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| Between: | DOUGLAS SHIRE SUSTAINABILITY GROUP INC. (ORGANISATION NO. IA34472) | First Appellant |
| And: | COLIN MUSSON | Second Appellant |
| And: | RENATA MUSSON | Third Appellant |
| And: | JOSH GIBSON | Fourth Appellant |
| And: | CHIDO CORPORATION OPERATIONS PTY LTD (ACN 619 297 997) | Fifth Appellant |
| And: | HILARY KUHN | Sixth Appellant |
| And: | DOUGLAS SHIRE COUNCIL | Respondent |
| And: | GRABEN PTY LTD (ACN 070 085 693) | Co-Respondent |

NOTICE OF APPEAL

Filed on: 1 June 2022
Filed by: Mills Oakley
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Reference: 9310329

DOUGLAS SHIRE SUSTAINABILITY GROUP INC. (ORGANISATION NO. IA34472), COLIN MUSSON, RENATA MUSSON, JOSH GIBSON, CHIDO CORPORATION OPERATIONS PTY LTD (ACN 619 297 997) AND HILARY KUHN c/- Mills Oakley, Level 23, 66 Eagle Street, Brisbane in the State of Queensland appeals to the Planning and Environment Court at Brisbane, against the decision of the Respondent to approve, subject to development conditions, a development application for a development permit for material change of use for resort complex (outdoor sport and recreation, short-term accommodation, food and drink outlet, shop, tourist park, air services & caretaker's accommodation), a development permit for reconfiguring a lot (1 into 4 lots and common property) and a preliminary approval for operational works (advertising devices)

NOTICE OF APPEAL

Filed on behalf of the Appellants

Form PEC-1

MILLS OAKLEY

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(**Development Application**) in respect of land described as Lot 123 on SR687 and located at 5640 Captain Cook Highway, Mowbray (**Land**).

The Appellants seek the following orders or judgment:

- (a) that the appeal be allowed;
- (b) that the Development Application be refused; and
- (c) such further or other orders as the Court deems appropriate.

The grounds of appeal are:

1. The Land:

- (a) has a site area of approximately 40 hectares;
- (b) is currently used for sugar cane production;
- (c) is improved by a single dwelling and ancillary farm shed;
- (d) is predominantly surrounded by rural land uses;
- (e) under the *Port Douglas Shire Council Planning Scheme 2018*, version 1.0
(Planning Scheme):
 - (i) is in the Rural Area under the Strategic Framework Map;
 - (ii) is in the Rural zone;
 - (iii) is affected by a number of overlays which include:
 - (A) the Coastal environment overlay; and
 - (B) the Acid sulfate soils overlay.

Proposed development

2. The material change of use component of the Development Application proposed the following elements (**the proposed development**):

- (a) a hotel complex containing 164 rooms to be used for holiday accommodation in two separate buildings;
- (b) a village precinct comprising retail space, food and drink outlets and conference/function rooms and day spa facilities;
- (c) a self-contained short-term accommodation precinct comprising a maximum of 90 self-contained dwelling units/villas;
- (d) a tourist park comprising a maximum of 35 self-contained cabins;
- (e) a helipad;
- (f) a wave park;
- (g) a freshwater swimming lagoon and aquapark; and
- (h) a caretaker's residence.

3. The reconfiguration component of the Development Application divides the land as follows:
 - (a) 1.408ha for the hotel and village precinct (Lot 1);
 - (b) 4.53ha for the Wave Park and aquapark (Lot 2);
 - (c) 1.08ha for the tourist park (Lot 3);
 - (d) 8.55ha for the self-contained short-term accommodation (Lot 4); and
 - (e) 24.57ha for common property which includes the main access, thoroughfares, car parking and freshwater lagoon.
4. The Development Application was properly made on 16 July 2021.
5. The Development Application was subject to impact assessment and triggered referral to referral agencies.
6. The Development Application attracted submissions both opposing and in support of the proposed development.
7. By Decision Notice dated 29 March 2022, the Respondent approved the Development Application, subject to development conditions.
8. On or about 5 May 2022, notification of the decision was provided to the submitters to the Development Application.
9. The Appellant contends that the decision of the Respondent to approve the Development Application should be set aside and a decision should be made refusing it for the reasons that follow.

Inappropriate Use of the Land

10. Both in substance and form, the proposed development is an inappropriate use of the Land. In that regard, the proposed development results in non-compliances with the following provisions of the Planning Scheme:
 - (a) The Strategic Framework –
 - (i) Section 3.4, Specific outcomes 3.4.2.1(2) and (5);
 - (ii) Section 3.5, Specific outcome 3.5.5.1(2);
 - (iii) Section 3.6, Specific outcomes 3.6.3.1(1) and (2);
 - (iv) Section 3.8, Specific outcome 3.8.2.1(1)(i), Specific outcomes 3.8.3.1(3) and (6) and Specific outcome 3.8.4.1(3);
 - (i) Section 3.9, Strategic outcome 3.9.1(1);
 - (b) The Rural zone code:
 - (i) Purpose 6.2.10.2(1)(b), (2)(b) and (c) and (3)(a) - (c);
 - (ii) PO1, PO4, PO5 and PO7;

- (c) The Coastal environment overlay code:
 - (i) Purpose 8.2.3.2(2)(d) and (f);
 - (ii) PO1, PO4 and PO14;
- (d) The Reconfiguring a lot code:
 - (i) Purpose 9.4.7.2(2)(e), (f) and (h);
 - (ii) PO1, PO2, PO3, PO4.

Building Height, Built Form, Character and Visual Amenity

11. The proposed development contemplates a built form and height which is not contemplated by the Rural zone and is not consistent with the current character or desired future character of the area and results in adverse visual amenity impacts. The proposed development results in non-compliances with the following provisions of the Planning Scheme:

- (a) The Strategic Framework:
 - (i) Section 3.5, Specific outcome 3.5.5.1(3).
- (b) The Rural zone code:
 - (i) Purpose 6.2.10.2(1)(b), (2)(c) and (3)(b) and (c); and
 - (ii) PO1.

Environmental Impacts

12. It has not been demonstrated that the proposed development will not have unacceptable ecological impacts, including on terrestrial and aquatic environments, as required by:

- (a) the Natural areas overlay code:
 - (i) Purpose 8.2.7.2(2)(a) – (c); and
 - (ii) PO1 – PO9.

13. It has not been demonstrated that the proposed development will not have unacceptable water quality impacts, as required by:

- (a) the Environmental performance code:
 - (i) Purpose 9.4.3.2 (2)(a) and (c); and
 - (ii) PO7.
- (b) the Infrastructure works code:

- (i) Purpose 9.4.5.2(2)(b)-(e); and
 - (ii) PO5 – PO7.
- (c) Filling and excavation code:
- (i) Purpose 9.4.4.2(2)(b) and (c); and
 - (ii) PO3 – PO4.

Loss of Agricultural Land

14. The proposed development results in the loss and fragmentation of good quality agricultural land and will have adverse impacts on the land use on and off the Land. In that regard the proposed development results in non-compliances with the following provisions of the Planning Scheme:

- (a) The Strategic Framework:
 - (i) Section 3.6, Specific outcomes 3.6.3.1(1) and (3).
- (b) The Rural zone code:
 - (i) Purpose 6.2.10.2(1)(a) and (3)(a);
 - (ii) PO4, PO5 and PO7.

Amenity Impacts

15. It has not been demonstrated that the proposed development would not result in unacceptable amenity impacts and therefore it does not comply with the following provisions of the Planning Scheme:

- (a) The Strategic Framework:
 - (i) Section 3.5, Specific outcome 3.5.5.1(2);
 - (ii) Section 3.9, Strategic outcome 3.9.1(1);
- (b) The Rural zone code:
 - (i) Purpose 6.2.10.2(2)(c) and (3)(b);
 - (ii) PO1, PO2, PO3;
- (c) The Coastal environment overlay code:
 - (i) Purpose 8.2.3.2(2)(d) and (f);
 - (ii) PO13;

- (d) The Reconfiguring a lot code:
 - (i) Purpose 9.4.7.2(2)(e).

Flooding

- 16. It has not been demonstrated that the proposed development will not have unacceptable flooding impacts, as required by:
 - (a) Flood and storm tide hazard overlay code:
 - (i) Purpose 8.2.4.2(2); and
 - (ii) PO1 – PO5.
 - (b) Filling and excavation code:
 - (i) Purpose 9.4.4.2(2)(c); and
 - (ii) PO3.

Infrastructure Servicing

- 17. It has not been demonstrated that the proposed development is able to be adequately serviced by infrastructure with no unacceptable impacts on infrastructure networks as required by the following provisions of the Infrastructure works code of the Planning Scheme:
 - (a) Purpose 9.4.5.2(2)(a) and (d); and
 - (b) PO3, PO4, PO8-PO11, PO13, PO14, PO17.

Acid Sulphate Soils

- 18. It has not been demonstrated that the proposed development is suitable on the Land within the:
 - (a) Acid sulfate soils overlay sub-categories and that it complies with:
 - (i) Purpose 8.2.1.2(2)(a) and (b); and
 - (ii) PO1, PO2 and PO3.

Traffic

- 19. It has not been demonstrated that the proposed development does not result in acceptable traffic impacts on and off the Land and therefore it does not comply with the following provisions of the Planning Scheme:
 - (a) The Strategic Framework:

- (i) Section 9, Specific outcome 3.9.4.1 (1) and (5);
- (b) Transport Network Overlay Code:
 - (i) Purpose 8.2.10.2(2)(a), (b), (c) and (d); and
 - (ii) PO1, PO2, PO3, PO4, PO5 and PO6.

Exercise of the planning discretion

- 20. The development conditions imposed by the Respondent are not adequate to address the issues identified above and include conditions which are unlawful or otherwise prohibited development conditions under s.66 of the Planning Act 2016.
- 21. There is no need for the proposed development.
- 22. There are no relevant matters which warrant approval of the Development Application.
- 23. There is a need to protect and maintain good agricultural land in Queensland.
- 24. The proposed development is inconsistent with the community expectation in the locality in light of the serious non-compliances with the planning scheme, particularly in relation to the loss of rural land.
- 25. The proposed development is a clear departure from the intent of the planning scheme to protect and maintain rural land.
- 26. The impacts of the proposed development will result in a serious impact on the ability for rural uses to occur on the land and adjoining land.
- 27. It is a relevant matter that it has not been demonstrated that the proposed development will not adversely affect habitat that is critical to the survival of the Spectacled Flying Fox species.
- 28. On the basis of the matters pleaded herein, the appeal ought be allowed and the Development Application refused.


Mills Oakley
Solicitors for the Appellants

If you are named as a respondent in this notice of appeal and wish to be heard in this appeal you must:

- (a) within 10 business days after being served with a copy of this Notice of Appeal, file an Entry of Appearance in the Registry where this notice of appeal was filed or where the court file is kept; and**
- (b) serve a copy of the Entry of Appearance on each other party.**

The Entry of Appearance should be in Form PEC – 5 for the Planning and Environment Court.

If you are entitled to elect to be a party to this appeal and you wish to be heard in this appeal you must:

- (a) within 10 business days of receipt of this Notice of Appeal, file a Notice of Election in the Registry where this Notice of Appeal was filed or where the court file is kept; and**
- (b) serve a copy of the Notice of Election on each other party.**

The Notice of Election should be in Form PEC – 6 for the Planning and Environment Court.