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**Our Ref:** PR128488/OLD/AF/L75836

**Date:** 30 June 2016

Attn: Neil Beck  
Chief Executive Officer  
Douglas Shire Council  
PO Box 723  
Mossman QLD 4870

**Via:** Mail

Dear Sir,

**RE: REQUEST FOR A NEGOTIATED DECISION NOTICE IN ACCORDANCE WITH SECTION 361 OF THE SUSTAINABLE PLANNING ACT 2009, FOR DEVELOPMENT RELATING TO LAND LOCATED AT 5 MOSSMAN STREET AND 2 MILL STREET MOSSMAN (MOSSMAN HARDWARE).**

RPS Australia East Pty Ltd confirms that we act on behalf of the Mossman Canegrowers Limited (the 'applicants') in submitting this request to amend the Decision Notice issued by Douglas Shire Council for the above described development, following on from our Notice to Suspend the Applicants Appeal Period which was lodged with Council on 3 June 2016.

Conditions which we seek amendment to, and the reasons thereto, are as follows:

### **Issue 1**

**Existing Condition 2)** *The conditions of the Development Permit must be effected no later than 6 months from the date the Development Permit takes effect except where specified otherwise in these conditions of approval.*

#### **Issue of Concern**

The limited time imposed upon the applicant within which to comply with the conditions of this approval (i.e. 6 months) will impose an undue financial burden upon the applicant. We note that the cost of implementing the conditions of this approval are likely to be significant and will impose a considerable financial strain upon resources of the applicant company, which we note is a "not for profit" organisation run for the benefit of the area's cane growers.

#### **Request**

To provide the applicant the opportunity to stage works to better suit limited financial resources and budgets, we request that the compliance period be extended to 2 years.

### **Issue 2**

**Existing Condition 4)** *The applicant must provide supporting information including existing and finished surface contours to demonstrate that the proposed access to be provided from Junction*

*Street does not create a nuisance or impede access to the existing access to Lot 97 of SR836110.*

**Issue of Concern:**

Plans submitted with the Operational Works application lodged by RECS – Engineers provide detail as to how it is intended to address the issue of access to Lot 97.

**Request**

We request confirmation that the information provided as part of the Operational Works application satisfies Council requirements under Condition 4 of the MCU approval.

**Issue 3**

**Existing Condition 7c)** *Replacement of the displaced on street parking with additional parking on the western side of Mossman Street to the satisfaction of the Chief Executive Officer as follows:*

- (i) Angled parking generally as shown on the RPS Drawing PR128488-2 Issue A dated 26 November 2015 except that the northern extent must be for the full frontage of the development (generally aligning with the northern boundary of Lot 15 on RP706250;*
- (ii) The parking is to be angled parking and is to be imperviously sealed and line-marked;*
- (iii) The parking must be graded to drain back to a new FNQROC Type 1 concrete invert to be provided at the current kerb location;*
- (iv) Where required to protect existing trees including their roots, construct tree guard around the existing trees in the road reserve*

**Issue of Concern**

The requirement for the applicant to provide designated car parking spaces for the full frontage of the opposing side of Mossman Street is onerous and excessive, for reasons including:

- No existing car parking spaces will be “displaced” by the proposed development – to the contrary, the proposal will result in the creation of a total of 11 additional car parking spaces, either within the site or adjacent to the proposed ingress from Junction Street.
- The parking shown on the submitted plans on the western side of Mossman Street was shown to demonstrate that proposed heavy vehicle movements associated with the proposed development would not compromise the future ability to construct car parks in this location, with the submitted plans clearly notated that these car parks were not intended to be provided as part of the subject development. To now require the applicant to provide these car parks (plus an additional 5+ spaces, if extended to then align with the northern boundary of Lot 15 on RP706250 – totalling 22+ car parking spaces) – is manifestly excessive having regard to the nature of the approved use on Lot 50 on RP706250 and the likely limited extent of increased parking demand arising from that use.
- We note that Council concerns relating to parking problems on Mossman Street relate specifically to parking congestion on Saturday mornings, when the Mossman Markets are in operation. We note that these markets operate without any form of land use approval (and hence should be considered as an unlawful activity) and submit that it is not reasonable to

require the applicant for the subject development to solve a parking problem not of their making and arising from an unlawful land use activity.

#### **Request**

Delete Condition 7c in its entirety.

#### **Issue 4**

**Existing Condition 7d)** *Repair the existing damaged kerb and channel commencing approximately 3m south from the southern entry/exit and extending to tie into the driveway to adjacent lot 49 on RP706250. These sections of kerb having been damaged by previous entry, exit and unloading operations associated with the use of this site.*

#### **Issue of Concern**

This condition requires the applicant to repair existing infrastructure damage (kerb and channelling) well beyond its boundaries, by requiring these repair works to tie into the driveway of the adjoining property – Lot 49 on RP706250. Given that this driveway is adjacent to the northern boundary of this lot, the required works would extend for the full frontage of Lot 49. This is clearly excessive and onerous upon the applicant for the subject development.

#### **Request**

We request that the extent of repair works required to any kerb and channelling be restricted to damaged sections to which the site has frontage, and not extend beyond the site boundaries.

#### **Issue 5**

**Existing Condition 9f)** *Detail the extent and height of the screen fence to be provided. The top of the fence must have the same reduced level and be designed in consultation with adjoining property owners with respect to the overall height of the fence.*

#### **Issue of Concern**

This condition imposes an obligation upon the applicant to negotiate with 3<sup>rd</sup> parties, all of whom we note were objector submitters to the proposed development. It is an unreasonable impost upon the applicant to subject them to the whims of such 3<sup>rd</sup> parties, given the likelihood that the chances of achieving an agreed outcome are minimal.

#### **Request**

That Council specify the design standard required for any screen fence and not subject the applicant to the need to negotiate with (likely hostile) 3<sup>rd</sup> parties.

#### **Issue 6**

**Existing Condition 16)** *A Plan of Survey must be prepared amalgamating Lot 50 and Lot 51 into one allotment. The Plan of Survey must be registered with the Department of Natural Resources and Mines and a new certificate of title issued at the applicant's/owner's cost.*

### **Issue of Concern**

The requirement to amalgamate the two existing lots on to one title is onerous and unnecessary. There is no statutory restriction that prevents a Development Permit from applying to two or more separate parcels of land. Furthermore, the requirement to amalgamate is likely to reduce the valuation of the property as opposed to retaining separate titles, and thus restrict the applicants financial flexibility, for instance by reducing the amount that can be borrowed against property valuations, and/or by preventing the ability to use the separate lots as security for borrowing.

We suggest that any concerns that Council may have regarding the “carry over” of the approval in the circumstance where the two lots are sold separately could be adequately addressed via a condition requiring that the two lots the subject of the approval be held in common ownership, and in the circumstances where the lots are sold into separate ownership then the approval over Lot 50 on RP706250 shall lapse and cease to have effect.

### **Request**

That Condition 16 be deleted in its entirety and be replaced by the following new Condition 16:

*“16 This approval relates to two parcels, described as Lot 50 on RP706250 and Lot 51 on SP113404 and shall remain in force for such time as these lots are held in common ownership. Should either lot be sold into separate ownership, this approval shall lapse and cease to have force or effect.”*

### **Issue 7**

**Existing Condition 22)** *Operational aspects of the approved development must be undertaken in accordance with the following requirements: -*

- a. Delivery and loading of goods are only permitted to occur between the hours of 7.00am and 7.00pm Monday to Saturday (excluding public holidays).*

### **Issue of Concern**

This condition imposes a restriction upon the delivery and loading of goods to defined hours Monday to Saturday. We note however that the existing store operates on Sundays, and that it is not uncommon for clients to purchase and load goods on Sundays.

Whilst the applicant and their tenant are happy to accept a restriction upon the delivery of goods to the site to those days/times nominated, it would be unreasonable to prevent the loading of goods on Sundays, when Sunday operations are an integral part of site operations. Further, the wording of the condition as currently drafted would effectively prevent any sales on Sundays, as the condition does not define the extent of “loading of goods” to which the restriction applies.

### **Request**

That Condition 22a) be amended by inclusion of the following wording:

*“, whilst loading of goods is only permitted on Sundays between the hours of 8:00am and 1:00pm.”*



We present this request for your consideration and await your response in due course. In the interim, if you require any further information or assistance, please do not hesitate to contact the undersigned.

Yours sincerely  
**RPS**

A handwritten signature in black ink, appearing to read "O. L. Dalton". The signature is fluid and cursive, with a large initial "O" and a stylized "L".

Owen Dalton  
Principal Planner