



PO Box 762
Mossman Qld 4873

sustainabilitydouglas@gmail.com

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MEDIA RELEASE – MOWBRAY ‘WAVE PARK’ OVERTURNED

Douglas Shire Sustainability Group (DSSG) welcomes the decision of the Planning and Environment Court (the Court) to allow the appeal by DSSG and others; overturning the decision of Douglas Shire Council (Council) of 30 March 2022, to approve the development of a “Wave Park’ at Mowbray.

President of DSSG, Didge McDonald, said “DSSG is vindicated in its opposition to this development in our Shire”.

“This is a win for all those wishing to safeguard the integrity of our planning scheme and ensuring appropriate development in Douglas Shire. The process of the Court has allowed public opinion to be heard, and in this case, validated.”

DSSG and others objected to the proposed development on several grounds, including

- (a) inappropriate use of land (the current zoning of the land is rural);
- (b) building height, built form, character and visual amenity impacts;
- (c) environmental impacts, particularly given the site is proximate to the Great Barrier Reef and Mowbray River;
- (d) loss of important agricultural land;
- (e) flooding impacts on surrounding properties;
- (f) failure to demonstrate proper infrastructure servicing, particularly given the demand required from Council’s limited potable water supply;
- (g) adverse traffic impacts;
- (h) lack of need; and
- (i) inconsistency with community expectations.

Expert Reports on most of these issues were commissioned by DSSG, Council and the developer, Graben Pty Ltd .

“Council has a lot to learn from this case“, said Mr McDonald. “It must stop approving development in flood prone and storm surge areas, it must stop relying on expert reports from developers, and instead seek independent expert advice; and it must stop trying to undermine or work around our Planning Scheme and the development footprint”.

“Council must undertake its own assessment of developments in a Coastal Management District and needs to consider future impacts, including climate change when it approves development applications.”

DSSG’s expert hydraulic engineer advised:

- The proposed development results in an increase of the flood levels on the surrounding land of up to 183mm. This is significantly in excess of 10mm which is the level typically accepted.
- The proposed extraction of water may result in saltwater intrusion into the water table.
- No proper assessment has been undertaken with respect of water quality. This is a concern given the proximity of the proposed development to the Great Barrier Reef and Mowbray River.
- The development will overload the community sewerage treatment plant and extensive upgrades are required in order to accommodate the wave park development.
- There is insufficient water supply within Port Douglas to service the proposed development. The implications of this is that the community will be left with a substantial burden to fund the private infrastructure needed to service the wave park.

DSSG’s Planning expert found that Council approved the development despite the subsequent findings of experts that the proposed conditions placed by Council were either deficient or inaccurate and inappropriate to address the identified problems.

More specifically, Council appears to have based their decision to approve the proposed development on the acceptance that problems will arise, though without understanding the severity of the problems; how they might be managed or mitigated – if at all - and at what cost. There appears to have been no consideration of the holistic effect of addressing the problems.

Further, the State has based their decision to approve the proposed development on erosion prone land in a Coastal Management District, involving the removal of marine plants, on incomplete and inaccurate information. The State’s decision to approve development in the coastal management district and remove marine vegetation has likely caused Council to either not look closely at their own policy in respect of these matters, or rely only on the State’s assessment.

In summary, Council did not have the technical knowledge or resources to assess an application of this nature, nor the impacts it is likely to generate. Council has relied heavily on the developer’s consultants, which have generally provided rudimentary, if any assessments at all.

Our Aquatic Ecology expert, after visiting the site, found that the marine plants on and adjacent to the site are dominated by a diverse assemblage of mangroves. These mangroves provide high value fisheries habitat.

She found that the marine plant mapping provided in the development application was incomplete and inaccurate and the extent of marine plant loss associated with the proposed development will be greater than the 0.17 ha approved by the State.

The expert also found that threatened aquatic species are likely or known to occur in the Mowbray River and associated wetlands, including estuarine crocodiles. Threatened species including estuarine crocodiles, dugong and marine turtles are likely to occur in nearshore coastal environments. Species typically assessed by terrestrial ecologists, including water mouse, birds and flying fox, may also be present in these habitats.

“It should have been clear from the beginning that this development was not in the best interests of the Douglas Shire” said Mr McDonald. We have a responsibility to protect our delicate coastal ecology which directly feeds into the World Heritage Great Barrier Reef”.

DIDGE MCDONALD 0418 852 545

EXPERT AGREED FINDINGS

The court process required DSSG, Council and Graben Pty Ltd to provide experts in several fields to work together and report to the Court on their joint findings. Not all findings were agreed and although individual experts made their own findings, many of those were unchallenged by the other experts.

A selection of the findings which were agreed by all (DSSG, Council and Graben Pty Ltd) experts is below:

Agriculture

The landform has been identified as subject to inundation from sea level rise and subject to inundation from storm surge and climate change by the Queensland Government.

Aquatic ecology

The potential indirect impacts of the proposed development on aquatic ecology were not considered as part of the development application.

Buffers to the adjoining wetlands may not be adequate along the western part of the site.

The experts agreed insufficient information was available to assess the impacts, including:

- Confirmation of the extent of marine plant loss associated with the proposed development, including protected mangroves in the World Heritage Area GBR Marine Park, which are identified as high value fisheries habitat.
- Confirmation or otherwise that stormwater from the site will not negatively impact the surrounding wetlands.
- Confirmation or otherwise that acid sulfate soils will be appropriately managed (including with respect to the potential impacts of groundwater drawdown) and will not negatively impact the surrounding wetlands.

Economic need

The joint experts found that the Economic Assessment included in the application was prepared by a person not qualified to make operational assessments, and has generally overstated the economic benefits that would be derived by the Douglas Shire.

Flooding, Coastal and Storm Water Quality

The report prepared for the applicant to address the Flood and Storm Tide Hazard Overlay was found to be not fit for purpose to assess the flooding at the site, necessitating a new report. The flood study that was relied upon in the application to Council has underestimated flood levels at the site.

Engineering including Hydrology

The developer did not complete any hydraulic or network analyses to determine whether the water supply and sewerage demands of the site could be met by Council's existing infrastructure. Council's approval was not supported by modelling.

There was no adequate demonstration that sufficient stormwater was available to meet anticipated site demands.

The applicants do not deal with the standard of treatment necessary for the use of harvested stormwater in the pools, and in this regard, it is noted that the use will be for primary contact with

users, so representing a public health risk unless properly managed. The application and approval are considered deficient in this respect.

The application does not address how, or if at all, sewer generation rates can be mitigated.

The acid sulphate soil investigation was not completed in accordance with the requirements of the relevant Guidelines for Sampling and Analysis of Lowland Acid Sulfate Soils in Queensland 1998. The level of investigation in the lagoon excavation area is clearly deficient.

No Acid Sulfate Soils Management Plan was prepared for the development application, although the volume of earthworks proposed to be undertaken on site exceeds 190,000 m³.

Planning

There is non-compliance with the planning scheme resulting from the proposal being located outside of a 'Tourist node', in the Rural zone.