

5.1. REQUEST FOR NEGOTIATED DECISION MOSSMAN HARDWARE

REPORT AUTHOR(S): Neil Beck, Planning Officer
GENERAL MANAGER: Nick Wellwood, General Manager Operations
DEPARTMENT: Sustainable Communities

PROPOSAL Request for a Negotiated Decision - Material Change of Use (Impact Assessment) - Display Facilities (Hardware Store)

APPLICANT Mossman Canegrowers Limited
C/- RPS Australia East Pty Ltd
PO Box 1949
CAIRNS QLD 4870

LOCATION OF SITE 5 Mossman Street & 2 Mill Street Mossman

PROPERTY LOT 50 on RP706250 & 51SP113404

LOCALITY PLAN



LOCALITY Mossman and Environs

PLANNING AREA Commercial

PLANNING SCHEME Douglas Shire Planning Scheme 2008

REFERRAL AGENCIES State Assessment and Referral Agency
Department of Transport and Main Roads

NUMBER OF SUBMITTERS	Three (3)
STATUTORY ASSESSMENT DEADLINE	Not Applicable
APPLICATION DATE	22 December 2015

RECOMMENDATION

That Council issues a Negotiated Decision Notice for Display Facilities (Hardware Store) over land described as Lot 50 on SP706250 & Lot 51 on SP113404, located at 5 Mossman Street & 2 Mill Street Mossman subject to the following:

- 1. Condition 2, Condition 7 and Condition 22 be amended to read as follows:**

Timing of Effect

- 2. The conditions of the Development Permit must be effected no later than 6 months from the date the Development Permit takes effect except where specified otherwise in these conditions of approval or extended by the Chief Executive Officer. Any request to extend the time must be made prior to the end date and must be made in writing and addressed to the Chief Executive Officer.**

External Works

- 7. Undertake the following works external to the land at no cost to Council:**
 - a. Provision of a concrete crossovers and aprons for all points of entry and egress in accordance with FNQROC Development Manual Standard Drawings for commercial crossover. The extent of the crossovers is to be minimised where possible to limit the conflict with pedestrians utilising the roadway verge;**

Consideration is to be given to commencing the left turn associated with exit manoeuvre for the semi-trailer within the site to minimise the apron width and the carriageway encroachment on Mossman Street.

The extent of crossovers proposed is to be substantiated with the swept path diagrams for the design vehicle at each point of entry or egress.

Note: The maximum grade for a cross-over is 2.5% and the new cross-over must not interfere with existing footpath formation.
 - b. Confirm clearance to existing power poles for the swept path of the design vehicles having regard to the proposed ingress and egress points of the site. This may determine if further works are required to the electrical reticulation system and poles;**
 - c. Replacement of the displaced on street parking with additional parking on the western side of Mossman Street to the satisfaction of the Chief Executive Officer as follows:**

- (i) ~~Replace displaced Angled angled parking generally as shown on the RPS Drawing PR128488-2 Issue A dated 26 November 2015. The number of spaces to be replaced will be determined at the time of seeking Operational Works approval for on-street works, except that the northern extent must be for the full frontage of the development (generally aligning with the northern boundary of Lot 15 on RP706250;~~
 - (ii) The parking is to be angled parking and is to be imperviously sealed and line-marked;
 - (ii) The parking must be graded to drain back to a new FNQROC Type 1 concrete invert to be provided at the current kerb location;
 - (iv) Where required to protect existing trees including their roots, construct tree guard around the existing trees in the road reserve;
- d. Repair the existing damaged kerb and channel commencing approximately 3m south from the southern entry/exit and extending to tie into the driveway to adjacent lot 49 on RP706250. These sections of kerb having been damaged by previous entry, exit and unloading operations associated with the use of this site.
 - e. Repair any damage to footpaths, verges or roadway (including removal of concrete slurry from footways, roads, kerb and channel and stormwater gullies and drain lines) that may occur during and works carried out in association with the construction of the approved development;
 - f. Suitable traffic and parking signs are to be located along Mossman Street to control parking and keep the carriageway free for the exit manoeuvre. The signage is to be in accordance with MUTCD and to the satisfaction of Council.

The external works outlined above require operational works approval. The works must be endorsed by the Chief Executive Officer prior to commencement of such works. Such work must be constructed in accordance with the endorsed plan to the satisfaction of the Chief Executive Officer.

22. Operational aspects of the approved development must be undertaken in accordance with the following requirements:
- a. Delivery and loading of goods are only permitted to occur between the hours of 7.00am and 7.00pm Monday to Saturday (excluding public holidays), whilst loading of goods is permitted on Sundays only between the hours of 8.00am and 1.00pm.
 - b. Noise generated by activities on the site must be mitigated and managed to ensure that the environmental values for noise sensitive receptors (e.g. dwellings) are achieved, as per section 7 of the Environmental Protection (Noise) Policy 2008.
 - c. The delivery of goods to and from the site must be co-ordinated to avoid delivery trucks arriving at the site prior to times stated in Item (a) above and to avoid multiple trucks arriving at the site at the same time.

2. All other conditions of Decision Notice dated 23 May 2016 remain unchanged.

EXECUTIVE SUMMARY

Council is in receipt of a request to negotiate conditions of approval relating to a Material Change of Use for 'Display Facilities,' (Hardware Store) over land located at 5 Mossman Street and 2 Mill Street Mossman.

Council approved the development application at the Ordinary Meeting held on 17 May 2016 subject to conditions. A copy of the approved plans form Attachment 1.

The land is currently contained within the designated Town Centre of Mossman and contained in the Commercial Planning Area within the Planning Scheme.

The application was publically notified in accordance with the requirements of the Sustainable Planning Act (2009). A total of three submissions were received, two of which were properly made and one submission was not.

The applicant has requested to negotiate several conditions of approval. The request is supported in part to the extent detailed in the Recommendation to Council.

TOWN PLANNING CONSIDERATIONS

The following details the conditions sought to be negotiated, the Applicant's representations followed by Officer comment.

Condition 2

Timing of Effect

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

Applicant's Comment

Request has been made to extend the period to two (2) years to allow for the staged works to better suit available resources and budgets.

Officer's Comment

The extent of time to comply with the conditions of approval is considered excessive given that the use of the site is already occurring on the land and therefore this particular request is not supported. However, it is considered reasonable that the Applicant be provided the opportunity to request an extension subject to approval by the Chief Executive Officer. The condition has been amended accordingly.

Condition 4

Roads and Paths

4. The applicant must provide supporting information including existing and finished surface contours to demonstrate that the proposed access to be provided from Junction Street does not create a nuisance or impede access to the existing access to Lot 97 on SR836110.

Applicant's Comment

The Applicant requested that the Operational Works application submitted with Council satisfies this requirement.

Officer's Comment

Since the lodgement of the request to negotiate conditions of the approval, the Applicant has withdrawn the Operational Works application. A revised Operational Works application will be lodged with Council to include other requirements of the development approval.

Therefore, the condition is recommended to remain unchanged.

Condition 7 (c) & 7(d)

External Works

7. Undertake the following works external to the land at no cost to Council:
 - c. Replacement of the displaced on street parking with additional parking on the western side of Mossman Street to the satisfaction of the Chief Executive Officer as follows:
 - (i) Angled parking generally as shown on the RPS Drawing PR128488-2 Issue A dated 26 November 2015 except that the northern extent must be for the full frontage of the development (generally aligning with the northern boundary of Lot 15 on RP706250;
 - (ii) The parking is to be angled parking and is to be imperviously sealed and line-marked;
 - (ii) The parking must be graded to drain back to a new FNQROC Type 1 concrete invert to be provided at the current kerb location;
 - (iv) Where required to protect existing trees including their roots, construct tree guard around the existing trees in the road reserve;
 - d. Repair the existing damaged kerb and channel commencing approximately 3m south from the southern entry/exit and extending to tie into the driveway to adjacent lot 49 on RP706250. These sections of kerb having been damaged by previous entry, exit and unloading operations associated with the use of this site.

Applicant's Comment

The Applicant is of the view that the condition is onerous and excessive having regard to the following:

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

The requirement to repair existing damaged infrastructure beyond the boundaries of the allotment is excessive and onerous.

Officer's Comment

The swept path diagram for heavy vehicles as submitted with the development application and contained at Attachment 1 extends onto the adjacent carriageway of the road and impacts on the use of the road verge to accommodate on-street parking albeit informal on-street parking at present. The swept path for heavy vehicles will displace on street parking.

In order to safely perform this manoeuvre, this section of the carriageway must be controlled and kept clear of conflict in the form of parked vehicles or other impediments in this location. The position is maintained that the Applicant be required to formalise the control of the carriageway and to relocate displaced on-street parking as a consequence of heavy vehicle movements. It is recommended that the condition be amended to not require angled parking for the full frontage of the site. As an alternative an equivalent number of parking spaces is required number of on-street spaces being displaced by heavy vehicle movements are provided elsewhere within the road reserve.

The Applicant is undertaking further investigations into the swept path for heavy vehicles in order to determine the number of on-street spaces to be constructed. Further supporting information in relation to this matter will accompany the development application for Operational Works.

While the intent of the condition has remained generally the same, the condition has been amended to allow the extent of external works to be determined at the Operational Works phase of the development having regard to the outcome of further investigations into heavy vehicle movements. The Applicant accepts of this position.

With regard to Condition 7 (d), the damaged infrastructure is a result of vehicles being unloaded and loaded on the street and is reasonably required. The required works are minor and the condition is recommended to remain.

Condition 9(f)

9. The site must be landscaped in accordance with details included on a Landscaping Plan. The Landscaping Plan must show:
 - f. Detail the extent and height of the screen fence to be provided. The top of the fence must have the same reduced level and be designed in consultation with adjoining property owners with respect to the overall height of the fence.

Applicant's Comment

The Applicant has concerns that they are required to negotiate with 3rd parties all of which were submitters to the proposal and that the chances of achieving an agreed outcome are minimal.

Officer's Comment

The condition does not require agreement to be reached with the neighbours, it requires that the neighbours be consulted as to the screen fence to be installed which is not unreasonable. The wording used in the condition was intentional for the reasons highlighted by the Applicant.

The Applicant has been made aware of the intent of the condition and that agreement with the neighbours is not required.

It is recommended the condition remain unchanged.

Condition 16

Amalgamation of Lots Required

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

Applicant's Comment

The Applicant has requested that this condition be deleted on the basis that there is no restriction for a planning approval to attach to two or more separate parcels of land and that the amalgamation of the tiles will adversely impact on the valuation of the property. A request has been made suggesting a condition attach to the approval requiring both allotments be held in the same ownership and in the event the lots are sold, then the approval over Lot 50 will lapse.

Officer's Comment

The use of Lot 50 is fundamental to the continued operation of the Hardware Store and therefore the allotments should be amalgamated. It is standard practice that where a single land use extends over multiple parcels, that those parcels are amalgamated.

The Applicant is accepting of this requirement.

Condition 22(a)

Noise Nuisance & Traffic Impact Mitigation Measures

22. Operational aspects of the approved development must be undertaken in accordance with the following requirements: -
 - a. Delivery and loading of goods are only permitted to occur between the hours of 7.00am and 7.00pm Monday to Saturday (excluding public holidays).

Applicant's Comment

The Applicant has advised that the Hardware Store operates on Sundays and therefore the condition ought to be amended to allow for the loading of goods to take place on Sundays.

Officer's Comment

The intent of the condition is to restrict the delivery and unloading of goods to take place between Mondays to Saturdays and not to prevent goods being purchased and taken from the store on Sundays. The condition has been amended to allow the loading of goods to take place on Sundays.

Referral Agency Requirements

The State Assessment Referral Agency (SARA) referred the application to the Department of Transport and Main Roads (TMR). Conditions imposed by TMR are included in Attachment 2.

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:

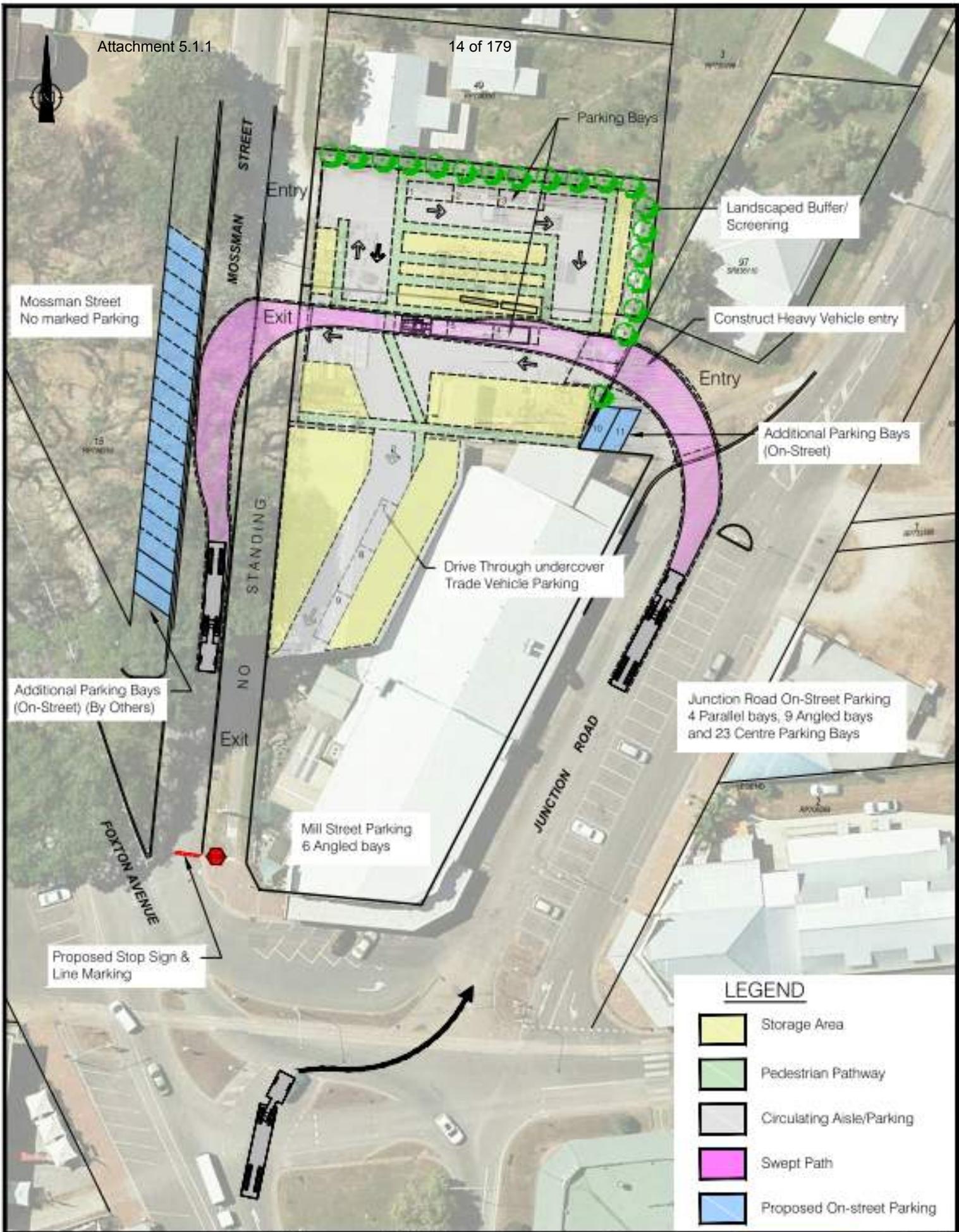
Regulator: Meeting the responsibilities associated with regulating activities through legislation or local law.

Under the *Sustainable Planning Act 2009* and the *Sustainable Planning Regulation 2009*, Council is the assessment manager for the application.

ATTACHMENTS

Attachment 1 – Approved Plan(s) & Document(s)

Attachment 2 – Referral Agency Conditions & Requirements



LEGEND

- Storage Area
- Pedestrian Pathway
- Circulating Aisle/Parking
- Swept Path
- Proposed On-street Parking



SCALE 1:400 IS APPLICABLE ONLY TO THE ORIGINAL SHEET SIZE. (A3)

PROJECT MANAGER D. Parkin	DATE MW 9/02/2015
DESIGNED RMS	CHECKED RMS
CAD FILE PR128488-2	SHEET NO. A3
128488-105-DCR	SWEETS 1

Mossman Canegrowers Limited

On-Street Parking & Swept Path

Lot 51 on SP113404 & Lot 50 on RP706250
 51 Mossman Street & Junction Road, Mossman

RPS

105 Abbott St
 PO Box 1008
 GARRIGOLD 4875

T +61 7 4011 1336
 F +61 7 4011 2942
 W www.rps.com.au

SCALE: 1:500 DATE: 20/11/2015 DRAWING NO.: PR128488-2 SHEET: A



Department of Infrastructure,
Local Government and Planning

Our reference: SDA-0216-028001

Your reference: MCUI 1232/2015

10 March 2016

Chief Executive Officer
Douglas Shire Council
PO Box 723
Mossman QLD 4873

Att: Jenny Elphinstone

Dear Sir / Madam

Concurrence agency response—with conditions

Development application for material change of use for display facilities (hardware store) on land located at 5 Mossman Street and 2 Mill Road, Mossman and described as Lot 50 on RP706250 and Lot 51 on SP113404

(Given under section 285 of the *Sustainable Planning Act 2009*)

The referral agency material for the development application described below was received by the Department of Infrastructure, Local Government and Planning under section 272 of the *Sustainable Planning Act 2009* on 23 February 2016.

Applicant details

Applicant name: Mossman Cane Growers Limited
c/- RPS Australia East Pty Ltd

Applicant contact details: PO Box 1949
Cairns QLD 4870
alex.bowen@rpsgroup.com.au

Site details

Street address: 5 Mossman Street and 2 Mill Road, Mossman

Lot on plan: Lot 50 on RP706250 and Lot 51 on SP113404

Local government area: Douglas Shire Council

Application details

Proposed development: Development permit for material change of use for display facilities (hardware store)

Aspects of development and type of approval being sought

Nature of Development	Approval Type	Brief Proposal of Description	Level of Assessment
Material Change of Use	Development permit	Material Change of Use for 'Display Facilities'.	Impact Assessment

Referral triggers

The development application was referred to the department under the following provisions of the *Sustainable Planning Regulation 2009*:

Referral trigger **Schedule 7, Table 3, Item 1**— State-controlled road

Conditions

Under section 287(1)(a) of the *Sustainable Planning Act 2009*, the conditions set out in Attachment 1 must be attached to any development approval.

Reasons for decision to impose conditions

Under section 289(1) of the *Sustainable Planning Act 2009*, the department must set out the reasons for the decision to impose conditions. These reasons are set out in Attachment 2.

Further advice

Under section 287(6) of the *Sustainable Planning Act 2009*, the department offers advice about the application to the assessment manager—see Attachment 3.

Approved plans and specifications

The department requires that the following plans and specifications set out below and in Attachment 4 must be attached to any development approval.

Drawing/Report Title	Prepared by	Date	Reference no.	Version/Issue
Aspect of development: Material Change of Use - Display Facilities (Hardware Store)				
On-Street Parking & Swept Path (as amended in red)	RPS	26/11/2015	PR128488-2	A
Town Planning Report	RPS	18 December 2015	PR128488/OLD/AMB/L75011	-

A copy of this response has been sent to the applicant for their information.

For further information, please contact Joanne Manson, Principal Planning Officer, SARA Far North QLD on 4037 3228 or email joanne.manson@dilgp.qld.gov.au who will be pleased to assist.

Yours sincerely



Brett Nancarrow
A/Manager (Planning)

cc: Mossman Cane Growers Limited, c/- RPS Australia East Pty Ltd, email: alex.bowen@rpsgroup.com.au

enc: Attachment 1—Conditions to be imposed
Attachment 2—Reasons for decision to impose conditions
Attachment 3—Further advice
Attachment 4—Approved Plans and Specifications

Our reference: SDA-0216-028001
 Your reference: PR128488/OLD/AMB/L75011

Attachment 1—Conditions to be imposed

No.	Conditions	Condition timing
Material Change of Use - Display Facilities (Hardware Store)		
<p>Schedule 7, Table 3, Item 1 – State-controlled road —Pursuant to section 255D of the <i>Sustainable Planning Act 2009</i>, the chief executive administering the Act nominates the Director-General of the Department of Transport and Main Roads to be the assessing authority for the development to which this development approval relates for the administration and enforcement of any matter relating to the following condition(s):</p>		
In accordance with approved plans		
1.	<p>The development must be carried out generally in accordance with the following plans:</p> <ul style="list-style-type: none"> • On-Street Parking & Swept Path prepared by RPS, dated 26/11/2015, Reference Drawing No PR128488-2, Issue A (as amended in red) 	Prior to the commencement of use and to be maintained at all times
In accordance with approved report		
2.	<p>The development must be generally in accordance with the Town Planning Report prepared by RPS, date 18 December 2015, Reference PR128488/OLD/AMB/L75011, in particular:</p> <ul style="list-style-type: none"> • Inbound deliveries from Cairns generate 1 service per week, this schedule will not change in the near future. • Delivery vehicles must access the subject land via Junction Road only and leave the subject site via Mossman Street. 	Prior to the commencement of use and to be maintained at all times
Wayfinding signage		
3.	<p>Signage, indicating vehicles must stop before proceeding, is to be installed at the Mossman Street / Mossman-Daintree Road (Foxton Avenue) intersection in accordance with the Department of Transport and Main Roads' Manual of Uniform Traffic Control Devices.</p>	Prior to the commencement of use

Our reference: SDA-0216-028001
Your reference: PR128488/OLD/AMB/L75011

Attachment 2—Reasons for decision to impose conditions

The reasons for this decision are:

- To ensure the development is carried out generally in accordance with the plans of development submitted with the application
- To ensure the development does not compromise the safe and efficient management or operation of the state-controlled.
- To ensure the development achieves the outcomes in 19.1 Access to state-controlled roads state code in the State Development Assessment Provisions version 1.7.

Our reference: SDA-0216-028001

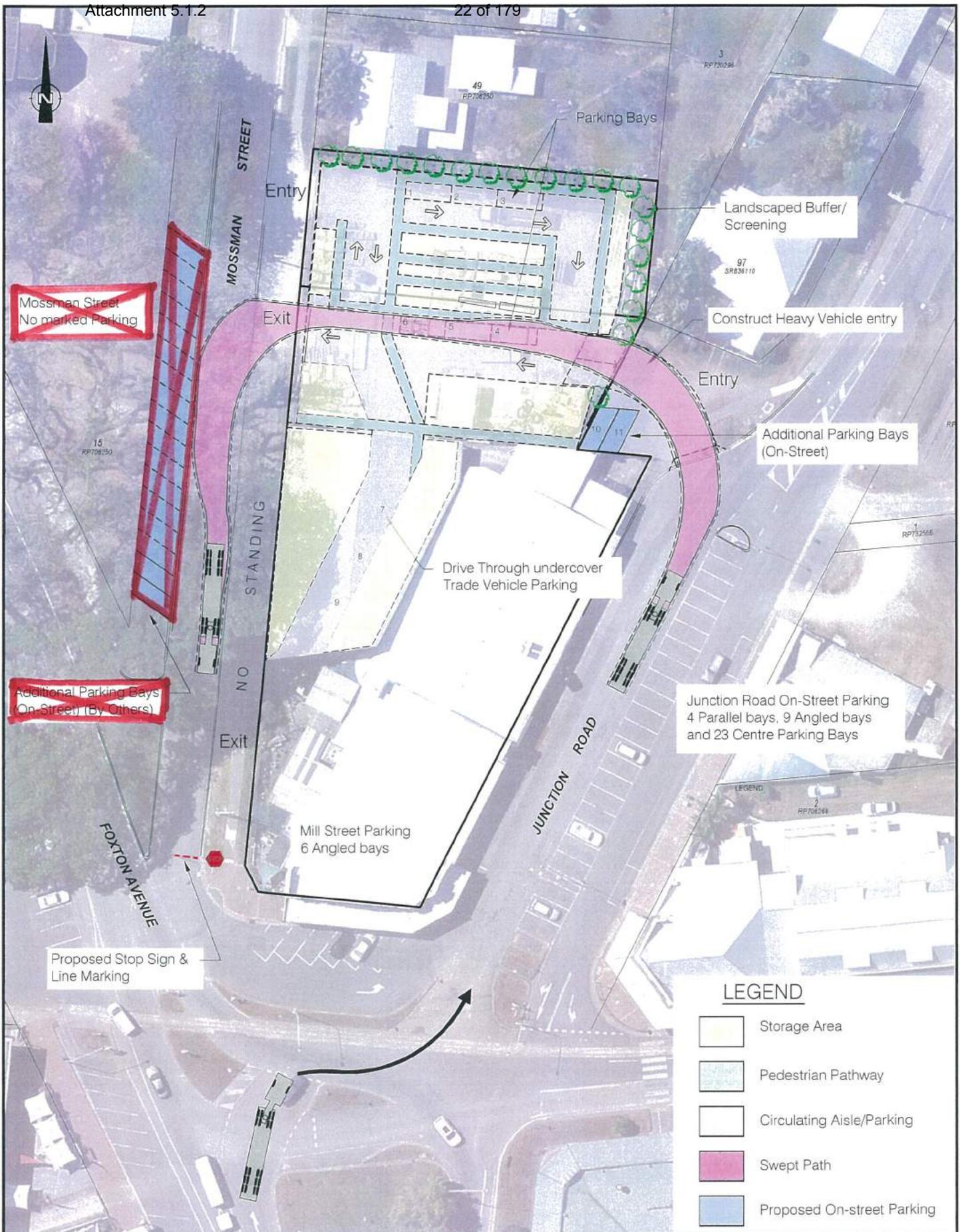
Your reference: MCUI 1232/2015

Attachment 3—Further advice

General advice	
Ref	State Planning Policy July 2014 interim development assessment provisions
1.	Douglas Shire Council, in its role as assessment manager, must assess the development application against the State Planning Policy July 2014, and in particular the interim development assessment provisions (Part E), such Natural hazards, risk and resilience and to the extent it is relevant to the proposed development.
Ref	Advertising device
2.	<p>A local government should obtain advice from the Department of Transport and Main Roads if it intends to approve the erection, alteration or operation of an advertising sign or another advertising device that would be visible from a state-controlled road, and beyond the boundaries of the state-controlled road, and reasonably likely to create a traffic hazard for the state-controlled road.</p> <p>Note: The Department of Transport and Main Roads has powers under section 111 of the <i>Transport Operations (Roads Use Management – Accreditation and Other Provisions) Regulations 2005</i> to require removal or modification of an advertising sign and / for a device which is deemed that it creates a danger to traffic.</p>
Further development permits, compliance permits or compliance certificates	
Ref	Road access works approval
3.	<p>Under section 33 of the <i>Transport Infrastructure Act 1994</i>, written approval is required from the Department of Transport and Main Roads to carry out road works on a state-controlled road.</p> <p>Please contact the Department of Transport and Main Roads on 4045 7144 to make an application for road works approval. This approval must be obtained prior to commencing any works on the state-controlled road reserve. The approval process may require the approval of engineering designs of the proposed works, certified by a Registered Professional Engineer of Queensland (RPEQ).</p> <p>The road works approval process takes time – please contact the Department of Transport and Main Roads as soon as possible to ensure that gaining approval does not delay construction.</p>

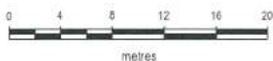
Our reference: SDA-0216-028001
Your reference: PR128488/OLD/AMB/L75011

Attachment 4—Approved plans and specifications



LEGEND

- Storage Area
- Pedestrian Pathway
- Circulating Aisle/Parking
- Swept Path
- Proposed On-street Parking



SCALE 1:400 IS APPLICABLE ONLY TO THE ORIGINAL SHEET SIZE. (A3)

AMENDMENTS		PROJECT MANAGER	
<div style="border: 2px solid red; padding: 5px; display: inline-block;"> </div> NOT INCLUDED IN APPROVED PLAN		D. Pinkham	
		SURVEYED	
		MW	9/09/2015
		COMPILED	
RMS		SHEET 1	
CAD REF		SHEET SIZE	
PR128488-2a DWG		A3	
128488-100.CCX		SHEETS 1	

Mossman Canegrowers Limited
On-Street Parking & Swept Path
 Lot 51 on SP113404 &
 Lot 50 on RP706250
 Cnr Mossman Street &
 Junction Road, Mossman

		RPS Australia East Pty Ltd ACN 140 292 762	
		135 Abbott St PO Box 1949 CAIRNS QLD 4870	
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SCALE	DATE	DRAWING NO	ISSUE
1:500	25/11/2015	PR128488-2	A