

5.2. NEGOTIATED DECISION REQUEST L47 CAPTAIN COOK HWY MOWBRAY, MULCH FACILITY

REPORT AUTHOR	Jenny Elphinstone, Senior Planning Officer
GENERAL MANAGER	Nick Wellwood, General Manager Operations
DEPARTMENT	Development Assessment and Coordination
PROPOSAL	Request for a Negotiated Decision Notice for the Material Change of Use (Impact Assessment) - Industry (Mulch Facility)
APPLICANT	Phillip Wren 294 Port Douglas Road Port Douglas QLD 4877
LOCATION OF SITE	L47 Captain Cook Highway Mowbray
PROPERTY	Lot 47 on RP749351

LOCALITY PLAN

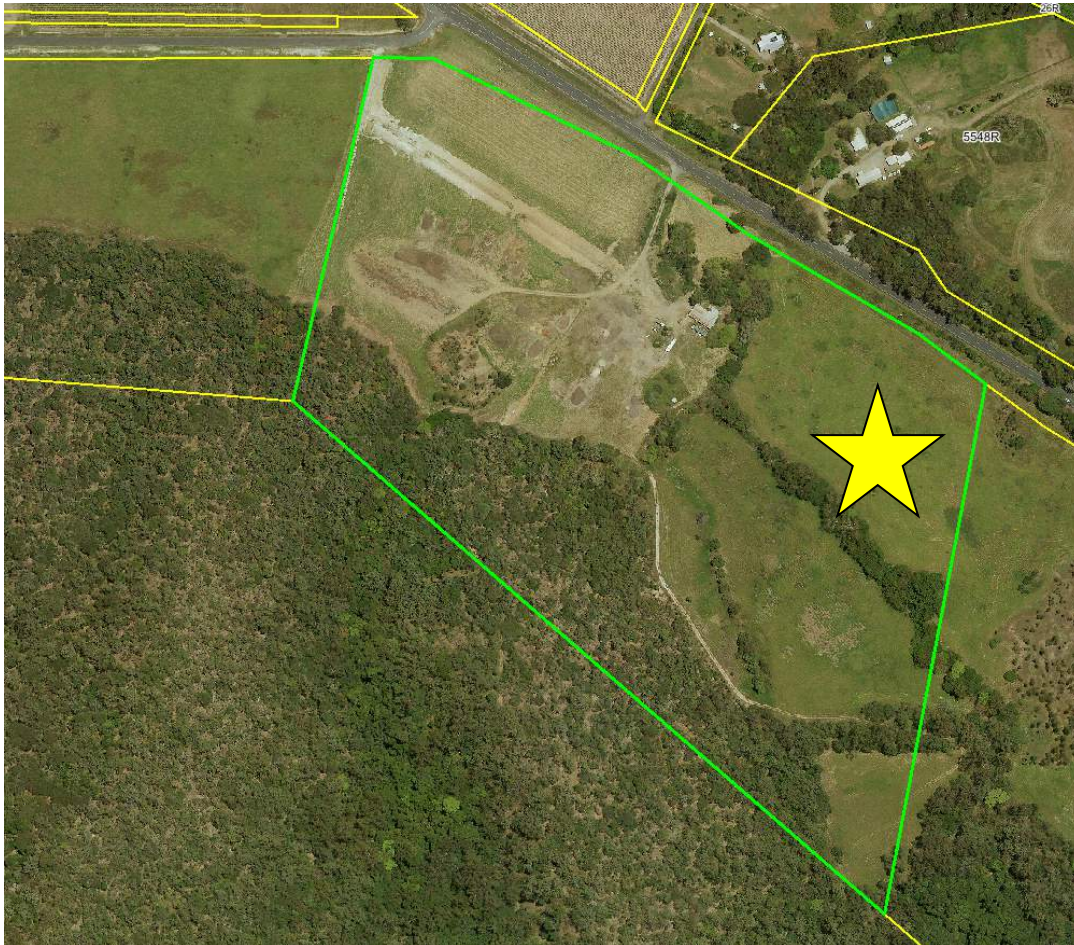


Figure 1 - Locality Plan

LOCALITY	Rural Areas and Rural Settlements
PLANNING AREA	Rural
PLANNING SCHEME	Douglas Shire Planning Scheme 2006
REFERRAL AGENCIES	Department of Infrastructure, Local Government and Planning
NUMBER OF SUBMITTERS	No properly made submissions. One recent submission (not properly made).
STATUTORY ASSESSMENT DEADLINE	Not Applicable
APPLICATION DATE	30 April 2015 (Original Application)

RECOMMENDATION

That Council approves in part the applicant's request for a negotiated decision for the material change of use for an Industry (Mulch Facility) over land described as Lot 47 on RP749351, located at Lot 47 on Captain Cook Highway, Mowbray, whereby:

- The approved plans are amended as follows.

Drawing or Document	Reference	Date
Designated Development Area	Projex Partners drawing 637-001-SK2 Revision A dated 7 July 2015 and as varied by the Amended Extent of Site Plan received by Council on 23 January 2017 (Council electronic document D#802482)	7 July 2015 <u>23 January 2017</u>
Generalised Activity Area	Projex Partners drawing 637-001-SK1 Revision A and as varied by the Amended by the Extent of Site Plan received by Council on 23 January 2017 (Council electronic document D#802482).	7 July 2015 <u>23 January 2017</u>
<u>Landscape Plan</u>	As received by Council on 23 January 2017 (Council electronic document D#802482).	<u>23 January 2017</u>
<u>Internal Road Plan</u>	As received by Council on 23 January 2017 (Council electronic document D#802482).	<u>23 January 2017</u>
<u>Stormwater Drainage Plan</u>	As received by Council on 23 January 2017 (Council	<u>23 January 2017</u>

Drawing or Document	Reference	Date
	<u>electronic document D#802482).</u>	

2. Condition 3 is amended as follows:

Noise Emissions

3. Noise emissions from machinery and equipment operated at the approved facility must be within the following parameters.

Monday to Saturday: 7:00 am to 6.00pm, noise from machinery and equipment allowed; and 6:00 pm to 7:00 am, no audible noise permitted; and

Sundays and Public Holidays: 8:00 am to 6pm, noise from machinery and equipment allowed; and 6:00 pm to 8:00 am, no audible noise permitted.

~~not make an audible noise between 6:00 pm and 7:00 am Monday to Saturday, and 6:00 pm and 8:00 am on Sundays and Public Holidays.~~

3. Condition 4 is amended as follows:

Environmental Management Plan

4. The operation of the use must at all times abide by the following An Environmental Management Plan for the site must be prepared by a suitably qualified person with respect to the potential environmental impacts of the development and compliance with the Environmental Protection Act and subordinate legislation, Council's Local Law No 3 (Community and Environmental Management) 2011, *the Biosecurity Act 2014*, *the Biosecurity Regulation 2016* and other relevant legislation. All workers attending the land are to be instructed on the plan. The plan is to include, but not be limited to the following:

- a. Fire Management Plan.

The stockpiling of mulch meets the Local Law No 3 (Community and Environmental Management) 2011 definition of a fire hazard. A 'fire hazard' means anything that, because of its flammable nature, its position or its quantity, exposes property to significant risk of damage or destruction by fire. ~~The plan must include details of how the risk of spontaneous combustion of mulch stockpiles will be managed including the provision of a suitable water storage / supply that includes a 50 mm ball valve with a camlock fitting.~~

Under this Fire Management Plan:

- i. Stockpiles of accumulated vegetation are limited to a maximum horizontal dimension of 30m and a maximum height of 3m;

- ii. Stockpiles of mulch and blended materials are limited to a maximum horizontal dimension of 20m and a maximum height of 3m;
- iii. The minimum separation distance between stockpiles is 5m;
- iv. Stockpiles are not mechanically compacted. Stockpiles are to be broken-up, turned and sufficiently watered to prevent self-combustion;
- v. Mulch piles are kept a minimum of 20m away from living vegetation, other than grass;
- vi. A fire break, minimum 5m wide, continuous around the stockpile area shall be maintained by mowing such that grass is a maximum of 10cm high;
- vi. Flammable liquids shall not be stored within 20m of any stockpile; and
- viii. A water storage/supply must be available and be fitted with a 50mm ball valve with a camlock fitting.

b. **Dust Mitigation Plan.**

The operation of the approved development has potential to create a dust nuisance from vehicle movements and maintaining stockpiles of mulch and other materials (eg potting mixtures). ~~The plan must include details of how the generation of dust and other airborne materials will be minimized.~~

Under this Dust Mitigation Plan:

- i. Access tracks are periodically watered in times of dry weather such that no observable dust can be seen moving across nearby properties and/or transported onto the adjacent Trezise Road; and
- ii. Working of materials in times of dry weather shall be monitored for dust generation and if necessary to dampened to minimise airborne material.

c. **Stormwater Management Plan**

Potential water contaminants contained on the site must be prevented from release to stormwater drainage and watercourses. Examples of water contaminants prescribed in the Environmental Protection Regulation include plant matter, for example, bark, lawn clippings, leaves, mulch, pruning waste, sawdust, shavings, woodchip and other waste from forest products. ~~The plan must include details of how potential contamination of stormwater runoff is prevented.~~

Under this Stormwater Management Plan:

The plan below will be installed and maintained where storm water run off from mulch piles will pass through 20m of grassed area and then run down gullies to soak pits. The design will be complimented with geotextile sediment fencing adjacent to the soak pits. The geotextile fencing is to be inspected regularly and cleared of debris when needed. The soak pits are to be inspected and cleared as is necessary to ensure sediment flows from the land are minimised.



d. Pest Control Plan

Materials stored at the approved facility may provide an environment suitable for breeding and harbourage of vermin, and mosquitoes which are vectors for Dengue and other mosquito-borne diseases. The plan must include details of how the harbourage and breeding of designated pest species will be prevented.

Under this Pest Control Plan:

- i. The site is monitored at least weekly for signs of vermin or greater than expected mosquito activity. In the event that nuisance causing or above expected activity is observed remediation actions are to be implemented; and**
- ii. The activity area is to be self-draining and no ponding created.**

e. **Electric Ant Management Plan**

Electric Ant infestations have occurred in the area and a number of movement control areas are located in Port Douglas and Craiglie. Electric Ants are able to be spread via the movement of plant material. The plan ~~must include details of~~ requires measures to be put in place to: ensure the facility does not accept material sourced from movement control areas (see attached document movement control flow chart), and what measures be put in place to monitor the facility and respond to any identified presence of electric ants.

Under this Electric Ant Management Plan:

- i. Signs must be erected at the entrance to the site PROHIBITING the bringing onto the land material that is sourced from land declared under the Plant Protection Act 1989 (Electric Ants) – including on that sign a diagram of the declared areas within the Shire;
- ii. A sign must indicate that the land is private property and access is prohibited other than to authorised persons;
- iii. The operator must advise all persons authorised to bring material to the site that bringing on to the land material that is sourced from land declared under the Plant Protection Act 1989 (Electric Ants) is prohibited; and
- iv. The operator must monitor the activity area for the presence of Electric Ants at least weekly and report the presence of Electric Ants to Biosecurity Queensland and Council forthwith if found and take such actions as required by Biosecurity Queensland.

f. **Weed Management Plan**

There are infestations of locally and State declared plants in the area which can be spread via the movement of propagating material such as seeds, tubers, cuttings etc. Examples of locally declared species are Hiptage beghalensis and Brillantasia lamium. Examples of State declared weed species in the area include Miconia spp, Siam weed, Thunbergia spp and African Tulip tree. The plan ~~must include details of what measures will be put in place to ensure that the facility does not contribute to the distribution of declared plant propagation material.~~

Under this Pest Control Plan:

- i. Source material is delivered directly to stockpiles and not spread across other parts of the site;
- ii. Source material is to be piled into confined stockpiles at least weekly;

- iii. The activity area including the fire break is to be monitored for weed species monthly and the balance of the cleared part of the land monitored annually after the wet season; and
- iv. State and locally declared weed species are destroyed and/or appropriately disposed.

~~Two (2) copies of the Environmental Management Plan must be submitted and approved by the Chief Executive Officer prior to the Commencement of Use. The Environmental Management Plan must be implemented during the operation of the approved development, and copies of the Plan must be kept on site during hours of operation.~~

4. Condition 5 is amended as follows:

Limitation on Number of Deliveries

- 5. ~~The number of daily deliveries will be limited to a maximum of five (5) deliveries per day of green waste to the site and a maximum of five (5) delivered per day of processed material from the site utilising an up to eight (8) m³ capacity truck. All vehicle trips to and from the land are to be conducted in daylight hours. The retailing or wholesaling of any material directly from the site is not permitted. All vehicle movements are limited to the entrance/exit off Trezise Road. The entry point to the Captain Cook Highway must be closed immediately on the effect of the Development Permit.~~

5. Condition 7 is amended as follows:

External Works

- 7. Undertake the following works external to the land at no cost to Council:
 - a. Provision of a concrete crossover(s) and apron(s) in accordance with FNQROC Development Manual Standard Drawing S1105 Typical Alternative Floodway Type Access (there being no table drain at the entrance location) modified to approximately 6m long being the distance between the edge of the seal and the boundary.

Such work must be constructed in accordance with part a. above to the satisfaction of the Chief Executive Officer prior to Commencement of Use.

6. Condition 10 is amended as follows:

Air Emissions

- 10. The operator must take all practical and feasible measures to prevent dDust emissions or other air pollutants, including odours, must not extending beyond the boundary of the site and causing a nuisance to surrounding properties.

7. Condition 12 is amended as follows:

Landscaping Plan

12. Within six months of the Commencement of Use from the issue of this approval tThe site must be landscaped whereby in accordance with details included on a Landscaping Plan. The Landscaping Plan must show:

- a. Deep planting of a 6m wide setback areas adjacent to where the activity occurs on the land and generally to the road frontages to apply to both Captain Cook Highway and Trezise Road to generally screen the activities from the roads;
- b. Species to have regard to Council's Planning Scheme Policy No 7 Landscaping with an aim for a height of at least five (5) m height within five (5) years of the Commencement of Use. Landscaping is to provide for middle and upper canopy to screen the mulch piles;
- c. ~~Inclusion of any other relevant conditions included in this Development Permit.~~

~~Two (2) A1 copies and one (1) A3 copy of the landscape plan must be approved by the Chief Executive Officer. The approval and completion of all landscaping works must be undertaken in accordance with the approved plan prior to the Commencement of Use. Landscaped areas must be maintained at all times to the satisfaction of the Chief Executive Officer.~~

8. Condition 16 is amended as follows:

16. This Development Permit provides for the collection and storage of green waste, the tub grinding of the collected green waste, the storage of mulch and resultant soil/compost.

The Development permit also provides for the ancillary mixing of other soil and sand to mix with the mulch and soil/compost generated on the land provided any storage and mixing is setback behind the mulch piles. The extent of ancillary use is the manufacture of less than 200t of compost/soil conditioner in a year.

The production of 200t or more of compost and/or soil conditioner per year is considered a material change of use and requires a development approval.

~~does not approve the manufacturing of product or creation of soil conditioners as contemplated by the Development Application. Such an expansion may be considered as a Permissible Change under the Sustainable Planning Act dependant upon the nature and scale of such proposed operations. A determination as to whether such an expansion can be considered as a Permissible Change or whether a new Material Change of Use application will be required is a matter for Council to decide once details of such an expansion and the method of distribution and sale of the product is made known.~~

EXECUTIVE SUMMARY

Council has approved the development of a mulch waste recycling facility on the land subject to conditions that will regulate the ongoing operation of the activity. The conditions seek to limit the impact of the activity to the land. The applicant has requested a negotiated decision under the *Sustainable Planning Act 2009*.

The applicant has requested the condition requiring the development of an environmental management plan be reworded to reflect appropriate management practices. This is supported. It is recommended that other conditions are amended to clarify the extent and type of activities permitted on the land. A limited extent of soil conditioning and composting is permitted as an ancillary activity. The amended conditions also have regard to the Biosecurity Act 2016 and Council's recent resolution of its obligations under this Act.

After the conclusion of the appeal period Council will be able to enforce conditions, in particular the use of the Captain Cook Highway entrance.

TOWN PLANNING CONSIDERATIONS

Proposal

The land is located on the south-east corner of the Captain Cook Highway and Trezise Road, Mowbray. The application was originally lodged for the following activities:

- a. The accumulation of vegetation;
- b. The conversion of the vegetation into mulch;
- c. The storage and distribution of the resulting mulch to sites for landscaping and landscape maintenance and the like, as well as;
- d. The conversion of the mulch to related products such as potting mixes, garden additives and the like for use in landscaping, landscape maintenance, restoration and revegetation protection projects, erosion control and the like – activities that generally involve composting of vegetation; and
- e. The secondary process would involve bringing to the site various materials such as gravel, soil and sand etc., for storage and treating those materials with the above mentioned mulch in various proportions to make a range of specialised products necessary to meet the needs of a variety of horticultural and rehabilitation activities.

Only part of the site is to be used for the mulching activity.

Previous Council Consideration

At the Ordinary Meeting held on 29 September 2015 Council approved the development subject to conditions. The conditions required a detailed environmental management plan, limited deliveries to the site and required various works. The Department of Infrastructure, Local Government and Planning (DILGP) is a concurrence referral agency and required conditions to be attached to the approval in respect to the adjacent State-controlled main road.

Both Council and the DILGP required the location to the site to be limited to Trezise Road and the existing access to the Captain Cook Highway to be closed.

Request for a Negotiated Decision Notice

The applicant has requested a Negotiated Decision Notice to amend the conditions issued by Council. The applicant claims the conditions unnecessarily limit the use and are onerous. Each component of the request is discussed below together with relevant planning comments.

Condition 3 – Noise emissions

The applicant finds the condition onerous and not standard and has requested the condition be reworded as follows

Noise Emissions

3. *Machinery and equipment operated at the approved facility must not make an audible noise between 7:00 pm and 7:00 am Monday to Saturday, and 7:00 pm and 8:00 am on Sundays and Public Holidays that is louder than the traffic noise in any dwelling existing at the date of approval.*

Planning Comment

The nature of the use is industrial and is undertaken in a rural area that is dominated by sugarcane cultivation and subject to noise emissions. Nevertheless, the use needs to reasonably contain all impacts to the land. The greatest noise would be the occasional operation of the tub grinder machine. The condition can be reworded to provide more clarity on noise and time emissions. The permitted hours during which machinery and equipment can operate and emit noise are listed and having regard to Sundays and public holidays and generally align with the limit on deliveries to daylight hours under condition 5.

Condition 4 – Environmental Management Plan

The condition requires a detailed environmental management plan. The applicant finds the condition onerous and unreasonable given the relative small scale of the development and the limited range of activities sought. The applicant contends that components of the condition can be achieved by “deemed to comply” wording in an amended condition. The condition is currently worded as follows.

Environmental Management Plan

4. *An Environmental Management Plan for the site must be prepared by a suitably qualified person with respect to the potential environmental impacts of the development and compliance with the Environmental Protection Act and subordinate legislation, Council’s Local Law No 3 (Community and Environmental Management) 2011, and other relevant legislation. The plan is to include, but not be limited to the following:*
 - a. *Fire Management Plan.*

The stockpiling of mulch meets the Local Law No 3 (Community and Environmental Management) 2011 definition of a fire hazard. A ‘fire hazard’ means anything that, because of its flammable nature, its position or its

quantity, exposes property to significant risk of damage or destruction by fire. The plan must include details of how the risk of spontaneous combustion of mulch stockpiles will be managed including the provision of a suitable water storage / supply that includes a 50 mm ball valve with a camlock fitting.

b. Dust Mitigation Plan.

The operation of the approved development has potential to create a dust nuisance from vehicle movements and maintaining stockpiles of mulch and other materials (eg potting mixtures). The plan must include details of how the generation of dust and other airborne materials will be minimized.

c. Stormwater Management Plan

Potential water contaminants contained on the site must be prevented from release to stormwater drainage and watercourses. Examples of water contaminants prescribed in the Environmental Protection Regulation include plant matter, for example, bark, lawn clippings, leaves, mulch, pruning waste, sawdust, shavings, woodchip and other waste from forest products. The plan must include details of how potential contamination of stormwater runoff is prevented.

d. Pest Control Plan

Materials stored at the approved facility may provide an environment suitable for breeding and harbourage of vermin, and mosquitoes which are vectors for Dengue and other mosquito-borne diseases. The plan must include details of how the harbourage and breeding of designated pest species will be prevented.

e. Electric Ant Management Plan

Electric Ant infestations have occurred in the area and a number of movement control areas are located in Port Douglas and Craiglie. Electric Ants are able to be spread via the movement of plant material. The plan must include details of measures put in place to ensure the facility does not accept material sourced from movement control areas (see attached document movement control flow chart), and what measures will be put in place to monitor the facility and respond to any identified presence of electric ants.

f. Weed Management Plan

*There are infestations of locally and State declared plants in the area which can be spread via the movement of propagating material such as seeds, tubers, cuttings etc. Examples of locally declared species are *Hiptage beghalensis* and *Brillantasia lamium*. Examples of State declared weed species in the area include *Miconia spp*, Siam weed, *Thunbergia spp* and African Tulip tree. The plan must include details of what measures will be*

put in place to ensure that the facility does not contribute to the distribution of declared plant propagation material.

Two (2) copies of the Environmental Management Plan must be submitted and approved by the Chief Executive Officer prior to the Commencement of Use. The Environmental Management Plan must be implemented during the operation of the approved development, and copies of the Plan must be kept on site during hours of operation.

The components of the applicant's request regarding this condition are discussed separately below.

a. Environmental Management Plan – Fire Management Plan

The applicant seeks the following wording to be included to provide a deemed to comply standard.

This condition is deemed to be complied with if:

- i. Stockpiles of accumulated vegetation are limited to a maximum horizontal dimension of 30m and a maximum height of 3m;
- ii. Stockpiles of mulch and blended materials are limited to a maximum horizontal dimension of 20m and a maximum height of 3m;
- iii. The minimum separation distance between stockpiles is 5m;
- iv. Stockpiles are not mechanically compacted;
- v. A fire break, minimum 5m wide, continuous around the stockpile area shall be maintained by mowing such that grass is a maximum of 10cm high; and
- vi. Flammable liquids shall not be stored within 15m of any stockpile.

The applicant has provided the following comments regarding onsite procedures to address fire risk.

- Green waste is being stockpiled in rows of 10m wide by 30m long with a maximum height of 3m, and minimum distance to next pile in row is 5m, and minimum 20m between rows
- Due to traffic around piles there is normally no grass thereby creating a fire break. Where there is grass it is regularly slashed to keep height to a minimum.
- Mulch piles are stored in piles of no more than 30m diameter and 5m distance to nearest pile.
- Green waste and mulch piles are kept minimum 20m away from any living vegetation on property as well as 20m away from any fuel or machinery when not in use. Grass surrounding all these areas is regularly slashed to keep height down.
- A water bore pump has been installed with water feeding to a tank on higher ground to gravity feed down to service farm where multiple taps and 50mm ball

fittings have been fitted. Water can be used if self combustion occurs and also watering of piles to prevent self combustions.

- Self combustions of mulch are common in the mulching industry and to keep them to a minimum, the piles are broken-up and turned to minimise hot centres, watering if needed, and compacting to remove oxygen in pile.
- The Cairns head of fire department has been consulted in relation to our operation and the local fire brigade will be called upon if the problem cannot be managed ourselves.
- A fire management plan will be kept on site and all workers will be instructed on the plan.

Planning consideration

It is in the applicant's financial interest to minimise fire risk. The condition can be reworded to reflect the ongoing management practices. The suggested amendments together with further details as listed above will provide a reasonable and manageable condition.

b. Environmental Management Plan – Dust Mitigation Plan

The applicant seeks the following wording to be included to provide a deemed to comply standard.

This condition is deemed to be complied with if:

- Access tracks are periodically watered in times of dry weather such that no observable dust can be seen moving across nearby properties; and
- Working of materials in times of dry weather shall be monitored for dust generation and if necessary to dampened to minimise airborne material.

The applicant has advised that dust will be kept down by applying water to roads in times of dry weather, as will water be applied to piles if deemed necessary.

Planning consideration

The condition can be reworded to reflect the ongoing management practices. The wording should include the watering of the adjacent Trezise Road, as is necessary.

c. Environmental Management Plan – Stormwater Management Plan

The applicant has provided a drainage design (Figure 2 below) where run off from mulch piles will pass through 20m of grassed area and then run down gullies to soak pits which will drop sediment to the bottom.



Figure 2 - Drainage Design

Planning Comment

The drainage design is appropriate for fine material and can be improved by geotextile sediment fencing adjacent to the piles to catch larger material that would wash down in high, intense rainfall events.

Parts d, e & f - Biosecurity Matters – Pest Electric Ant and Weeds

Since the Decision Notice was issued, the *Biosecurity Act 2014* has commenced (July 2016) together with the related *Biosecurity Regulation 2016*. The Act provides comprehensive biosecurity measures to safeguard the community and environment from pests, diseases and contaminants. Under the Act there are reporting requirements for prohibited and restricted matter, notifiable incidents and restricted places. The Act has regard to weeds, pest animals and ants. At Council's Ordinary Meeting held on 31 October 2017 Council resolved to adopt the Douglas Shire Biosecurity Management Plan (BSMP) together with an Invasive Plants and Animals Surveillance Program. Under the BSMP Council is expected to:

- i. control invasive biosecurity matter on land under its control;
- ii. inspect private property to determine the presence of invasive biosecurity matter;
- iii. provide advice to landholders on appropriate pest control options; and
- iv. carry out procedures to ensure control of invasive biosecurity matter on private property.

Under the Act there is an overriding duty and obligation for the applicant to comply with the *Biosecurity Act 2014* and the *Biosecurity Regulation 2016*.

A core principle of the Act is the general biosecurity obligation requiring all persons who deal with biosecurity matters to take all reasonable and practical measures to prevent or minimise biosecurity risk.

The proposed use has a high biosecurity risk where non approved dumping material occurs and where material has been inappropriately moved from an identified contaminated area. It is important that the conditions require the operator to address as far as practicable the general biosecurity obligation. Through the DSBP Council identifies itself as a knowledge base and where incidents occur it is important for the applicant to seek advice from Council on the appropriate pest control options.

d. Environmental Management Plan – Pest Control Plan

The applicant has raised issue with the word “prevent” and seeks this to be changed to “minimised.” The applicant comments that it is impossible to prevent pests and Council does not do this at the Killaloe Waste Station.

The applicant seeks the following wording to be included to provide a deemed to comply standard and to include the word “minimised” in the existing condition wording.

This condition is deemed to be complied with if:

- i. The site is monitored at least monthly for signs of vermin or greater than expected mosquito activity. In the event that nuisance causing or above expected activity is observed remediation actions are to be implemented; and
- ii. The activity area is to be self-draining and no ponding created.

Planning Comment

The rewording is supported and the monitoring should be conducted at least weekly.

e. Environmental Management Plan – Electric Ant Management Plan

The applicant seeks the following wording to be included to provide a deemed to comply standard.

This condition is deemed to be complied with if:

- i. Signs are erected at the entrance to the site PROHIBITING the brining on to the land material that is sourced from land declared under the Plant Protection Act 1989 (Electric Ants) – including on that sign a diagram of the declared areas;
- ii. A sign indicating that the land is private property and access is prohibited other than to authorised persons;
- iii. The operator advising all persons authorised to bring material to the site that brining on to the land material that is sourced from land declared under the Plant Protection Act 1989 (Electric Ants) is prohibited; and
- iv. The operator monitors the activity area for the presence of Electric Ants at least weekly and report the presence of Electric Ants to Biosecurity Queensland and

Council forthwith if found and take such actions as required by Biosecurity Queensland.

Planning Comment

In the local area, electric ants are an identified pest and there are controls on moving waste from parts of Mowbray, Craiglie and Port Douglas as mapped as biosecurity zones on the Queensland Government Business Queensland website:

<https://www.business.qld.gov.au/industries/farms-fishing-forestry/agriculture/land-management/health-pests-weeds-diseases/pests/electric-ants/movement-controls> .

Material from these mapped areas can be moved to an approved waste facility. Otherwise, material can only be moved by a person holding the relevant biosecurity instrument permit. Where pest species are found on land they need to be appropriately baited and treated. It is concurred that the condition can be amended to minimise the risk of movement of electric ants and to direct actions to occur should the ants be found on the land. An inspection for Electric Ants should be conducted at least weekly.

f. Environmental Management Plan – Weed Management Plan

The applicant seeks the following wording to be included to provide a deemed to comply standard.

This condition is deemed to be complied with if:

- i. Source material is delivered directly to stockpiles and not spread across other parts of the site;
- ii. Source material is to be piled into confined stockpiles at least weekly; and
- iii. The activity area including the fire break is to be monitored for weed species monthly and the balance of the cleared part of the land monitored annually after the wet season.

Planning Comment

The proposed wording seeks to monitor and contain locally and state declared weeds. The condition is satisfactory with further wording to address how the declared weed material is then treated and suitably disposed.

Condition 5 – Frequency of Deliveries

The Condition currently reads as follows:

Limitation on Number of Deliveries

5. *The number of daily deliveries will be limited to a maximum of five (5) deliveries per day of green waste to the site and a maximum of five (5) delivered per day of processed material from the site utilising an up to eight (8) m³ capacity truck. All trips are to be conducted in daylight hours. The retailing or wholesaling of any material directly from the site is not permitted.*

The planning report erroneously stated that the applicant intended, “a maximum of five (5) deliveries of an eight (8)m³ capacity truck of green waste per day.” The original application included a table of estimated deliveries as below, with a long term estimate of some 40 vehicle trips per day.

Purpose	VPD in	VPD out
Operators delivery of vegetation	2	2
Supervisor check of site	1	1
Delivery of vegetation by others	3	3
Operators supply of mulch from the site*	1	1
TOTAL	7	7
ANTICIPATED (LONG TERM) DEVELOPED OPERATION		
Operators delivery of vegetation	3	3
Supervisor check of site	1	1
Delivery of vegetation by others	10	10
Deliver of blending materials**	2	2
Supply of mulch and (potting) mixes	4	4
TOTAL	20	20

Figure 3 – Application Trip Details

The applicant suggests that the wording, “*The retailing or wholesaling of any material directly from the site is not permitted,*” is unlawful.

The applicant has requested the condition be deleted.

Planning Comment

The condition is intended to minimise impacts of vehicles attending the site and ensure the trips are undertaken in a safe manner. All vehicle are required to enter and exit the site from a location along Trezise Road that is deemed to be a safe location by DILGP. The Applicant has agreed to this entry/exit location and has provided the updated plan below. There is no condition requiring an illuminated street entry and any such condition would be unreasonable.

This issue can be addressed by requiring all vehicle trips to be conducted in daylight hours, rather than limiting attendance to a particular number of trips. Limiting delivery to daylight hours also considers biosecurity issues concern to ensure delivered material is appropriately sorted.

The concerns regarding retailing and wholesaling from the site have regard to vehicle trips attending the site. The position of the site results in minimal additional impact on the vehicle trips using the Highway. Trezise Road is capable, at this point, to sufficiently provide for the vehicles attending the site. Vehicles attending and leaving the site are able to do so in a forward direction. the concerns can be suitably addressed by limiting vehicle trips to daylight hours.

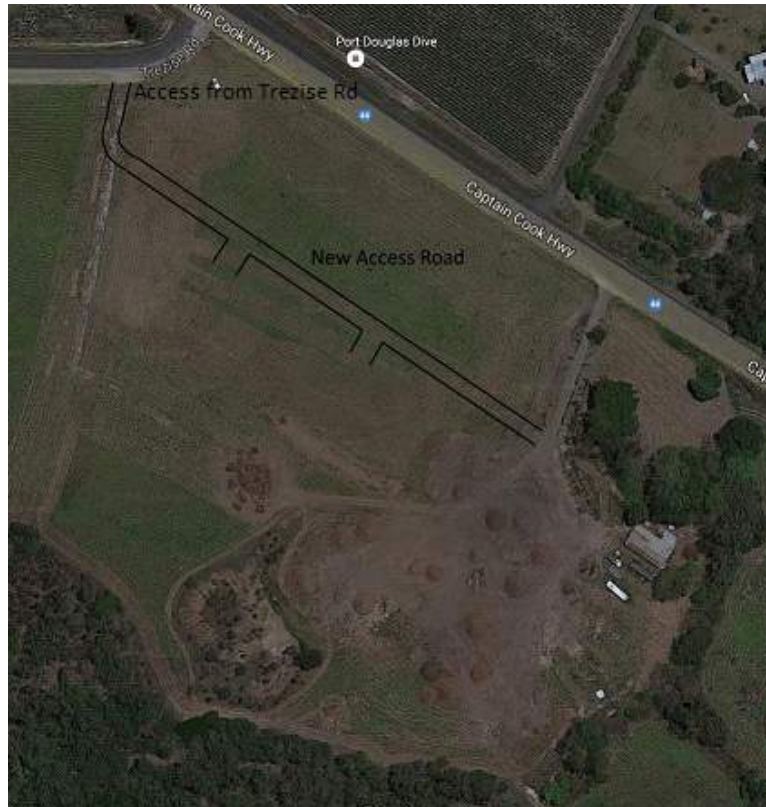


Figure 4 – Internal Road

Concern is maintained with the timing of deliveries and the condition can be amended to address this concern by limiting deliveries to daylight hours. It is appropriate that the condition reflect that vehicle movements are limited to the entrance/exit off Trezise Road.

Condition 7 – External works

The applicant has suggested additional wording to clarify the intended vehicle crossing to service the development.

External Works

7. *Undertake the following works external to the land at no cost to Council:*
 - a. *Provision of a concrete crossover(s) and apron(s) in accordance with FNQROC Development Manual Standard Drawing S1105 Typical Alternative Floodway Type Access (there being no table drain at the entrance location) modified to approximately 6m long being the distance between the edge of the seal and the boundary.*

Such work must be constructed in accordance with part a. above to the satisfaction of the Chief Executive Officer prior to Commencement of Use.

Planning comment

No concern is raised with the proposed rewording.

Condition 10 - Air emissions

The applicant has requested the condition be reworded as follows.

Air Emissions

10. *The operator must take all practical and feasible measures to prevent dust emissions or other air pollutants, including odours, must not extending beyond the boundary of the site and causing a nuisance to surrounding properties.*

Planning Comment:

No concern is raised with the proposed rewording.

Condition 12 – Landscape Buffer

The condition reads as follows.

Landscaping Plan

12. *The site must be landscaped in accordance with details included on a Landscaping Plan. The Landscaping Plan must show:*
 - a. *Deep planting of setback areas generally to the road frontages to apply to both Captain Cook Highway and Trezise Road to generally screen the activities from the roads;*
 - b. *Species to have regard to Council's Planning Scheme Policy No 7 Landscaping with an aim for a height of at least five (5) m height within five (5) years of the Commencement of Use. Landscaping is to provide for middle and upper canopy to screen the mulch piles;*
 - c. *Inclusion of any other relevant conditions included in this Development Permit.*

Two (2) A1 copies and one (1) A3 copy of the landscape plan must be approved by the Chief Executive Officer. The approval and completion of all landscaping works must be undertaken in accordance with the approved plan prior to the Commencement of Use. Landscaped areas must be maintained at all times to the satisfaction of the Chief Executive Officer.

The applicant has raised concern with the extent of landscaping necessary on the assumption that the whole of the nominated setback area would require landscaping. An alternative site plan of the area to be used has been provided below together with the intended buffer. The applicant has requested the condition be rewording.

"The site must be landscaped to render the operations unobtrusive when viewed from the Highway."

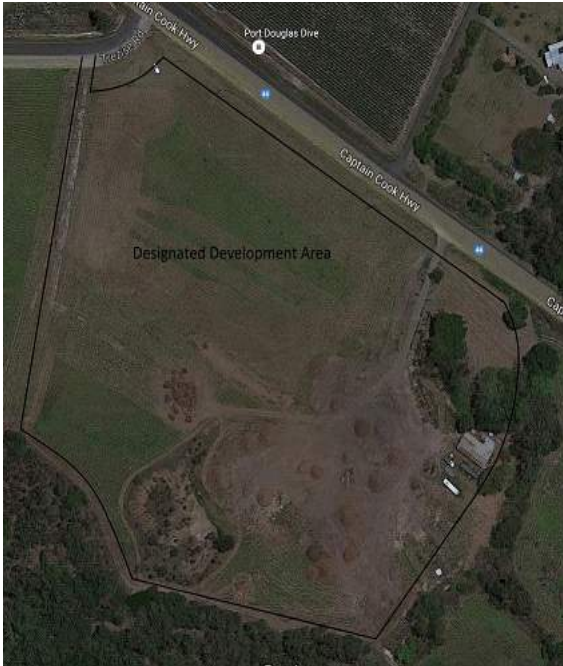


Figure 5 - Amended Extent of site Plan



Figure 6 - Landscape buffer

Planning Comment

It is reasonable to require a 6m wide landscape buffer area along both road frontages adjacent to where the activity occurs. The condition can be appropriately amended and it is not necessary that a plan be provided.

Condition 16 – Extent of Use Approval

The condition reads as follows.

16. *This Development Permit does not approve the manufacturing of product or creation of soil conditioners as contemplated by the Development Application. Such an expansion may be considered as a Permissible Change under the Sustainable Planning Act dependant upon the nature and scale of such proposed operations. A determination as to whether such an expansion can be considered as a Permissible Change or whether a new Material Change of Use application will be required is a matter for Council to decide once details of such an expansion and the method of distribution and sale of the product is made known.*

The applicant contends that the condition is unreasonable and unlawful as the use applied for entailed mulching operations. The purpose of the application is to allow production of landscaping materials using vegetation that would otherwise be directed to Council's waste stream. To prohibit manufacture of mulch and like product is an effective refusal of the application. The original application stated the intention to produce some alternative products such as gravel, soil and sand for blending with the mulch. When the mulch is held for an extended time, it breaks down and becomes soil/compost.

Planning Comment

The collection and storage of green waste, the tub grinding of the collected green waste, the storage of mulch and resultant soil/compost are considered primary operations of the land use. The original application did not include any Environmentally Relevant Activity (ERA).

The manufacture of 200t or more of compost and/or soil conditioner in a year is defined by the *Environment Protection Regulation 2008* as an ERA. Where the use of other soil and sand to mix with the mulch and soil/compost generated on the land is manufacturing less than 200t per year, this component is considered an ancillary use and like the general mulching activity needs to be adequately screened and the activity is undertaken in an appropriate manner. The conditions of the approval limit the operation of machinery and require buffer screening. The activities proposed for the land are best located in rural areas where the activity is suitably contained to the land. Under the *Planning Act 2016* a future application can be made to change an application, including a use not proposed in the original application. It is recommended that the condition be reworded to reflect these planning considerations.

The operation of a recycling facility where 1000t or more of green waste is mulched in a year is defined as a prescribed activity under the *Waste Reduction and Recycling Act 2011*. Under this Act and the associated Regulation an operator of a prescribed activity is required to report the activity annually to the Department of Environment and Heritage Protection. This requirement is already listed in the Advice statements.

Public Notification / Submissions

The original application was publicly notified in July-August 2015 and no submissions were received during that period. One submission from two persons was recently received regarding the facility. As the submission was not received within the period of public notification period, the submission is “not properly made” and no third party appeal rights are available to the submitter. The concerns raised by the submitter are as follows.

The concerns raised by the joint submission are claimed to be held by “a clear majority of residents and holiday visitors.” The submission identifies the land being on the main tourist route to Port Douglas and finds the development an unsightly waste dump leading into a prominent holiday destination. The submission claims the development provides a habitat for pests/weeds, is a fire danger, has no boundary gardens, minimal signage, no dust control measures, no car parking or driveways, has noise issues with machinery used on site, no runoff controls, utilises an access to the Highway and has more than five deliveries a day. The submission states that there are five other raw materials suppliers in the Shire (Oakdare, Billy Bellerio, Mossman Quarry, Raw & More and Port Douglas Raw Materials) and there is an over saturation of an industry that is already suffering noting that others have purchased properties located in correctly zoned industrial areas and have made significant financial commitments to those sites. The submission also states that Council loses out income due to dump of raw materials at this site instead of Council’s Killaloe waste site.

In response, it is noted that planning considerations do not include individual financial competitive concerns. The conditions of the approval have regard to the management of dust, pests and weeds, runoff, car parking, the use of machinery, the provision of a landscaped buffer to the highway and the prohibition of direct access off the Highway. The conditions are able to be imposed once the appeal period has expired. The application was made in response to operating the use on the land without an approval. The applicant has advised that the majority of the waste delivered to the site is from local commercial operators, including the applicant, and the resultant mulch is utilised back on many of the local resorts.

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

Nil