



DETAILED ASSESSMENT REPORT

REQUEST TO EXTEND CURRENCY PERIOD REQUEST TO VARY INFRASTRUCTURE AGREEMENT

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SUMMARY SHEET	
Applicant:	Mr Kim Michael Carroll & Ms Heidi Meyer
Owner:	Mr Kim Michael Carroll & Ms Heidi Meyer
Consultant:	Insite SJC
Application Number:	MCU15/0270.03 & MCU15/0270.04
Proposal:	Request to Extend Currency Period for a Development Permit for Material Change of Use (Integrated Tourist Facility) Request to Vary Infrastructure Agreement
Application Received Date:	15 November 2019
Decision Due Date:	13 December 2019
Number of Properly Made Submissions for Original Application:	337 properly made 26 not properly made
PROPERTY DETAILS	
Division:	7
Property Address:	24 & 26 Box St BUDERIM QLD 4556
RP Description:	Lot 5 RP 27823 & Lot 7 RP 176066
Land Area:	Lot 5 – 12,570m ² Lot 7 – 28,151m ² Total – 40,721m ²
Existing Use of Land:	Single detached house
PLANNING SCHEME DETAILS FOR ORIGINAL APPLICATION	
Planning Scheme:	Maroochy Plan 2000 (Amendment 24)
Strategic Framework Land Use Category:	Rural or Valued Habitat
Planning Area:	6 – Buderim
Precinct:	5 – Buderim Non-Urban
Precinct Class:	General Rural Lands
Overlays	Natural conservation management area Waterways, wetlands and fish habitat areas Steep and unstable land Bushfire prone areas

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Assessment Type:	Impact assessment
PLANNING SCHEME DETAILS AT DATE OF CURRENT EXTENSION REQUEST	
Planning Scheme:	Sunshine Coast Planning Scheme 2014 (Version 20 – effected 11 November 2019)
SEQRP Designation:	Urban Footprint
Strategic Framework Land Use Category:	Rural Enterprise and Landscape Area
Local Plan Area:	Buderim
Zone:	Limited Development (Landscape Residential)
Assessment Type:	Impact

PROPOSAL

Extension to Currency Period

The applicant seeks an additional 4 year extension to the currency period of the approved Development Permit for Material Change of Use (Integrated Tourist Facility). A 4 year extension would take the approval's currency to 29 June 2024, being 6 years from the date the approval took effect.

The applicant requests an extension of 4 years on the grounds that:

- (1) *The two (2) year currency period was an unreasonable time frame in which to commence the use.*
- (2) *The applicant has engaged in a thorough national and international EOI campaign building personal relationships with luxury resort operators and attempting to secure a Hotel Management Agreement, evidencing an intent to give effect to the development approval and complying with conditions as set forth by the accompanying infrastructure agreement.*
- (3) *The terms of Council's development approval and the accompanying infrastructure agreement are proving obstructive to securing a Hotel Management Agreement.*
- (4) *The approval was granted by the Council under the Maroochy Plan 2000. Council will assess the extension application under the Sunshine Coast Planning Scheme 2014. The proposal is not so offensive to the Sunshine Coast Planning Scheme to warrant a refusal of the request.*
- (5) *The grounds relied upon by Council in April 2018 to support the development proposal not withstanding conflicts with the Maroochy Plan 2000 remain relevant in November 2019.*
- (6) *The community is not unaware of the development proposal and were an application re-made, the public notification process would be unlikely to introduce substantially different submissions.*
- (7) *Council anticipated it would extend the relevant period in the Decision Notice.*
- (8) *Key business organisations have reinforced their support for the approved development.*

Amendment to Infrastructure Agreement

The applicant has lodged a concurrent request to delete Special Condition 3.3 of the existing infrastructure agreement which states:

- 3.3 *Within 2 years of the date of the development approval taking effect and prior to any work occurring on the subject site, the developer must enter into an enduring and binding management rights agreement with a 5-star or higher hotel operator, and provide evidence of the agreement to Council. The agreement must include written terms that bind the hotel operator to proceed to manage and operate a 5-star or higher hotel upon completion of the development's construction.*

The applicant seeks to replace Special Condition 3.3 in full, with the following terms:

- 3.3A *On or before 31 July 2020, the applicant shall provide to Council evidence of a Memorandum of Understanding from at least one 5-star operator evidencing a desire on the part of the operator to manage and operate a 5-star hotel.*
- 3.3B *On or before 31 December 2020, the applicant shall provide to Council evidence of a binding agreement with an investor to fund construction of a 5-star hotel.*
- 3.3C *On or before 31 July 2021, the applicant shall lodge with Council an amended plan package in accordance with the terms and conditions of the development approval.*
- 3.3D *On or before 31 October 2021, Council shall provide to the applicant written approval of the amended plan package.*
- 3.3E *On or before 31 December 2021, the applicant shall provide to Council evidence that the developer has entered into a binding management agreement with a 5-star hotel operator. The agreement must include written terms that bind the hotel operator to proceed to manage and operate a 5-star hotel upon completion of the development construction.*
- 3.3F *The date by which the applicant is to provide Council with a binding management agreement is extended by the same time Council takes beyond 3 months to approve the amended plans per Special Condition 3.3D.*

The applicant also seeks to amend Special Condition 5.1 which requires the submission of a complete detailed drawing package to Council within 24 months of the date the development approval takes effect or prior to lodgement of the first Operational Works application, whichever occurs sooner. The applicant seeks to delete the following words:

- 5.1 *Within 24 months of the date the development approval takes effect or prior to lodgement of the first Operational Works application, whichever occurs sooner...*

And insert in lieu thereof the words:

- 5.1 *In accordance with Special Condition 3.3C, the applicant shall lodge...*

The changes requested to the infrastructure agreement are sought through a Deed of Variation by the applicant.

Thus Council is required to consider both the request to extend the Development Permit and the request to vary the infrastructure agreement. Both of these matters are considered within this report.

BACKGROUND:

Development Approval

The existing development approval comprised a Development Permit for Material Change of Use (Integrated Tourist Facility) and incorporated a 111 room resort complex, function facility, restaurants and day spa (ref MCU15/0270). The approval was granted at an Ordinary Meeting of Council on 19 April 2018, and took effect on 29 June 2018 following the expiry of the submitter appeal period. The approval was granted a 2 year currency period to 29 June 2020, inclusive of the following clause:

Note: Council will likely agree to an extension of the [currency] period where evidence is provided that the developer has entered into an enduring and binding management rights agreement with a 5-star or higher hotel operator within the 2 year [currency] period.

The development was approved with a 2 year currency period on the basis that the applicant would enter into a suitable Hotel Management Agreement with an operator within that period, aligning with the terms of the infrastructure agreement entered into by the applicant.

On 17 July 2019, the applicant submitted a request to extend the currency period of the Development Permit and vary the terms of the infrastructure agreement. This request was subsequently withdrawn on 20 September 2019, prior to a decision being made by Council. A new request (being the current request) was lodged on 15 November 2019.

A copy of the Council Ordinary Meeting resolution dated 19 April 2018 (OM18/50) granting approval of the original development application is provided below:

Ordinary Meeting 19 April 2018 (OM18/50)

That Council

- (a) *delegate authority to the Chief Executive Officer to APPROVE Application No. MCU15/0270 with conditions and grant a Development Permit for Material Change of Use (Integrated Tourist Facility) situated at 24 & 26 Box Street, Buderim, subject to:
 - (i) *imposition of the conditions of approval identified in Appendix A, and*
 - (ii) *execution of the Infrastructure Agreement included as Attachment 7 by both parties**
- (b) *delegate authority to the Chief Executive Officer to execute the Infrastructure Agreement included as Attachment 7, and*
- (c) *delegate authority to the Chief Executive Officer to negotiate and determine all future requested changes to the Infrastructure Agreement, with the exception of changes that would materially alter the terms of the Agreement.*

The original application proposed a combination of demonstrated merit and “sufficient grounds” under the *Sustainable Planning Act 2009*, being matters in the public interest, which led to a development approval despite conflicts with the *Maroochy Plan 2000*. The applicant sought to overcome the conflicts with the *Maroochy Plan 2000* by means of a community benefits package that included, among other things:

- delivery of a high-end 5 star hotel and conference facilities to satisfy current and future tourism demand for luxury accommodation product on the Sunshine Coast;
- transfer of approximately 3,000m² of vegetated escarpment land into public ownership for bushland reserve purposes, to link with other publicly-owned environmental lands adjoining the subject site;
- delivery of an environmentally sustainable development outcome with buildings that are to be certified as achieving a 6 Star Green Star rating and an Advanced ECO rating from Ecotourism Australia; and
- provision of drainage easements through the subject site to provide lawful discharge rights to upstream properties.

The report to the 19 April 2018 Ordinary Meeting included a summary of Council’s independent economic peer review findings, including that:

“Most of the tourism benefits of the project are tied to many of the project’s features (i.e. Luxury status, size/scale, function areas). A traditional 4 star serviced apartment development would not offer any tourism benefits in terms of product and infrastructure to the region as the region has a significant amount of this type of product.”

This finding reinforced the importance of the development being successfully delivered in the manner that was proposed. That is, the overriding need and extent of community benefits (particularly tourism and economic) to the region necessary to overcome conflicts with *Maroochy Plan 2000* could only be realised if the luxury 5-star branding and operation of the development were actually achieved post-approval.

Infrastructure Agreement

As part of the development approval, the applicant executed an infrastructure agreement with Council to provide a level of security with respect to the delivery of the proposed community benefits. The agreement was that a Hotel Management Agreement with a 5-star operator would be signed within 2 years, or the applicant would cancel the development approval, thus removing any risk to Council and the community of an uncertain development that was in conflict with the *Maroochy Plan 2000*.

The agreement was entered into voluntarily by the applicant and ultimately formed part of the approval package. Condition 2 of the development approval (extracted below) imposes an obligation for compliance with the infrastructure agreement when carrying out the development.

Effect of Infrastructure Agreement	
2.	The land owner, developer and operator must comply with the obligations of the Infrastructure Agreement executed on 24 April 2018.

With the executed infrastructure agreement in place, the development application was considered to satisfy the legal test of "sufficient grounds" under the *Sustainable Planning Act 2009*, and was ultimately supported by Council.

The infrastructure agreement included the following Special Conditions regarding critical timeframes for securing a 5-star hotel operator, and the consequences for not doing so:

3. Security of 5+ Star Hotel operator

- 3.1 Within 12 months of the development approval taking effect, the applicant must provide evidence to Council that an Expression of Interest (EOI) process has commenced to seek a 5-star or higher hotel operator interested in the management rights agreement for the hotel project.
- 3.2 Within 18 months of the development approval taking effect, the applicant must advise Council on the feedback, interest and responses from all potential hotel operators as a result of the process described in obligation 3.1 above.
- 3.3 Within 2 years of the date of the development approval taking effect and prior to any work occurring on the subject site, the developer must enter into an enduring and binding management rights agreement with a 5-star or higher hotel operator, and provide evidence of the agreement to Council. The agreement must include written terms that bind the hotel operator to proceed to manage and operate a 5-star or higher hotel upon completion of the development's construction.
- 3.4 If the binding management rights agreement with a 5-star or higher hotel operator is terminated for any reason, the applicant must immediately notify Council and then within 6 months of that agreement being terminated reinitiate a new Expression of Interest process.
- 3.5 Should the applicant fail to comply with any of the above obligations 3.1 – 3.4 prior to works commencing, the applicant must formally cancel the approval under the Planning Act 2016.

The infrastructure agreement was clear about the steps Council required the applicant to undertake towards obtaining a binding management agreement with a hotel operator. On 28 June 2019, Council provided correspondence to the applicant confirming that Special Condition 3.1 of the agreement had been satisfied in that the applicant had advised on the feedback, interest and responses from potential hotel operators at the time.

On 24 December 2019, the applicant forwarded correspondence to Council in response to Special Condition 3.2. The correspondence includes a brief summary statement of reported discussions that have taken place with various hotel operators, and indicates an apparent level of interest from each.

STATUTORY PROCESS:

On 15 November 2019, the applicant made an extension application under s86 of the *Planning Act 2016* to extend the currency period of a development approval. Under s87 of the *Planning Act 2016*, in deciding an extension application the assessment manager:

"may consider any matter that the assessment manager considers relevant, even if the matter was not relevant to assessing the development application."

In assessing the current extension application, the following matters are considered relevant matters under s87:

- actions taken by the applicant to advance the development approval
- the consistency of the approval with current laws and policies applying to the development
- the age of the approval and the community's current awareness of it
- the views contained in submissions that were received at the time of the original development application, and the current reasonable expectations of the community about the development intent for the land
- the relationship between the currency of the development approval and the terms of the current infrastructure agreement, which forms part of the approval package and is referred to in the conditions of the development approval
- the views and opinions of specialist industry advisory consultants currently practicing in the field of international and luxury hotel management agreements (i.e. deal structuring, execution and management of new hotel operator contracts).
- the current economic climate and demonstrated need for luxury hotel and conference facilities on the Sunshine Coast, having regard to development activity occurring in the tourism sector in more recent years.
- the validity of the applicant's statements which purport that:
 - 2 years is an unreasonable timeframe in which to commence the use
 - the terms of Council's development approval and the accompanying infrastructure agreement are proving obstructive to securing a Hotel Management Agreement (HMA)
 - capital investment must be achieved prior to securing a hotel operator
 - the grounds relied upon by Council to support the original development proposal, notwithstanding conflicts with the *Maroochy Plan 2000*, remain relevant today
 - Council's intention to extend the relevant period as evidenced by the statement in the Decision Notice
 - the support of key business organisations for the approved development

Each of these matters is discussed in detail below.

ASSESSMENT:

Actions taken to progress the development approval

While the applicant has reportedly made efforts toward finding a willing hotel operator for the development, since the original development approval took effect on 29 June 2018 little progress appears to have been made with respect to actioning the conditions of the approval including:

- submission of amended architectural plans to Council for endorsement to satisfy Condition 10 of the development approval - *required within 24 months of approval taking effect*
- submission of a final Geotechnical Design Report to Council for approval to satisfy Conditions 15 – 22 - *required prior to commencement of works and prior to approval of first operational works application*
- submission of a Vegetation Management Plan (Condition 27), Rehabilitation and Revegetation Plan (Condition 28), Fauna Management Plan (Condition 29), Bushfire Management and Evacuation Plan (Condition 30), detailed Stormwater Management Plan (Condition 31), approval for State Road Intersection Works (Condition 32) and submission of Operational Traffic Management Plan

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(Condition 33) – *all required prior to approval of the first operational works application*

- submission of operational works application(s), or request for a pre-design meeting(s) with Council to inform detailed design for engineering works and landscaping ahead of operational works application lodgement
- submission of Green Star Rating and Ecotourism documentation to Council to satisfy Condition 23
- submission of a development application for reconfiguring a lot (for any boundary adjustments associated with the transfer of bushland park to Council).

It appears the applicant's priority has been to source a hotel operator before advancing further with the other requirements of the development approval. Nevertheless, the applicant could have progressed the required amendments to the plans or commenced detailed design in anticipation of lodging related operational works application(s) to Council. These actions would have demonstrated both an intent and actual advancement of the development, despite the obligation of securing a 5-star hotel operator still being a matter yet to progress at the time.

Consistency with current laws and policies

Change in planning law

As previously identified, the original application was assessed under the *Sustainable Planning Act 2009* and the *Maroochy Plan 2000*. The assessment of this extension application, or a new application if it were to be re-lodged over the site, occurs under the *Planning Act 2016* which came into effect on 3 July 2017. The new planning legislation provides distinctly different rules for assessing and deciding a development application.

In a recent judgement from *Room2Move.com Pty Ltd v Western Downs Regional Council [2019] QPEC 34*, His Honour Judge Williamson QC referred to the extension application mechanism as a:

"clear recognition by the legislature of circumstances where no town planning purpose is served by development repeating the statutory assessment and decision making process simply because the approval which authorises it has, or will, lapse" [9]

In other words:

"...is there a town planning imperative for the development, and its approval, to be the subject of a fresh assessment and decision under the [Planning Act]?" [11].

In the case of the subject application, due to a combination of the change in statutory assessment rules under the *Planning Act 2016* and the change in planning scheme, in particular the change of zone and the stronger provisions regarding growth management boundaries and maximum building height, there is considered to be a planning purpose for a fresh assessment to be undertaken. This is further reinforced by the fact that the original development application was only approved under *Maroochy Plan 2000* after Council's consideration of the fine balance of matters in favour and against approving the application based on the statutory planning framework at the time.

Ultimately, it was the applicant's demonstration and Council's acceptance of the

community benefits that would arise from certain delivery of a high-end 5 star luxury hotel and conference facilities to satisfy current and future tourism demand for such product on the Sunshine Coast that was the primary reason for approval despite conflict with the *Maroochy Plan 2000* under the *Sustainable Planning Act 2009*.

It is considered, from a planning viewpoint, that the changes to both the planning legislation and the planning scheme, coupled with the fine balance of matters in favour of and against approval of the development, warrants assessment of a new development application over the site. This would allow Council to determine, in the current planning policy and economic context, if sufficient need still exists for approving a luxury hotel in light of recent development activity across the Coast region.

The applicant has not submitted an updated economic or community needs assessment to consider the current economic climate and need for a luxury hotel/resort, and this is something that would be relevant and appropriate to any fresh application made over the site.

Change in planning scheme

The following Planning Scheme provisions applied to the original application:

PLANNING SCHEME DETAILS for original application	
Planning Scheme:	Maroochy Plan 2000 (Amendment 24)
Strategic Framework Land Use Category:	Rural or Valued Habitat
Planning Area:	6 – Buderim
Precinct:	5 – Buderim Non-Urban
Precinct Class:	General Rural Lands
Overlays	Natural conservation management area Waterways, wetlands and fish habitat areas Steep and unstable land Bushfire prone areas
Assessment Type:	Impact assessment

The original development application was properly made on the 26 November 2015 and assessed against the *Maroochy Plan 2000* (Amendment 24 - effected 16 September 2013) and resulted in approval.

Council agreed to the applicant's request to allow the application to be lodged under, and assessed against, the *Maroochy Plan 2000* (ref SPS15/0078). The applicant made this request to avoid having the application assessed against Council's new planning scheme, being the *Sunshine Coast Planning Scheme 2014*, which had already been adopted and commenced by this time. The *Sunshine Coast Planning Scheme 2014* supersedes the *Maroochy Plan 2000* and provides Council's most recent expression of the planning intent for the Sunshine Coast.

The following planning scheme provisions apply to the development application at the time the extension application was lodged:

PLANNING SCHEME DETAILS at date of current extension request

Planning Scheme:	Sunshine Coast Planning Scheme 2014 (Version 20 – effected 11 November 2019)
Strategic Framework Land Use Category:	Rural Enterprise and Landscape Area
Local Plan:	Buderim
Zone:	Limited Development (Landscape Residential)
Applicable Overlays:	<ul style="list-style-type: none"> • Biodiversity, waterways and wetlands (Stream order 1-2 and Native vegetation) • Height of buildings and structures (8.5m) • Landslide hazard and steep land (moderate to high hazard, slope greater than 25%)
Consistent / Inconsistent Use:	Inconsistent
Assessment Type:	Impact assessment

It is noted that the site is affected by similar overlay constraints under the *Sunshine Coast Planning Scheme 2014* when compared to the superseded *Maroochy Plan 2000*. In assessing the development application against the overlays under the *Maroochy Plan 2000* a number of conflicts were identified, particularly in relation to landslide hazard and impacts on native vegetation. These conflicts were assessed and weighted, and despite the conflicts, Council determined that the application was able to be supported against the *Maroochy Plan 2000* when considering the proposed “sufficient grounds” enabled by the repealed *Sustainable Planning Act 2009*.

If the application were considered under the current *Sunshine Coast Planning Scheme 2014*, similar conflicts would arise in relation to landslide hazard and impacts on native vegetation. That is, while the planning scheme has changed in several key and determinative ways as discussed later in this report, the general intent of Council’s planning for the site has not changed in that the development is still not anticipated at this location.

Notwithstanding, legal advice was sought in relation to the assessment of the application. In relation to the request to extend the currency period, it was confirmed that although the general intent for the site hasn’t significantly changed under the *Sunshine Coast Planning Scheme 2014*, the inconsistency of the proposal is even more pronounced under the *Sunshine Coast Planning Scheme 2014* which adopts additional measures to restrain development of this sort on the site. Furthermore, the intent under the *Sunshine Coast Planning Scheme 2014* is less compromised than under a superseded planning scheme. The previous approval was only granted on the basis of finding sufficient grounds under the repealed *Sustainable Planning Act 2009*. These differences are significant in the context of the current assessment.

Thus, if the application were to be relodged as a fresh application and assessed under the *Sunshine Coast Planning Scheme 2014*, it is considered there would be additional planning scheme conflicts arising, specifically in relation to zone intent, and the introduction of urban growth management boundaries and the building height overlay.

These matters are considered to be relevant matters in relation to the assessment of this extension application and are discussed in more detail below.

Zoning and urban growth management boundaries

Land within the General rural lands precinct under *Maroochy Plan 2000* was primarily intended to be protected for agricultural, rural and ancillary activities. However, given the site's location in close proximity to urban residential areas, coupled with the biophysical constraints arising from the presence of significant vegetation and steep slopes, it was recognised that the site was not akin to traditional rural land and would generally not be suitable for rural or agricultural type pursuits.

The site was instead included within the Limited development (landscape residential) zone under the *Sunshine Coast Planning Scheme 2014*. This was a "new" zone introduced by the planning scheme to specifically identify land across the Sunshine Coast that was, and is, subject to multiple constraints and considered unsuitable for any form of urban development other than for a single dwelling house, particularly where supported by Local Plan Area objectives. The new zone was tested and refined during the drafting and consultation period of the *Sunshine Coast Planning Scheme 2014* to ensure Limited development zoned land accurately represented highly constrained land that was not suitable nor desired for urban development. In this way, a greater alignment between zoning and overlay mapping exists within the *Sunshine Coast Planning Scheme 2014* than that which existed in the *Maroochy Plan 2000* for highly constrained land.

Under the *Sunshine Coast Planning Scheme 2014*, the proposed development, and indeed any form of urban development other than a dwelling house, certain types of home based business, and a utility installation, is not classified as a "consistent" land use, nor even a "potentially consistent" land use within the zone. Instead, as the editor's note on page 2 of the Limited development (landscape residential) zone code states:

"Note—a use not listed in Table 6.2.18.2.1 is an inconsistent use and is not intended to occur in the Limited development (landscape residential) zone."

In this and many other ways, the *Sunshine Coast Planning Scheme 2014* has used an increased drafting precision to place greater emphasis on excluding urban development from occurring within the Limited development (landscape residential) zone. Since the commencement of the *Sunshine Coast Planning Scheme 2014*, Council has consistently and successfully implemented its intended non-urban policy outcome for the Limited development (landscape residential) zone.

The region-wide policy position to exclude urban use types on Limited development zoned land is given more localised context and meaning when considering Council's desired character for Buderim. The overall outcomes for the *Buderim local plan code* provide, among other things, that:

"Urban and rural residential development within the Buderim local plan area is limited to land within the urban and rural residential growth management boundaries respectively so as to protect the undeveloped parts of the Buderim escarpment, avoid land otherwise substantially constrained to development and provide for the efficient provision of infrastructure and services."

AND

"Development is low rise and of a scale and intensity that is generally less than other parts of the central Sunshine Coast."

AND

"The local plan area, and in particular the Buderim Town Centre and adjoining land, has a village character and atmosphere."

The proposal significantly conflicts with the Purpose and Overall outcomes of the zone code and the local plan code in that it proposes a large scale urban use on land that is intended to be set aside for non-urban use in order to maintain the long-term desired character of Buderim and its escarpment, and also to protect the significant environmental values and scenic quality that are present in this area.

The Strategic Framework of the *Sunshine Coast Planning Scheme 2014*, s3.3.1 Strategic outcomes for Theme 1: Settlement pattern requires growth to be contained within defined local growth management boundaries. Specifically, s3.3.3.1 Specific outcome (b) states:

- (b) *Urban development is limited to land within the urban growth management boundary identified conceptually on Strategic Framework Map SFM 1 (Land use elements) and in further detail on the zoning maps.*

The policy intent for the planning scheme's inclusion of an urban growth management boundary is to curb the creep of urban development, as explained in the Strategic Outcomes s3.3.1, including the following:

"In 2031, the Sunshine Coast is renowned for its range of distinctive and sensitive landforms and landscapes, its large and diverse areas of open space and its unique and well defined communities. Growth is carefully managed and well-designed to maintain and enhance the character, lifestyle and environment attributes which make such a significant contribution to the Sunshine Coast's natural (competitive) advantage."

AND

"Growth is contained within defined local growth management boundaries that apply and refine the land use categories in the SEQ Regional Plan. These local growth management boundaries reflect the outcomes of detailed local investigations."

AND

"Urban development and rural residential development is contained within local growth management boundaries so as to protect biophysical and landscape values and natural resources, avoid natural hazards, maintain the individuality of communities and provide for the efficient delivery of infrastructure and services.

AND

Outside these areas, rural lands and natural areas are maintained predominantly for their rural enterprise, landscape and environmental values. These areas reinforce the character of the Sunshine Coast as a place with large areas of open

space surrounding distinct and separate urban and rural residential areas. The Regional Inter-urban Break preserves the geographic separation between the Sunshine Coast and the greater Brisbane and Caboolture urban area."

The development clearly cuts across the zone intent, the local intent for Buderim and the strategic growth management boundary provisions of the current *Sunshine Coast Planning Scheme 2014*. While there are some similarities in the outcomes expressed by it and the *Maroochy Plan 2000* (the latter being a 15-year-old scheme by the time of application lodgement), the construct and practical application of the two planning schemes are very different. This difference in approach reflects a deliberate planning strategy on behalf of Council, and is also a consequence of the passage of time and the evolution of town planning practice and theory that occurred between planning schemes.

Key ways in which the *Sunshine Coast Planning Scheme 2014* is more precise and rigorous in its drafting and implementation when compared to the *Maroochy Plan 2000* include the following:

- The introduction of a strategic, whole-of-region urban growth management boundary, defined by an identifiable and measurable containment line tied to cadastre across the region.
- The introduction of a new type of zone, being the Limited development (landscape residential) zone, to target and deal with known sites and areas that were close to urban areas (such as in Buderim) but were specifically not intended to be developed. An equivalent zone did not exist in the *Maroochy Plan 2000*, giving rise to widespread use of Rural zones with a broader focus in and around built up areas.
- The introduction of 'consistent' and 'potentially consistent' tables identifying the list of allowable (or potentially allowable) uses for every zone, and therefore every property on the Sunshine Coast. Non listed uses are specifically identified to be 'inconsistent' uses.
- A more ground-truthed and resolved approach to the relationship between zoning and biophysical overlays, resulting in many properties that were ruled out of urban zoning due to land constraints. The *Maroochy Plan 2000* instead relied on the development application process to resolve existing tension between zoning and constraint overlays for each property. For example, many sites under *Maroochy Plan 2000* were given an urban zoning while also given insurmountable mapped constraints.
- The elevation of building height provisions to more prescriptive Performance outcomes, supported by building height overlay mapping to provide more certainty as to the expected upper limit of building heights across the region.
- A deliberately more 'codified' and less 'narrative' planning scheme drafting technique, with clear and succinct expressions of planning intent for each zone, overlay, local plan area and land use type.

Given the changes to the planning scheme provisions that were in effect at the time the original application was assessed and decided, and the successful implementation of planned outcomes since commencement of the *Sunshine Coast Planning Scheme 2014*, it is considered that there is a town planning purpose, and indeed an imperative, to be served in requiring a fresh assessment of the development for the site.

Building height

The approved development displays a maximum building height across the site of 10 metres, measured from natural ground level. With the extensive cut proposed, the physical height of some buildings would be in the order of 14 – 15 metres above finished ground level.

Under *Maroochy Plan 2000*, no maximum building height was specified for rural precincts because more intensive urban development was not anticipated. At the time, the applicant argued that a self-assessable dwelling house was permitted up to 10 metres above natural ground level where the land exceeds 15% slope and thus used this as a basis for their proposed building height despite the clear differences in scale between a dwelling house and the proposed resort complex. This argument was applied in the absence of a clear expression of height allowable for the site. Elsewhere in Buderim (i.e. within centre and residential precincts), the maximum building height under *Maroochy Plan 2000* was 8.5 metres.

Under the *Sunshine Coast Planning Scheme 2014*, Council sought to strengthen its policy in relation to building height by use of an overlay with mapping that tied height allowances to the cadastre of every property in the planning scheme area. The Height of buildings and structures overlay specifically indicates the whole of Buderim, excluding the TAFE campus adjoining the Sunshine Motorway, as having a maximum height of 8.5 metres above natural ground level. The introduction of the current planning scheme also saw the removal of the 10 metre height allowance for dwellings on steeply sloping land, reducing all dwelling houses to a maximum of 8.5 metres regardless of slope. Thus the new planning scheme both clarified and reduced the allowable height limit for the site.

Overall outcome (a) of the *Height of buildings and structures overlay code* states:

- (a) *development provides for the height of buildings and structures to comply with specified height limits except where explicitly provided for in this code;*

The proposal fails to meet the Performance outcome, Overall outcomes and ultimately the Purpose of the *Height of buildings and structures overlay code* of the *Sunshine Coast Planning Scheme 2014*.

Since the introduction of the *Sunshine Coast Planning Scheme 2014*, Council has rigorously and consistently applied the overlay requirements with the exception of very limited and specific circumstances. Thus, there has been a clear policy shift with the drafting and implementation of the *Sunshine Coast Planning Scheme 2014* with respect to building height, of which the development significantly conflicts with.

Age of approval and community awareness of the development

The original development application was approved and took effect on 29 June 2018. All application material and approved documents were, and still are, publicly available on Council's website. The site is also currently for sale, with a tender process having closed on 30 October 2019. There are also signs visible on the land which notify passers-by that "A 111 unit integrated tourist resort will be built on this site" and provides the development approval reference number MCU15/0270.

While the period of time that has elapsed since the original application was notified (3 years) and approved (20 months) is not considered to be substantial, it is noted that a 20% turnover of dwelling ownership has occurred across the existing Box Street

properties since the formal public notification took place in October – November 2016. This indicates that a number of new owners have moved into the area, or purchased investment properties, subsequent to the formal notification process. In total figures, this amounts to 14 new owners out of 72 total owners within the street.

Notwithstanding the percentage change in property ownership within the street, it is considered that neither the age of the approval, nor the community's current awareness of the development, are significant influencing factors in assessment of the extension application.

Properly made submissions to original application

At the time the application was publicly notified, a total of 363 submissions were received, of which 337 were determined to be 'properly made'. Of the properly made submissions, 292 were in support, 43 were objecting and 2 were neutral to the development. The objections were primarily concerned with:

- scale, density and building height
- inconsistency with zoning intent
- inconsistency with character of the area
- traffic, parking and noise impacts
- flawed economic assessment
- bushfire risk

None of the submitters chose to exercise their rights to lodge an appeal against the original decision.

Since lodgement of both the previous (withdrawn) and current extension requests, Council has received correspondence from original submitters objecting to any extension of the approval. The cited reasons for objection included the binding nature of the conditions and timeframes imposed by Council that were specifically intended to ensure the benefits of the development were realised, and that the apparent complexity and risk of securing finance leaves no justifiable basis for an extension to be granted.

In light of these recent submissions, it is difficult to form a conclusion that it would be unlikely any new submissions, whether for or against the proposal, would be provoked raising an issue that was not already considered as part of the assessment of the original development application.

Implications on existing Infrastructure Agreement

The applicant has lodged a concurrent application to vary the infrastructure agreement so that the timeframe for meeting Special Condition 3.3 can be extended, with a consequential amendment to Special Condition 5.1.

The proposed changes to the infrastructure agreement have been considered in conjunction with the extension to currency period request. If the request to extend the currency period is not agreed, then the approval will be scheduled to lapse on 29 June 2020 and no purpose would be served in agreeing to extend the deadline dates triggered by the infrastructure agreement.

Consideration of the proposed infrastructure agreement changes is not subject to a statutory application or assessment process, and Council is under no obligation to agree to the proposed changes, whether or not the applicant's extension request for the development approval is ultimately successful.

The existing 2 year currency period of the development approval is purposely aligned to match the key operational requirement of the infrastructure agreement. That is, if a 5-star hotel operator is not contracted within the first 2 years of the life of the approval, then the approval is required to be formally cancelled and will no longer have effect. This action protects Council and the community from uncertainty of the development not being delivered in the manner proposed, and therefore not achieving its intended community benefits for the region while also being in conflict with the *Maroochy Plan 2000*.

Validity of applicant's statements in support of their extension request

The applicant provides the following rationale in support of their request for an additional 4 year extension to the currency period, and consequential amendments to the infrastructure agreement. Comments are provided by the assessing officers in response to each point:

- (1) *The two (2) year currency period was an unreasonable time frame in which to commence the use.*

Comment:

The 2 year currency period was imposed with the intent of allowing an extension of time where the applicant was successful in obtaining "an enduring and binding management rights agreement with a 5-star or higher hotel operator within the 2 year relevant period".

If this indeed occurs, the Decision Notice clearly states that "Council will likely agree to an extension of the [currency] period where evidence is provided that the development has entered..." into such an agreement.

In this way, the approval was made to appropriately align with the infrastructure agreement that was executed between the parties which provided for the approval to be cancelled and the development not to proceed if a binding hotel agreement was not achieved within 2 years.

The applicant understood the deadline clauses of the infrastructure agreement that was signed and did not seek to appeal the currency period imposed on the development approval.

- (2) *The applicant has engaged in a thorough national and international EOI campaign building personal relationships with luxury resort operators and attempting to secure a Hotel Management Agreement, evidencing an intent to give effect to the development approval and complying with conditions as set forth by the accompanying infrastructure agreement.*

Comment:

The material submitted by the applicant's planning consultant in support of the extension request identifies various marketing activities, conference attendance and meetings with international agencies and resort operators. In particular, the

most recent submission from the applicant's planning consultant provided some brief statements about the purported level of interest from various potential operators. When requested by assessment officers, the applicant was either unwilling or unable to produce any documentary evidence from the operators who they purport to have a current and continuing interest in managing a hotel on the site. No evidence has been provided demonstrating that contractual negotiations are underway with a particular hotel operator.

Although it is clear that some effort has been made by the applicant to source potential hotel operators, it is apparent that relatively poor progress has been made toward finding and selecting a willing operator and entering any form of contractual or otherwise binding arrangement for management of a hotel on the site.

- (3) *The terms of Council's development approval and the accompanying infrastructure agreement are proving obstructive to securing a Hotel Management Agreement.*

Comment:

The terms of Council's approval and the reasons for them were discussed earlier in this report. They were reasonable terms under the circumstances and willingly agreed to in full by an applicant confident of delivering an outcome that was attractive to Council at the time.

The applicant now reports that securing an appropriate hotel operator is taking longer than originally anticipated, with the original capital investor pulling out of the project. This is claimed to have prevented an agreement with a suitable hotel operator and the applicant has thus advised that they are unable to enter into a new Expression of Interest (EOI) process until new capital investment is secured. The applicant now further purports that *"the lack of any council approved architectural plans"* means that few interested operators *"have been prepared at this stage to outline management terms."*

During the assessment process, advice was sought from an experienced independent hotel advisory expert in relation to the assertions made by the applicant. The independent expert advice is summarised as follows:

- 2 years is more than sufficient time to run an operator selection process and negotiate a suitable Hotel Management Agreement (HMA).
- The remaining term of the currency period is sufficient time to, at the very least, secure a Letter of Intent which provides a mutual binding commitment to work together exclusively to carry out further due diligence and execute a Hotel Management Agreement.
- It is entirely possible to sign a binding Hotel Management Agreement without capital funding being fully resolved. In fact, during the operator selection process, the funding arrangements being considered by the applicant are generally not divulged to prospective operators. Indeed, most often the security of the selected hotel operator is a necessary critical element to securing project finance, not the other way around as purported.
- It is also possible to sign a binding Hotel Management Agreement without a development approval in place. The critical aspect of any development is the operator's level of confidence in the project being delivered. In this case, a development approval is in place, notwithstanding the architectural plans

- have not yet been finalised. As previously noted, the applicant has not taken any action to advance the progress of architectural drawings in the 20 months since the approval took effect, yet it is now asserted that 'stamped' approved plans are a necessary component in securing a hotel operator.
- This site is currently for sale on the open market with no 'brand' or operator in place, a fact which means the applicant's ability to now secure a binding agreement with a preferred operator is reduced. The decision to place the property up for sale on the open market is counter-productive to building confidence with hotel operators and therefore appears to be at odds with the applicant's stated objectives.
 - The feasibility of the project in its current form raises genuine questions when considered in the context of existing and future demand dynamics of the Sunshine Coast. A high level, hypothetical feasibility using current relevant data found that, with an estimated construction cost of approx. \$126,000,000 derived from the applicant's cost estimate (up from \$95,000,000 cited by the applicant at the time of Council's Ordinary Meeting in April 2018), the project would achieve "break even" with an Average Daily Room Rate of \$807. Most equity investors or developers would reasonably expect a minimum return of 20%, increasing the Average Daily Rate to \$1,034 which would appear to be significantly above what the Sunshine Coast could sustain.

In light of this advice, it is understood that raising capital funding and securing a hotel operator are two separate and distinct processes and should, to the greatest extent possible, be carried out confidential to each other. Once an operator has been secured, then further specifics about the capital structure can be discussed. As such, the validity of applicant's assertions that capital investment is a necessary requirement to securing a hotel operator is highly questionable. Of greater relevance is the confidence in the overall project and the value proposition for hotel operators.

The questionable feasibility of the project based on conservative cost estimates and resulting average daily rates for letting of hotel rooms/suites also raises concerns that the development may not be delivered in its current form. Thus the resulting community benefits to the Sunshine Coast may possibly not be realised and, further, it would appear that the overall design and construction costings of the development may need to be downgraded to provide a feasible development outcome for any investor and/or operator.

- (4) *The approval was granted by the Council under the Maroochy Plan 2000. Council will assess the extension application under the Sunshine Coast Planning Scheme 2014. The proposal is not so offensive to the Sunshine Coast Planning Scheme to warrant a refusal of the request.*

Comment:

Refer to previous discussion under the heading 'Consistency with current laws and policies'.

- (5) *The grounds relied upon by Council in April 2018 to support the development proposal notwithstanding conflicts with the Maroochy Plan 2000 remain relevant in November 2019.*

Comment:

Refer to previous discussion under the heading 'Consistency with current laws and policies'.

- (6) *The community is not unaware of the development proposal and were an application re-made, the public notification process would be unlikely to introduce substantially different submissions.*

Comment:

Refer to previous discussion under the heading 'Age of approval and community awareness of the development' and also 'Properly made submissions to original application'.

- (7) *Council anticipated it would extend the relevant period in the Decision Notice.*

Comment:

Given the extent of conflict with the planning scheme identified during the assessment of the original development application, Council imposed a shorter currency period of 2 years, and made clear within the Decision Notice that an extension was only anticipated "where evidence is provided that the development has entered into an enduring and binding management rights agreement with a 5-star or higher hotel operator within the 2 year relevant period".

No such evidence has been provided by the applicant to date. The reasons for, and importance of, the currency period have been discussed in this report.

It is noted that the applicant may elect to lodge a new request to extend the currency period at any time prior to the application lapsing. This means, a request to extend the currency period may be made up to and including 29 June 2020. The approval remains current until such time as the extension request is decided.

- (8) *Key business organisations have reinforced their support for the approved development.*

Comment:

Council has received submissions both in favour of, and objecting to, the development and the extension of the currency period.

CONCLUSION

The proposed extension to the approval's currency period by a further 4 years is not supported for the following reasons:

- A town planning purpose would be served in assessing a fresh application over the site given the original assessment and approval was finely balanced and the following new circumstances apply now that may result in a different outcome:
 - a new planning scheme, including a change to zoning, introduction of growth management boundaries and building height overlay
 - new planning legislation which has different decision rules for assessing and deciding development applications
 - changes in State planning instruments including new exempt clearing provisions for bushfire protection

- the current economic climate and recent development activity across the Sunshine Coast in the high-end luxury hotel and conference facility market
- It is difficult to form a conclusion that no new submissions would be received if the application were re-lodged to Council under the current planning scheme, due to the community's reasonable expectations based on the *Sunshine Coast Planning Scheme 2014* strengthened zoning, growth management and building height provisions.
- There is limited validity in the applicant's assertions that investment capital and 'stamped' approved drawings must be secured prior to entering into a Hotel Management Agreement, which has been confirmed by an independent professional hotel advisory expert.
- The applicant's cited reasons that a Hotel Management Agreement cannot be achieved within the 2 year timeframe are not accepted. Specific advice received from Council's independent experienced hotel advisory expert confirms that 2 years is more than sufficient time to negotiate a suitable Hotel Management Agreement.
- The overall financial feasibility of the project is questionable, and may result in a downgrading of the development's design and construction costings thereby reducing the anticipated community benefits on which the original proposal was supported.

Based on the extension request not being supported, the applicant's request to also amend Special Conditions 3.3 and 5.1 of the infrastructure agreement is also not supported.

In summary both of these requests would result in an increased uncertainty for Council and the community that the development will be delivered in its intended form, therefore not achieving its intended community benefits for the region. It is therefore recommended that Council:

- refuse the request to extend the currency period for the development permit for material change of use (integrated tourist facility) by an additional 4 years; and
- disagree to amend special conditions 3.3 and 5.1 of the executed infrastructure agreement.