

5. AGENDA ITEMS

5.1. APPLICATION FOR MATERIAL CHANGE OF USE (AIR SERVICES AND CARETAKERS ACCOMMODATION) 35-39 PORT STREET, PORT DOUGLAS

REPORT AUTHOR	Daniel Lamond, Planning Officer
MANAGER	Paul Hoyer, Manager Environment and Planning
DEPARTMENT	Environment and Planning
APPLICATION NO	MCUC 2021_4231/1
PROPOSAL	Material Change of Use- Air Services and Caretakers accommodation
APPLICANT	Morris Aviation Australia C-/ Planz Town Planning Pty Ltd PO Box 181 EDGE HILL QLD 4870
LOCATION	35-39 Port Street PORT DOUGLAS, 23-33 Port Street PORT DOUGLAS
PROPERTY	LOT: 11 SP: 273000 and LOT: 12 SP: 273000
PLANNING SCHEME	2018 Douglas Shire Council Planning Scheme Version 1.0
ZONING	Industry Zone
LEVEL OF ASSESSMENT	Impact
PROPERLY MADE DATE	8 July 2021
STATUTORY ASSESSMENT DEADLINE	28 February 2022
REFERRAL AGENCIES	Potential trigger for State Assessment & Referral Agency

LOCALITY PLAN



Figure 1 – Locality Plan

RECOMMENDATION

That Council refuses the development application for Material Change of Use for Air services (Helipad and Caretaker's Accommodation) over land described as Lot 11 on SP273000 and Lot 12 on SP273000, on the following planning grounds:

- (1) The proposal conflicts with Theme 2- Environment & Landscape Values 3.5.6.1 Specific Outcome 1 as the air and acoustic environment is not carefully managed to maintain the health and wellbeing of the community.**
 - (2) The proposal conflicts with Theme 2- Environment & Landscape Values 3.5.6.1 Specific Outcome 3 as it represents a new noisy recreational activity that is not compatible with the amenity of the surrounding area and the impacts on sensitive receiving environments is not avoided.**
 - (3) The proposal conflicts with the Overall Outcomes of the Industry Zone Code;**
 - a. The viability of future industrial activities is not protected from the intrusion of the incompatible use.**
 - (4) The proposal conflicts with PO9 of the Industry Zone Code as Air Services is an inconsistent use and the establishment of air services is not consistent with the outcomes sought for the Industry zone.**
 - (5) The proposal conflicts with PO10 of the Industry Zone Code as it lowers the standard of amenity in terms of noise for sensitive land uses located near-by and outside the Industry zone.**
 - (6) The proposal conflicts with the Port Douglas and Craiglie Local Plan overall development outcome (f) of the Waterfront South sub-precinct as the precinct is not protected from encroachment of incompatible land use activities.**
 - (7) The proposal conflicts with PO55 of the Port Douglas and Craiglie Local Plan as the buildings and structures proposed are not set back from sensitive areas to ensure the environmental qualities of the adjacent area are not adversely affected.**
 - (8) The proposal conflicts with the overall outcomes of the Environmental Performance Code;**
 - a. The proposal has the potential to cause an adverse impact on amenity of adjacent and surrounding land and does not avoid the risk through location, design and operation of the development;**
 - b. sensitive land uses are not protected from amenity related impacts of noise, through design and operation of the proposal;**
 - (9) The proposal does not comply with P02 of the Environmental Performance code as potential noise generated from the development is not avoided through design, location and operation of the activity.**
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EXECUTIVE SUMMARY

Council is in receipt of a development application for a Material Change of Use for Air services and Caretakers accommodation at 35-39 Port Street, Port Douglas.

Morris Aviation Australia trading locally as Nautilus Aviation operate scenic flights and propose to establish a new facility for use as a base for the tourist operation equipped with two helicopter landing pads, refuelling infrastructure, hangars, an office, reception for patrons and a caretakers residence.

The Air services land use is impact assessable (inconsistent) within the Industry zone and the application underwent public notification, with 24 submissions received by Council. The primary concern raised within the submissions was the potential for unreasonable noise impacts on surrounding sensitive land uses.

The applicant did not accept an information request from Council and is of the view that the proposal will not create an unreasonable noise impact. An acoustic assessment has been provided to Council by the applicant, however there are several concerns with the assessment.

The application cannot be recommended for approval primarily due to the risk of noise nuisance.

TOWN PLANNING CONSIDERATIONS

Background

Nautilus Aviation currently operate scenic flights from the Sheraton Mirage next to the Port Douglas cemetery and from a Rural site adjacent to the highway at Killaloe. Both sites present constraints for business efficiency. Consequently, the applicant seeks to establish a new central facility with the necessary infrastructure to operate tourist flights and service the local tourism market.

A development application was received by Council in July 2021 with no prior pre-lodgement discussion with the Planning Department. The development application was lodged with conceptual proposal plans, no site survey, no acoustic report and no ecology survey. The applicant made use of an ability under the Planning Act to refuse Council the ability to issue an Information request.

Concerns regarding noise nuisance and the construction of the caretakers residence affecting marine plants were raised with the applicant and the applicant subsequently provided an acoustic assessment and an ecology survey. The acoustic report has been assessed and scrutinised by Councils Environmental Health unit.

Proposal

Proposed is the development of an Air Services land use with a caretakers residence. The proposal includes the development of a hangar to store two helicopters equipped with two helicopter pads, two 5000 litre aviation fuel tanks, an office and guest lounge. The site is proposed to be serviced by nine car parking spaces, two bus spaces and access via an easement off Port Street over Lot 11 on SP273000.

The proposal is for a scenic flight tourism operation to occur from the site. Flights are based out of the site in a four seater and an eight seater helicopter with two pilots and two administration staff based at the site.

The hours of operation are proposed to be 'daylight' hours and the maximum number of movements during peak season is anticipated to be in the order of 22 daily. One scenic flight is considered to be two movements if the helicopter returns to the site. The operation is proposed for seven days per week. The applicant has hinted at accepting conditions limiting daily flight movements as a potential strategy to mitigate noise nuisance.

State Planning Requirements

The *Planning Regulation 2017* includes a list of referral triggers to the State Assessment and Referral Agency. Schedule 10 includes a referral trigger for damage to marine plants via operational works associated with the construction of the Caretakers residence building and patio area with regard to filling.

The plans submitted to Council are indicative. However, they show filling and retaining at the North-west side boundary. This boundary is a 2 metre high fill batter with the toe of the batter at tidal level with tidal influence. There are a number of mangrove ferns straddling the boundary which appear to be required to be removed to retain the fill to develop the outdoor courtyard area proposed as part of the caretakers residence. The applicant has provided an ecology report which attempts to confirm that there are no marine plants on-site. Concern is held regarding marine plants at the boundary as there has been no identification survey picking up the accurate boundary location to determine whether the marine plants (mangrove ferns) are on the site or not. The ecology report prepared by Biotropica includes a disclaimer that the area surveyed with the GPS utilised has a 3-5m assumed potential error.

This indicates that the applicant may have missed a referral to the State Assessment and Referral agency. Given the recommendation is for refusal this does not affect the application process greatly.

DOUGLAS SHIRE PLANNING SCHEME ASSESSMENT

Table 1.

Douglas Shire Planning Locality	Comment
Planning Zone	
Industry Zone	See comment below
Local Plan Code	
Port Douglas/ Craiglie	See comment below
Other Development Codes	
Access, parking and servicing code	Complies
Environmental performance code	See comment below
Filling and excavation code	See comment below

Compliance Issues

Industry Zone

AO2.3 requires that structures are set back 2.5 metres from the boundary when adjoining land not in the Industry zone. The conceptual plans show the need for a retaining wall adjacent to the caretaker accommodation building on the boundary. This is not compliant with the acceptable outcome.

However, it does not affect compliance with the performance outcome corresponding, as the performance outcome is based on maintaining the amenity of other land uses and the adjoining area is a tidal mangrove habitat area with no uses established.

AO9 and PO9 of the code are not complied with as they require that land uses identified as inconsistent uses for the Industry zone are not established. Further, the overall outcomes sought for the Industry zone are not complied with as the viability of future industrial activities is not protected from the intrusion of the incompatible use over the land.

The proposal represents a tourism operation bringing patrons to the Industry zone which is in conflict with the development of the land for industrial uses by nature, although pairing noise emitting uses has some level of benefit. If the proposal establishes over the land, there is no area on the land left for industry uses to establish. Industry land supply is limited in the Shire and must be protected.

Port Douglas and Craigie Local Plan Code

The proposal is in conflict with overall development outcome (f) of the local plan code as the waterfront south sub-precinct is required to be protected from incompatible land uses. The sub-precinct is earmarked with planning intent for marine based industry and related tourism development. The tourist use for scenic flights is not related to industry activities.

PO54 of the local plan code is also in conflict with the proposal as it requires that the land incorporates a slipway, or an alternative functioning facility with capacity to service the Port Douglas marine and tourism industry. Since drafting of this Performance Outcome, Council commissioned an economic feasibility study to determine whether a slipway use would be viable in Port Douglas.

The study concluded that a slipway use was not commercially viable. This performance outcome is not complied with, but now has little relevance in site assessment with the information we now have. This is not considered to be a reason for refusal of the application.

The proposal is also in conflict with PO55 of the local plan code as the indicative site plan appears to show filling and retaining of the boundary straddling mangrove habitat with protected marine plants present.

Filling and Excavation Code

The code stipulates a number of boundary setback requirements for filling and excavation at boundaries and the indicative plans provided with the application appear to show some retaining on the side boundary where compliance with the acceptable outcomes of the code would not be achieved.

However, the performance outcomes are based on visual amenity of retaining walls and in this case these walls, or fill batter areas would not cause detrimental amenity outcomes as the site is generally surrounded by established mangrove areas providing a strong visual buffer. Non-compliance with this code is not a reason for refusal.

Noise Nuisance

PO10 of the Industry Zone code is in conflict with the proposal as the helicopter operation is expected to lower the standards of amenity in terms of noise at the surrounding sensitive land uses.

The proposal conflicts with the overall outcomes of the Environmental Performance Code;

- a. The proposal has the potential to cause an adverse impact on amenity of adjacent and surrounding land and does not avoid the risk through location, design and operation of the development;
- b. sensitive land uses are not protected from amenity related impacts of noise, through design and operation of the proposal.

Further, the proposal does not comply with P02 of the Environmental Performance code as potential noise generated from the development is not avoided through design, location and operation of the activity.

The applicant has provided a Noise Impact Assessment by Renzo Tonin and Associates which aims to assess potential noise impacts on existing and future sensitive uses in the surrounding area.

The assessment was carried out in accordance with the following Guidelines and Standards:

- Draft Environment Guideline: Helicopter Landing Sites, prepared by the Queensland Environmental Protection Agency (now known as Queensland Department of Environment and Science);
- Superseded Australian Standard AS2363-1990 Acoustics – Assessment of Noise from Helicopter Landing Sites;
- Current Australian Standard AS2363-1999 Acoustics – Measurement of Noise from Helicopter Operations;
- Victorian Department of Planning and Community Development and the Noise Control Guidelines (Publication 1254).

Australian Standard AS2363-1999 states that it does not provide an evaluation of the noise compatibility of sites considered for helicopter operations. It simply provides a means for calculating the acoustic environment near existing and proposed helicopter landing sites or routes as a result of helicopter operations. The underlying philosophy of the Standard is that each helicopter site is a unique situation. The application of any procedure within the Standard may not result in a satisfactory solution for the community and as such consideration should be given to ambient noise and the specific nature of noise sensitive areas which may be affected.

The most important consideration in assessment of an acoustic report is whether the report can demonstrate that there will be no environmental nuisance caused to surrounding sensitive land uses by the proposed operation. The acoustic report does not demonstrate compliance with environmental nuisance provisions of the *Environmental Protection Act 1994*.

If Council were to approve the application, it is likely that noise complaints will be received which would trigger the need for an investigation. This would involve taking background levels at the affected premises and comparing them with levels during operation in various wind and weather conditions.

The determination of nuisance would include a review of all relevant criteria, being frequency, duration, intensity, tonal components, order of occupancy as well as other considerations. Any measurement from these affected premises at sensitive land uses over 5dB(A) above background levels would suggest that an environmental nuisance may be occurring.

Council cannot reasonably approve the proposed development unless the applicant can clearly demonstrate compliance with the environmental nuisance provisions.

There are a number of concerns with the acoustic assessment provided. The location of the noise logger which was used to establish background levels is not representative of the sensitive receptors that have the potential to be affected. For example, the logger was sited in the mangroves near Mudlo Street Port Douglas where presence of insects and birds making noise is expected to be higher than at houses and units. It would seem more appropriate to take background levels from the residential areas being potentially affected such as the cul-de-sac boundary to the units on Craven Close Port Douglas for example.

The noise monitoring locations are not reflective of the majority of potentially affected premises along Mudlo Street, Craven Close Port Douglas or the immediate area. In addition, measurements were not repeated in various wind and weather conditions.

S3 noise monitoring results were chosen by the author as the best representation to demonstrate compliance with the documents referenced within the report. The most appropriate results were obtained from S4 but some measurements were not included as traffic noise was deemed extraneous noise. The cul-de-sac is a far more appropriate location to monitor from in this location.

The results show that maximum noise levels for the duration of each aspect of flight operations are well above the measured background level for the area. For example LA Max is 28dB(A) above background for departure and 11 dB(A) above background for hovering. Another method used shows MaxLPA 29dB(A) above background for departure and 12dB(A) above background for hover. These levels are considerably above the 5dB(A) threshold for environmental nuisance and may represent the full duration of the flight aspect (departure, hover etc) but this is not clear in the report. The primary concern here is that the operation is proposed seven days per week between daylight hours and may involve up to 22 movements to and from the site each day.

The recommendations from the noise impact assessment are considered to be of no value given they include limiting flight movements to 24 movements per day and include noise abatement flight techniques and paths that still result in higher than reasonable levels. Further, the application includes a flight route which shows the helicopters approaching the site from the North-West and taking off to the South-West which avoids going over sensitive land uses. Previous investigations into impacts relating to the Mirage helicopter pad adjacent to the cemetery have revealed that loaded helicopters must depart (take -off) into the prevailing wind for control. The prevailing winds at Port Douglas are South Easterlies and Northerlies. No commentary has been provided for the practical function of the operation which makes the proposed flight path appear to be one that is not intended to be complied with. Further, the plan includes a disclaimer stating that flight approach and departure is dependent on weather and other conditions.

If the applicant had submitted the acoustic report with the development application and allowed Council to make an information request, then the concerns listed above could have been formally issued and addressed resulting in a more accurate understanding of the noise implications associated with the proposal.

Specific Outcomes- Strategic Framework

The proposal is generally compliant with the specific outcomes seeking tourist development consolidation in Port Douglas. It is a development that strengthens the tourism sector by providing employment and quality experiences to visitors. However, development must comply with the other specific outcomes in the framework which regulate off-site impacts and amenity for residents.

The proposal conflicts with Theme 2- Environment & Landscape Values 3.5.6.1 Specific Outcome 1 as the air and acoustic environment is not carefully managed to maintain the health and wellbeing of the community. This has been determined as the noise assessment report does not adequately demonstrate that the environmental nuisance provisions from the *Environmental Protection Act 1994* are satisfied.

The proposal conflicts with Theme 2- Environment & Landscape Values 3.5.6.1 Specific Outcome 3 as it represents a new noisy recreational activity that is not compatible with the amenity of the surrounding area. The impacts on sensitive receiving environments is not avoided as the noise assessment does not demonstrate environmental nuisance will not occur as a result of the helicopter movements.

Public Notification / Submissions

Public notification was carried out in accordance with section 53 of the *Planning Act 2016* for the proposed development. A 15 business day public notification period was carried out with 24 submissions received by Council in relation to the proposed development. 18 of the submissions received were properly made and 6 were not properly made.

The primary theme of the submissions received was objection due to perceived noise nuisance impacts on sensitive land uses being houses, dwelling units and accommodation premises. The lack of an acoustic report with the application material was listed as a concern and was raised with the applicant informally by officers. This prompted the late submission of the noise impact assessment by the applicant after public notification was completed.

The flight duration and operation for seven days per week with 22 daily flight movements and operating hours of within daylight hours was picked up across the submissions as a major concern. Some submissions noted that a significantly lower frequency may be tolerable.

Another common concern raised across the submissions was the impact on the mangrove eco-system surrounding the site. The site is essentially reclaimed land made up of a large pad of imported fill on what was once mangrove habitat in a tidal zone. The applicant submitted an ecology survey of the site which located no species of concern as the site is a maintained and levelled vacant piece of land for the most part. However, the applicant did not provide an identification survey locating the actual site boundaries. This is particularly important as the ecology survey located a number of marine plants (Mangrove ferns) at the boundary where the indicative proposal plans appear to show filling and retaining. Whether the mangrove ferns are on the site or not is in question as the boundary has not been located accurately.

Down-draught can have impacts on the mangrove ecosystem. Nesting birds can be affected for example. This was raised as a concern given the site is constrained on most sides. Noise in general is not a major concern for ecologists in a waterway as heavily used as Dickson Inlet by power boats and this has been confirmed by the applicant's ecologist.

Supply of other air services sites which adequately cater for the tourist flights was mentioned across a number of the submissions as a reason for refusal.

Noise impacts on the users of Dickson Inlet including nature based tourism and recreational boat users was raised as a concern however it is acknowledged that power boats are commonplace here and make considerable noise from time to time.

Internal Referrals

Advice was received from the following internal departments:

Table 2.

Department	Comments
Environmental Health	The application material including the noise assessment report was referred to Councils Environmental Health unit for scrutiny. The assessment undertaken by the Environmental Health Officers has determined that the proposal is likely to result in sensitive land uses nearby experiencing environmental noise nuisance which is not reasonable.

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances, and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

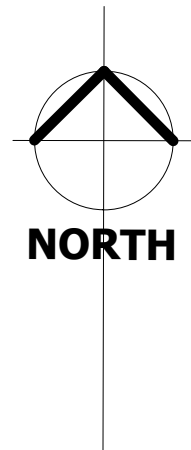
The following area outlines where Council has a clear responsibility to act:

Regulator	Council has a number of statutory obligations detailed in numerous regulations and legislative Acts. Council also makes local laws to ensure that the Shire is well governed. In fulfilling its role as regulator, Council will utilise an outcomes based approach that balances the needs of the community with social and natural justice.
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Under the *Planning Act 2016* and the *Planning Regulation 2017*, Council is the assessment manager for the application.

ATTACHMENTS

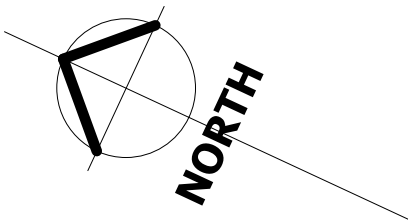
1. Attachment 1- Proposal Plans [5.1.1 - 8 pages]



FLIGHT APPROACH AND
DEPARTURE PATHS ARE
INDICATIVE AND SUBJECT TO
WEATHER AND OTHER
CONDITIONS



1 Locality Plan & Indicative Flight Paths
WD01 1 : 10000

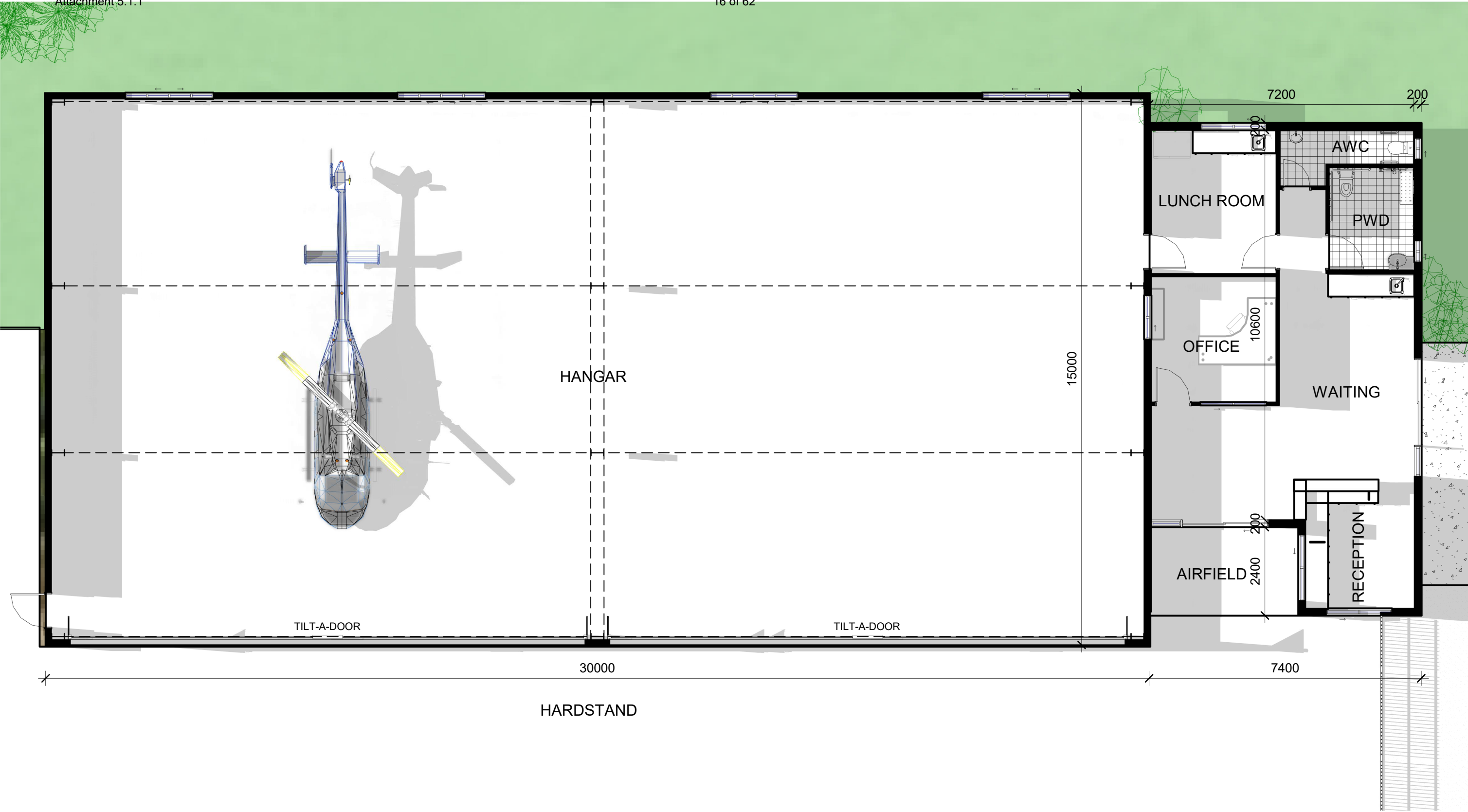


Town Planning Information

Property Description:	LOT 11 RP273000 35-39 PORT STREET PORT DOUGLAS
Proposal:	HANGAR, OFFICE, CARETAKERS AND HELICOPTER OPERATIONS
Planning Area:	DOUGLAS SHIRE COUNCIL
Land Use:	INDUSTRY
Site Area:	4915m ²
Gross Floor Area:	HANGAR - 448m ² OFFICE - 100m ² CARETAKERS - 58m ² TOTAL - 606m ²
Site Coverage:	606M2 OR 12.32%
Car Parking Required:	1 PER 20m ² OFFICE - 5 SPACES 1 PER 2 STAFF (4 STAFF) - 2 SPACES BUS SETDOWN - 2 SPACES
Car Parking Provided:	CAR PARKS - 8 SPACES BUS SETDOWN - 2 SPACES
Landscaping Required:	20% - 983m ²
Landscaping Provided:	31.73% OR 1560m ²

1 Site
WD02 1 : 500

Site Plan



1 Ground Floor
WD03 1 : 100

Floor Plan - Office / Hangar





2 East
WD04 1 : 100



1 South
WD04 1 : 100

Elevations

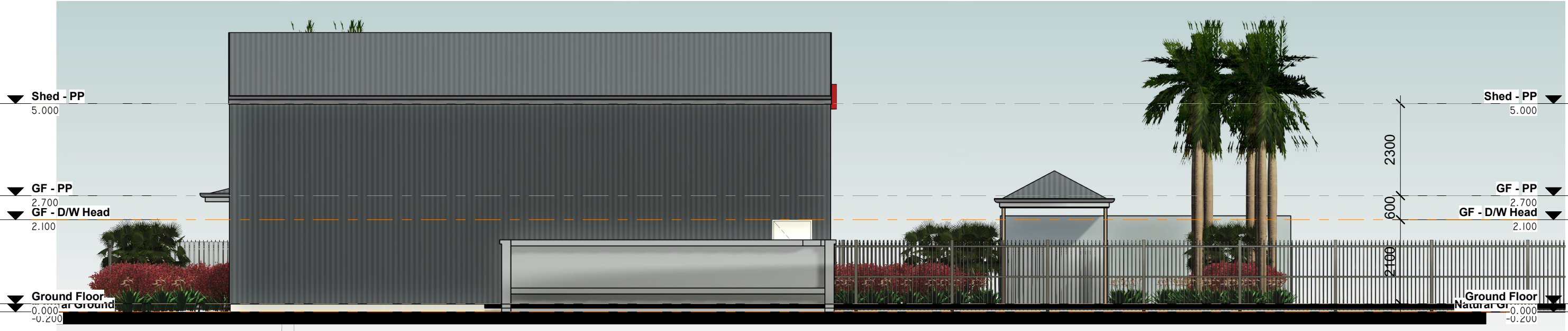
MCU Air Services

35-39 Port St, Prot Douglas

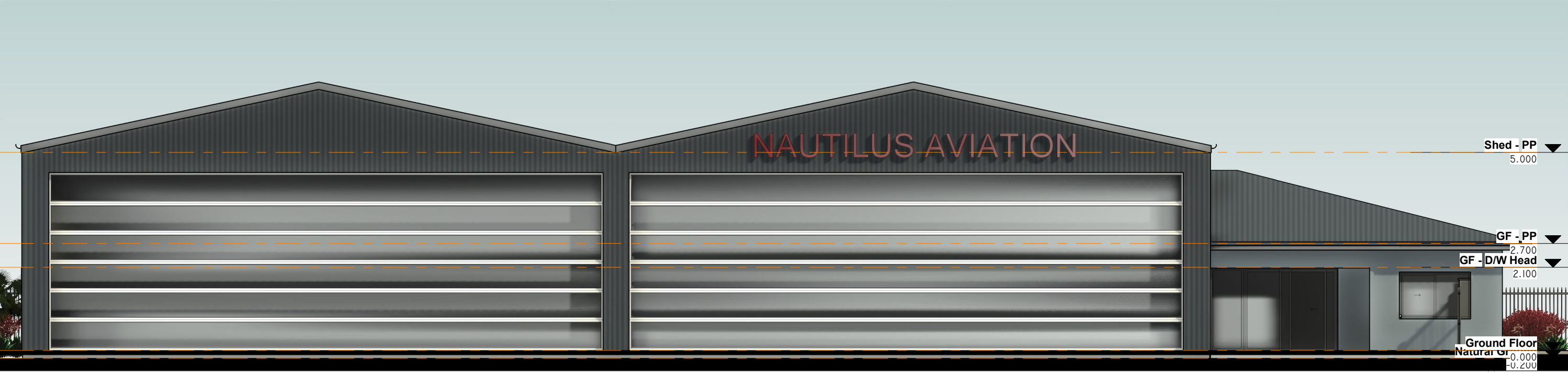
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Job No: 21-055
Date: 25/06/2021
Scale: @A3 1 : 100
Sheet No: WD04
Issue: B





2 North
WD05 1:100



1 West
WD05 1:100

Elevations

MCU Air Services

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1 Ground Floor - Caretakers
WD06 1 : 100

Caretakers Residence

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Issue: B





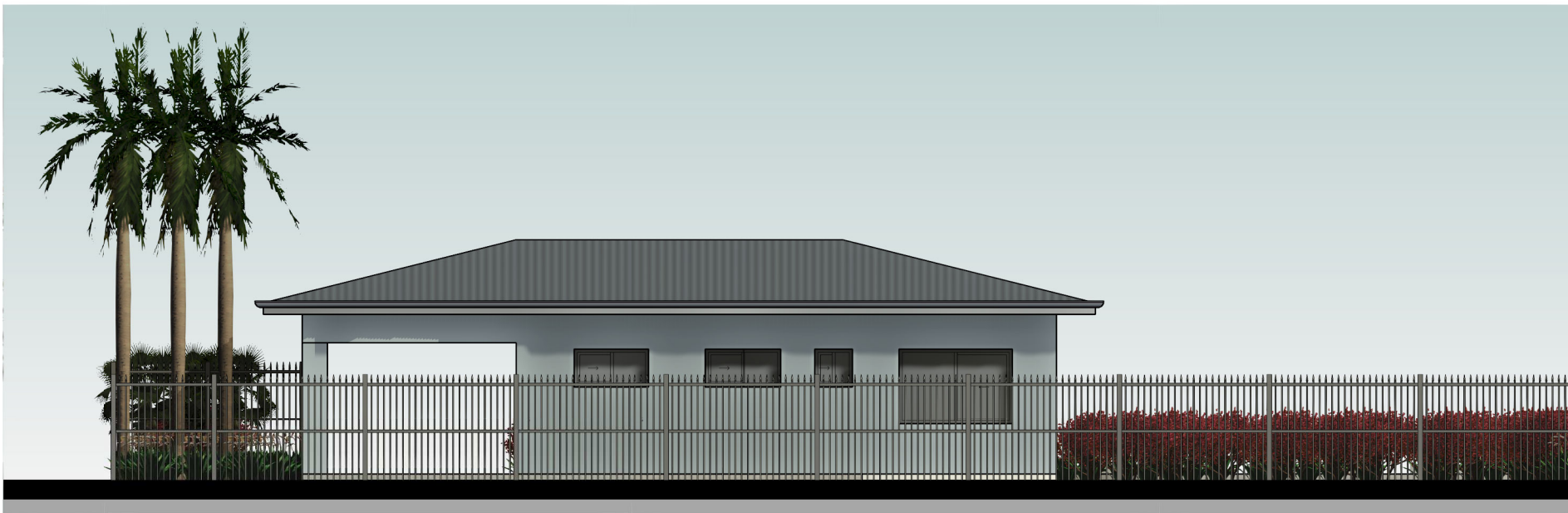
3 CT - South
WD07 1 : 100



4 CT- West
WD07 1 : 100



1 CT - North
WD07 1 : 100



2 CT - East
WD07 1 : 100

Caretakers - Elevations

MCU Air Services

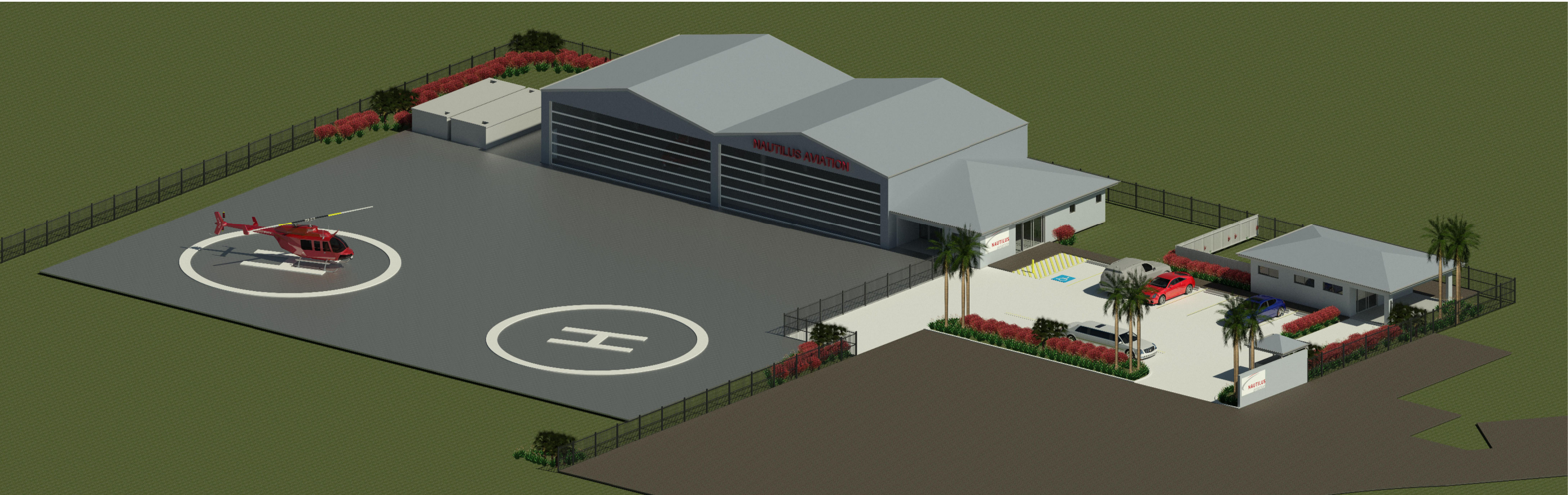
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