"/> | |
| 5. Engineering Design drawings -
Complete sets (1 x A1 set, 2 x A3 sets and
1 x electronic copy on compact disc in 'PDF' format) | <input type="checkbox"/> | |
| 6. One copy of Design and Standard Specifications
(Unbound Copy Preferable) | <input type="checkbox"/> | |
| 7. Written consent from adjoining property owners
authorising any works on their property | <input type="checkbox"/> | |
| 8. Water reticulation network in electronic format
(Engineer to confirm system requirements and
compatibility with Cairns Water) | <input type="checkbox"/> | |
| 9. Landscape drawings -
Complete set (1 x A1 set, 2 x A3 sets and
1 x electronic copy on compact disc in 'PDF' format)
These must be accompanied by elements of the
stormwater & street itg. layout design, to avoid conflicts. | <input type="checkbox"/> | |
| 10. Overall network drawings (for staged development) for: | | |
| • Water | <input type="checkbox"/> | |
| • Stormwater | <input type="checkbox"/> | |
| • Sewer | <input type="checkbox"/> | |
| • Pathways and roads | <input type="checkbox"/> | |
| • Street Lighting | <input type="checkbox"/> | |

OPERATIONAL WORKS RECEIPTING CHECKLIST (Continued)

<u>DESIGN SUBMISSION</u>	<u>CHECK</u>	<u>COMMENT</u>
10. Overall network drawings (for staged development) Continued.		
• Electrical	<input type="checkbox"/>	
• Gas	<input type="checkbox"/>	
• Public Transport	<input type="checkbox"/>	
• Park Reserves	<input type="checkbox"/>	
• Drainage Reserves	<input type="checkbox"/>	
11. Pavement design criteria	<input type="checkbox"/>	
12. Geotechnical reports for proposed Earthworks	<input type="checkbox"/>	
13. Structural and geotechnical certificates for retaining walls etc.	<input type="checkbox"/>	
14. Water supply/sewerage pump station design parameters	<input type="checkbox"/>	
15. Stormwater drainage calculations	<input type="checkbox"/>	
16. Erosion and Sediment Control Strategy (ESCS)	<input type="checkbox"/>	
17. Declared Pest Management Plan (if applicable)	<input type="checkbox"/>	
18. The approval of any other Authorities & concurrence agencies likely to be affected by the works.	<input type="checkbox"/>	

19. Contact details of the Consulting Engineer who is submitting the Application:

Name of Engineer		
Name of Company		
Telephone Number (s)	Office:	Mobile:
Email address		
RPEQ No.		

20. Date of submission of application / / 200

(For further information on all of the above refer to the FNQROC Development Manual Section AP1)

**PLEASE RETURN THIS FORM AND ALL ASSOCIATED DOCUMENTS TO 'PLANNER OF THE DAY',
CUSTOMER SERVICES DESK, CAIRNS CITY COUNCIL, 119-145 SPENCE ST. CAIRNS, QLD, 4870**

Division 8 Appeals to court relating to development applications

4.1.27 Appeals by applicants

- (1) An applicant for a development application may appeal to the court against any of the following—
 - (a) the refusal, or the refusal in part, of a development application;
 - (b) a matter stated in a development approval, including any condition applying to the development, and the identification of a code under section 3.1.6;
 - (c) the decision to give a preliminary approval when a development permit was applied for;
 - (d) the length of a period mentioned in section 3.5.21;
 - (e) a deemed refusal.
- (2) An appeal under subsection (1)(a) to (d) must be started within 20 business days (the *applicant's appeal period*) after the day the decision notice or negotiated decision notice is given to the applicant.
- (3) An appeal under subsection (1)(e) may be started at any time after the last day a decision on the matter should have been made.

[s 4.1.28]

4.1.28 Appeals by submitters—general

- (1) A submitter for a development application may appeal to the court only against—
 - (a) the part of the approval relating to the assessment manager's decision under section 3.5.14 or 3.5.14A; or
 - (b) for an application processed under section 6.1.28(2)—the part of the approval about the aspects of the development that would have required public notification under the repealed Act.
- (2) To the extent an appeal may be made under subsection (1), the appeal may be against 1 or more of the following—
 - (a) the giving of a development approval;
 - (b) any provision of the approval including—
 - (i) a condition of, or lack of condition for, the approval; or
 - (ii) the length of a period mentioned in section 3.5.21 for the approval.
- (3) However, a submitter may not appeal if the submitter—
 - (a) withdraws the submission before the application is decided; or
 - (b) has given the assessment manager a notice under section 3.5.19(1)(b)(ii).
- (4) The appeal must be started within 20 business days (the *submitter's appeal period*) after the decision notice or negotiated decision notice is given to the submitter.

4.1.28A Additional and extended appeal rights for submitters for particular development applications

- (1) This section applies to a development application to which chapter 5, part 8A applies.

-
- (2) A submitter of a properly made submission for the application may appeal to the court about a referral agency response made by a prescribed concurrence agency for the application.
 - (3) However, the submitter may only appeal against a referral agency response to the extent it relates to—
 - (a) if the prescribed concurrence agency is the chief executive (environment)—development for an aquacultural ERA; or
 - (b) if the prescribed concurrence agency is the chief executive (fisheries)—development that is—
 - (i) a material change of use of premises for aquaculture; or
 - (ii) operational work that is the removal, damage or destruction of a marine plant.
 - (4) Despite section 4.1.28(1), the submitter may appeal against the following matters for the application even if the matters relate to code assessment—
 - (a) a decision about a matter mentioned in section 4.1.28(2) if it is a decision of the chief executive (fisheries);
 - (b) a referral agency response mentioned in subsection (2).

4.1.29 Appeals by advice agency submitters

- (1) Subsection (1A) applies if an advice agency, in its response for an application, told the assessment manager to treat the response as a properly made submission.

Editor's note—

See section 3.3.19 (Advice agency's response powers).

- (1A) The advice agency may, within the limits of its jurisdiction, appeal to the court about any part of the approval relating to the assessment manager's decision under section 3.5.14 or 3.5.14A.

[s 4.1.30]

- (2) The appeal must be started within 20 business days after the day the decision notice or negotiated decision notice is given to the advice agency as a submitter.
- (3) However, if the advice agency has given the assessment manager a notice under section 3.5.19(1)(b)(ii), the advice agency may not appeal the decision.

4.1.30 Appeals for matters arising after approval given (co-respondents)

- (1) For a development approval given for a development application, a person to whom any of the following notices have been given may appeal to the court against the decision in the notice—
 - (a) a notice giving a decision on a request for an extension of a period mentioned in section 3.5.21;
 - (b) a notice giving a decision on a request to make a minor change to an approval.
- (2) The appeal must be started within 20 business days after the day the notice of the decision is given to the person.
- (3) Subsection (1)(a) does not apply if the approval resulted from a development application (superseded planning scheme) that was assessed as if it were an application made under a superseded planning scheme.
- (4) Also, a person who has made a request mentioned in subsection (1) may appeal to the court against a deemed refusal of the request.
- (5) An appeal under subsection (4) may be started at any time after the last day the decision on the matter should have been made.

Division 9 Appeals to court about other matters

4.1.30A Appeals by applicant for approval of a proposed master plan

- (1) A person who has applied for an approval of a proposed master plan may appeal to the court against—
 - (a) the refusal, or the refusal in part, to give the approval; or
 - (b) a matter stated in the notice of decision about the application; or
 - (c) a deemed refusal.
- (2) An appeal under subsection (1)(a) or (b) must be started within 20 business days (the *applicant's appeal period*) after the day the applicant is given the notice of the decision.
- (3) An appeal under subsection (1)(c) may be started at any time after the last day a decision on the matter should have been made.

4.1.31 Appeals for matters arising after approval given (no co-respondents)

- (1) A person to whom any of the following notices have been given may appeal to the court against the decision in the notice—
 - (a) a notice giving a decision on a request to change or cancel a condition of a development approval;
 - (b) a notice under section 3.5.33A(9)(b) or 6.1.44 giving a decision to change or cancel a condition of a development approval.
- (2) The appeal must be started within 20 business days after the day the notice of the decision is given to the person.

[s 4.1.32]

- (3) Also, a person who has made a request mentioned in subsection (1)(a) may appeal to the court against a deemed refusal of the request.
- (4) An appeal under subsection (3) may be started at any time after the last day the decision on the matter should have been made.

4.1.32 Appeals against enforcement notices

- (1) A person who is given an enforcement notice may appeal to the court against the giving of the notice.
- (2) The appeal must be started within 20 business days after the day notice is given to the person.

4.1.33 Stay of operation of enforcement notice

- (1) The lodging of a notice of appeal about an enforcement notice stays the operation of the enforcement notice until—
 - (a) the court, on the application of the entity issuing the notice, decides otherwise; or
 - (b) the appeal is withdrawn; or
 - (c) the appeal is dismissed.
- (2) However, subsection (1) does not apply if the enforcement notice is about—
 - (a) a work, if the enforcement notice states the entity believes the work is a danger to persons or a risk to public health; or
 - (b) stopping the demolition of a work; or
 - (c) clearing vegetation on freehold land; or
 - (d) the removal of quarry material allocated under the *Water Act 2000*; or
 - (e) extracting clay, gravel, rock, sand or soil, not mentioned in paragraph (d), from Queensland waters; or

- (f) development the assessing authority reasonably believes is causing erosion or sedimentation; or
- (g) development the assessing authority reasonably believes is causing an environmental nuisance.

4.1.33A Appeals against decisions to change approval conditions under the repealed Act

- (1) A person who is dissatisfied with a decision made on an application to change the conditions attached to an approval given under section 2.19(3) or section 4.4 of the repealed Act may appeal to the court against—
 - (a) the decision; or
 - (b) a deemed refusal of the application.
- (2) An appeal under subsection (1)(a) must be started within 20 business days after the day notice of the decision is given to the person.
- (3) An appeal under subsection (1)(b) may be started at any time after the last day a decision on the matter should have been made.

4.1.33B Appeals against local laws

- (1) An applicant who is dissatisfied with a decision of a local government or the conditions applied under a local law about the use of premises or the erection of a building or other structure permitted by the planning scheme may appeal to the court against the decision or the conditions applied.
- (2) The appeal must be started within 20 business days after the day notice of the decision is given to the applicant.

4.1.34 Appeals against decisions on compensation claims

- (1) A person who is dissatisfied with a decision under section 5.4.8 or 5.5.3 for the payment of compensation may appeal to the court against—

[s 4.1.35]

- (a) the decision; or
 - (b) a deemed refusal of the claim.
- (2) An appeal under subsection (1)(a) must be started within 20 business days after the day notice of the decision is given to the person.
- (3) An appeal under subsection (1)(b) may be started at any time after the last day a decision on the matter should have been made.

4.1.35 Appeals against decisions on requests to acquire designated land under hardship

- (1) A person who is dissatisfied with a designator's decision to refuse a request made by the person under section 2.6.19, may appeal to the court against—
- (a) the decision; or
 - (b) a deemed refusal of the request.
- (2) An appeal under subsection (1)(a) must be started within 20 business days after the day notice of the decision is given to the person.
- (3) An appeal under subsection (1)(b) may be started at any time after the last day a decision on the matter should have been made.

4.1.36 Appeals about particular infrastructure charges

- (1) This section applies to a person who has been given, and is dissatisfied with, an infrastructure charges notice or a regulated State infrastructure charges notice.
- (2) The person may appeal to the court against the notice.
- (3) The appeal must be started within 20 business days after—
- (a) if the notice is given because of a development approval or master plan approval—the day the applicant is given notice of the decision about the approval; or

-
- (b) otherwise—the day the notice is given to the person.
 - (4) An appeal under this section may only be about—
 - (a) whether a charge in the notice is so unreasonable that no reasonable relevant local government, State infrastructure provider or coordinating agency could have imposed it; or
 - (b) an error in the calculation of the charge.
 - (5) To remove any doubt, it is declared that an appeal under this section can not be about the methodology used to establish the charge in the relevant infrastructure charges schedule or regulated State infrastructure charges schedule.

4.1.37 Appeals from tribunals

- (1) A party to a proceeding decided by a tribunal may appeal to the court against the tribunal's decision, but only on the ground—
 - (a) of error or mistake in law on the part of the tribunal; or
 - (b) that the tribunal had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.
- (2) An appeal against a tribunal's decision must be started within 20 business days after the day notice of the tribunal's decision is given to the party.

4.1.38 Court may remit matter to tribunal

If an appeal includes a matter within the jurisdiction of a tribunal and the court is satisfied the matter should be dealt with by a tribunal, the court must remit the matter to the tribunal for decision.

[s 4.1.39]

Division 10 Making an appeal to court

4.1.39 How appeals to the court are started

- (1) An appeal is started by lodging written notice of appeal with the registrar of the court.
- (2) The notice of appeal must state the grounds of the appeal.
- (3) The person starting the appeal must also comply with the rules of the court applying to the appeal.
- (4) However, the court may hear and decide an appeal even if the person has not complied with subsection (3).

4.1.41 Notice of appeal to other parties (div 8)

- (1) An appellant under division 8 must give written notice of the appeal to—
 - (a) if the appellant is an applicant—
 - (i) the chief executive; and
 - (ii) the assessment manager; and
 - (iii) any concurrence agency; and
 - (iv) any principal submitter whose submission has not been withdrawn; and
 - (v) any advice agency treated as a submitter whose submission has not been withdrawn; or
 - (b) if the appellant is a submitter or an advice agency whose response to the development application is treated as a submission for an appeal—
 - (i) the chief executive; and
 - (ii) the assessment manager; and
 - (iii) any referral agency; and
 - (iv) the applicant; or

- (c) if the appellant is a person to whom a notice mentioned in section 4.1.30 has been given—
 - (i) the chief executive; and
 - (ii) the deciding entity; and
 - (iii) any entity that was a concurrence agency or building referral agency for the development application to which the notice relates.
- (2) The notice must be given within—
 - (a) if paragraph (b) does not apply—10 business days after the appeal is started; or
 - (b) if the appellant is a submitter or advice agency whose response to the development application is treated as a submission for an appeal—2 business days after the appeal is started.
- (3) The notice must state—
 - (a) the grounds of the appeal; and
 - (b) if the person given the notice is not the respondent or a co-respondent under section 4.1.43—that the person may, within 10 business days after the notice is given, elect to become a co-respondent to the appeal by filing in the court a notice of election in the approved form.

4.1.42 Notice of appeal to other parties (div 9)

- (1) An appellant under division 9 must, within 10 business days after the day the appeal is started give written notice of the appeal to—
 - (a) if the appellant is a person to whom a notice mentioned in section 4.1.31 has been given—the entity that gave the notice; or
 - (b) if the appeal is under section 4.1.30A—the local government and coordinating agency for the application for approval of the master plan; or

[s 4.1.43]

- (c) if the appeal is under section 4.1.33A—the entity that made the decision about the application to change the conditions; or
 - (d) if the appeal is under section 4.1.33B—the local government; or
 - (e) if the appeal is under section 4.1.36—the entity that gave the notice the subject of the appeal; or
 - (f) if the appellant is a person to whom an enforcement notice is given—the entity that gave the notice and if the entity is not the local government, the local government; or
 - (g) if the appellant is a person dissatisfied with a decision about compensation—the local government that decided the claim; or
 - (h) if the appellant is a person dissatisfied with a decision about acquiring designated land—the designator; or
 - (i) if the appellant is a party to a proceeding decided by a tribunal—the other party to the proceeding.
- (2) The notice must state the grounds of the appeal.

4.1.43 Respondent and co-respondents for appeals under div 6

- (1) Subsections (2) to (8) apply for appeals under sections 4.1.27 to 4.1.29.
- (2) The assessment manager is the respondent for the appeal.
- (3) If the appeal is started by a submitter, the applicant is a co-respondent for the appeal.
- (4) Any submitter may elect to become a co-respondent to the appeal.
- (5) If the appeal is about a concurrence agency response, the concurrence agency is a co-respondent for the appeal.

- (6) If the appeal is only about a concurrence agency response, the assessment manager may apply to the court to withdraw from the appeal.
- (7) The respondent and any co-respondents for an appeal are entitled to be heard in the appeal as a party to the appeal.
- (8) A person to whom a notice of appeal is required to be given under section 4.1.41 and who is not the respondent or a co-respondent for the appeal may elect to be a co-respondent.
- (9) For an appeal under section 4.1.30—
 - (a) the assessment manager is the respondent; and
 - (b) any entity that was a concurrence agency or a building referral agency for the development application to which a notice under section 3.6.1(1)(a) relates may elect to become a co-respondent.

4.1.44 Respondent and co-respondents for appeals under div 9

- (1) This section applies if an entity is required under section 4.1.42 to be given a notice of an appeal.
- (2) The entity given written notice is the respondent for the appeal.
- (3) However, if under a provision of the section more than 1 entity is required to be given notice, only the first entity mentioned in the provision is the respondent.
- (4) The second entity mentioned in the provision may elect to be a co-respondent.

4.1.45 How an entity may elect to be a co-respondent

An entity that is entitled to elect to be a co-respondent to the appeal may do so, within 10 business days after notice of the appeal is given to the entity, by following the rules of court for the election.

[s 4.1.46]

4.1.46 Minister entitled to be party to an appeal involving a State interest

If the Minister is satisfied an appeal involves a State interest, the Minister may, by filing in the court a notice of election in the approved form, elect to be a party to the appeal.

4.1.47 Lodging appeal stops certain actions

- (1) If an appeal (other than an appeal under section 4.1.30) is started under division 8, the development must not be started until the appeal is decided or withdrawn.
- (2) Despite subsection (1), if the court is satisfied the outcome of the appeal would not be affected if the development or part of the development is started before the appeal is decided, the court may allow the development or part of the development to start before the appeal is decided.

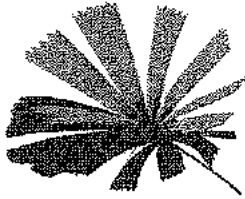
3.3.19 Advice agency's response powers

- (1) An advice agency's response may, within the limits of its jurisdiction, recommend to the assessment manager 1 or more of the following—
 - (a) the conditions that should attach to any development approval;
 - (b) that any approval should be for part only of the application;
 - (c) that any approval should be a preliminary approval only.
- (2) Alternatively, an advice agency's response may, within the limits of its jurisdiction, advise the assessment manager—
 - (a) it has no advice agency recommendations; or
 - (b) it should refuse the application.
- (3) An advice agency's response may also do either or both of the following—
 - (a) offer other advice to the assessment manager about the application;
 - (b) tell the assessment manager to treat the response as a properly made submission.



A p p e n d i x D

Council's response, dated 27 October 2010, accepting the modified Site Plan (Drawing 07125-DA100B).



**Cairns
Regional
COUNCIL**

ENQUIRIES: Luke Jackson
PHONE: (07) 4044 3240
FAX: (07) 4044 3836
OUR REF: 8/38/2 (2772940)

25 October 2010

RECEIVED
27 OCT 2010

Town & Country Limited
C/- RPS
PO Box 1949
CAIRNS QLD 4870

BY: J1262830-OCK

Dear Sir/Madam

**AMENDED PLAN FOR PROPOSED COMMERCIAL
DEVELOPMENT AT 63 FRONT STREET MOSSMAN**

Reference is made to the Change to an Existing Approval issued on 12 May 2009 for the above application and your letter dated 18 October 2010. It is noted that in your letter you request that the amended plans attached be considered "generally in accordance with" the approved plans in the Change to an Existing Approval Decision Notice. You are advised that the submitted plans which are attached herein (i.e. Amended Site Plan – 09220 – SK011 revision A prepared by TRG and dated SEP 09) are considered to be generally in accordance with the approved plans. Accordingly, no formal change to the decision is required. The attached plans replace the site plan referred to in condition 1 of the Change to an Existing Approval.

Please be aware that the amended plans must still comply with all relevant conditions of the Change to an Existing Approval Decision Notice and the original Decision Notice, including developer contributions and car parking.

Should you require any further information or assistance, please contact Luke Jackson of Council's Development Assessment Team on telephone number (07) 4044 3240.

Yours faithfully

**Kelly Reaston
Manager Development Assessment**

CAIRNS REGIONAL COUNCIL

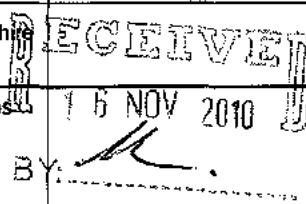
DEVELOPMENT ASSESSMENT – RECEIPT SHEET –2010/2011

APPLICATION NO: 8/38/2 DATE: 16.11.10 RECEIPT NO: 4966564

APPLICANT: RPS AUSTRALIA EAST CHEQUE NO: 400981

ADDRESS OF APPLICANT: C/- RPS PO Box 1949 CAIRNS QLD 4870

SITE LOCATION: 63 FRONT ST, MOSSMAN L101 SP K6233

RECEIPT CODE	TYPE OF APPLICATION	AMOUNT PAID
133	• Planning and Development Certificates	
134	• Consideration of Alternative Acceptable Measure / Report to Council • Prelodgement Enquiry / Report to Council / Compliance Check for Self Assessable Development	
314	• Application for Material Change of Use and Preliminary Approvals for Building Work – Code and Impact. • Extension of Currency Period / Reconsider Lapsed Approval for Material Change of Use • Request for Superseded Scheme application • Signage under DSC Scheme (Op Works)	\$2589.30
130	• Application for Reconfiguring a Lot • Extension of Currency Period / Reconsider Lapsed Approval for Reconfiguring a Lot	
314/130	Combined application (Split fee: Code: 314 for MCU and Code: 130 for ROL)	
135	Modification or Cancellation of Application or Consent Order	
395	Landscape Plan Assessments	
492	• Vegetation Protection (Local Law 24 former CCC) • Permit to Damage Protected Vegetation (Local Law former DSC)	
141	Applications for Operational Works/Re-assessment (Excludes Signage – DSC Scheme)	
302	Applications for Other Engineering Assessment (eg- for On Street, Local Law 22 approvals)	
142	Construction Monitoring Fee, Works/Final Works Inspections, Re-inspections	
513	Bonds for Outstanding Works, Construction Security, Defects Liability, EPS	
138	Endorsement of Survey Plans	
491	Extractive Industry Permits/ Renewal	
355	Tonnage charge	
SALES		
129	Public Notification Signs	
125	Sale of Planning Documents (Including Hard Copies of CairnsPlan / Douglas Shire Planning Scheme)	
419	• CDs of Cairns Plan / Douglas Shire Planning Scheme and superseded schemes • CDs - copy of application • C-Data Manipulation • CD supplied to customer <input type="checkbox"/>	
314	Photocopying,	