

30 January 2025

Chief Executive Officer
Douglas Shire Council
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email: enquiries@douglas.qld.gov.au

Attention: Jenny Elphinstone

Dear Sir/Madam

**COUNCIL FILE REFERENCE – MCUI2024_5682/1
INDEPENDENT TOWN PLANNING REVIEW FOR NAGAN FAMILY**

**Submission against the Development application seeking a development permit for Material Change of Use
– Extractive Industry (extraction of approximately 30,000 tonne of sand per year)**

**Lot 1 Captain Cook Highway (with frontage to Killaloe Dump Road and the un-named road off Bonnie Doon
Road, Killaloe), formally described as Lot 1 on RP893855**

Reel Planning has been engaged by Bernard Nagan to undertake an independent town planning review of the above development application. It is understood that Mr Nagan intends to include this review as a supplementary submission to support the formal submission that he lodged against the above development application.

In accordance with the provisions of the *Planning Regulation 2017*, the submitter is seeking Council, as the assessment manager, to accept and consider this supplementary submission as common material and have regard to it in deciding the application.

The submitter is seeking Council to refuse the development application.

In our opinion the development application material is manifestly inadequate, lacking in key information and detail. It fails to demonstrate compliance with the relevant assessment benchmarks. It is considered that the application has not been supported by required technical reports to enable a detailed and informed assessment of the application and therefore cannot in its current form be reasonably conditioned to ensure adverse impacts (both on the natural environment and the amenity of nearby residents) are mitigated through conditions of approval.

In light of the strong potential for adverse impacts, in our opinion the application should be refused by Council.

The development application, as lodged with Douglas Shire Council, did not provide sufficient information addressing the assessment benchmarks in the *Douglas Shire Council Planning Scheme 2018 (v1)*. In response, Council, as the Assessment Manager, issued the applicant with an Information Request (corrected) dated 1 November 2024. It is considered the applicant's response to the Information Request dated 26 November 2024 in conjunction with the original development application material is inadequate with respect to the following key matters.

- The description of the proposed operations supported by the plan of development is lacking in detail and certainty.

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- The application material fails to clearly identify and articulate how the proposed use will be operated and managed to mitigate adverse impacts.
- The application does not clearly identify the extent of the proposed extraction area and activity, existing heights and proposed extraction depths and finished levels with adjoining site boundaries, buffers, waterway and farm drains.
- The application does not identify the existing location, function and treatment of drainage paths through and adjacent to the extraction area and the impact on drainage flows through the site and receiving waterways.
- The application does not address the impacts on the hydrological characteristics of the site and potential impact on the ecological values of the coastal environment including aquatic ecology and the mapped wetland in the southern portion of the site.
- The application does not address the adverse impacts on the neighbouring sensitive land use providing no acoustic or air quality assessment, nor does it deal with the adequacy of the proposed 50 metre setback buffer.
- The application does not address the safety and efficiency of the intersection of Bonnie Doon Road and the unnamed road to accommodate traffic generated from the proposed land use.
- The application does not address the potential for adverse impact on the scenic amenity of the area

It is also noted that other submissions deal with cultural heritage considerations which have also not been addressed.

Assessment against the Extractive Industry Code (9.3.10)

Section 6.3 of the planning report lodged with the development application incorrectly identified the applicable assessment benchmarks, failing to identify the applicable Extractive Industry Code and therefore providing no assessment against how the proposed development achieves compliance with the assessment provisions.

The purpose of the code is to assess the suitability of an extractive industry development.

All of the prescribed outcomes in the assessment code are considered applicable to the development proposal, and it is considered the application has failed to provide sufficient information demonstrating compliance.

The prescribed overall outcomes are:

- (a) *extractive industries are established in locations that are adequately separated from sensitive land uses and do not have significant ecological, landscape or rural value;*
- (b) *a separation area is established to maintain a buffer between the extractive industry and existing and future sensitive land uses;*
- (d) *extractive industry operations are designed and managed to operate safely and avoid adverse impacts on amenity of adjacent sensitive land uses;*

The submitter, Bernard Nagan is the registered owner of the rural lot [REDACTED] to the north of the subject site and is the closest sensitive land use (a residential dwelling house) to the proposed sand extraction activity. The application is proposing a 50 metre buffer from the dwelling to the extent of the extraction area. The extent of the proposed buffer is not clearly delineated on the proposed plan of development.

The acceptable outcome (AO4) prescribes a minimum 200 metre setback from a proposed extraction area (not involving blasting or crushing) to a sensitive land use.

In response to the inadequate information lodged with the application, Council requested a Noise Attenuation Report as part of Council's Information Request. In response, the applicant did not provide a technical report prepared by suitably qualified consultant.

The applicant's response to Council's request for further information was a high-level response stating '*the proposed sand extraction is considered to be similar in nature and scale of other rural activities that may be established in a rural area without the opportunity for Council to require noise attenuation reporting and or the provision of buffers to mitigate impacts*'. In response to addressing the adequacy of the proposed 50m buffer the applicant states '*given the limited scale of the activity, the 50m buffer is expected to be an adequate separation distance*'.

The application material has not adequately demonstrated why a reduced buffer width of 50 metres is sufficient to provide adequate separation to minimise the potential for nuisance, in particular air quality and noise on the adjoining residence. A detailed site-specific technical assessment of the proposed extractive industry activity is required to identify the potential impacts the use will have on the adjoining sensitive land use and establish the required minimum buffer width and potential screening to mitigate against those adverse impacts.

Consistent with the Council officer preliminary assessment, it is considered the Environmental Assessment report forming part of the development application material does not adequately identify and assess the environmental impacts of the proposed use. In response to Council's Information Request the applicant did not provide any further technical reporting. The application in its current form provides inadequate information to assess the potential adverse impacts.

- (c) *external operations such as haulage routes do not adversely impact on amenity and well-being of the community;*

Vehicle access to the site is proposed to be achieved from the unnamed road via a new access bridge over the mapped waterway along the northern boundary. The lot owned by the submitter, [REDACTED] is the only lot that currently achieves access from the unnamed road. The road is gravel formation with a standard of construction consistent with a rural lot driveway. While the subject site and the adjoining rural lot to the west, Lot 2 RP893855 have frontage to the unnamed road reserve, a bridge type crossing would be required over the mapped waterway.

The applicant in response to Council's Information Request stated the upgrade of the formation of the unnamed road to bitumen seal standard can accommodate expected vehicle trips from the proposed sand extraction operations. The application did not provide any assessment or consideration of the safety and efficiency of the intersection of Bonnie Doon Road and the unnamed road to accommodate the type and volume of traffic generated from the proposed land use.

The assessment of the impact on the intersection is a relevant matter requiring assessment by a suitably qualified person.

- (e) *extractive industries cause no adverse impact on scenic amenity*

The subject site is identified as a Medium Landscape Value in the Landscape Values Overlay Map. The applicant's response to compliance with the Landscape Values Overlay Code consists of a broad statement that '*the sand extraction proposal is small scale and will be visually unobtrusive. Views of the sand extraction proposal from public viewing points will be distant views and the sand extraction proposal will blend into the rural activities being undertaken in the locality*'.

The proposal will result in a change to the existing natural landform involving the excavation and removal of sand. The development application did not include an assessment addressing compliance with the purpose, overall outcomes and relevant performance outcomes of the Landscape Values Code, or the relevant Themes and Elements of the Strategic Framework with respect to the extent and level

of impact on the visual amenity on the landscape and how the proposed extractive industry activity can be managed to minimise the extent of impact.

- (f) *extractive industry sites are effectively and progressively rehabilitated including the achievement of a stable land form that is safe and suitable for other appropriate uses.*

The application material states '*rehabilitation works will be undertaken progressively and in tandem with the extraction program*'. The response to the Council's Information request further stated '*it is expected that the disturbed extraction footprint will be limited to an area of approximately 2,000m² and rehabilitation of the disturbed extraction area will be arranged in 1-2 months*'.

The application material did not include a staging or rehabilitation plan. How the application is staged and rehabilitated is important. From our experience it is informed by understanding the impacts on hydrology, finished levels and visual impacts.

Coastal Hazards – Storm Tide Inundation and Flood

The subject site is affected by Coastal Hazard mapping including medium and storm tide hazard.

In response to the inadequate information lodged with the application, as part of Council's Information Request, Council requested a post-development storm tide analysis in respect to the proposed anticipated finished levels and a pre and post flood modelling analysis considering the extent of extraction, area of extraction and existing and any proposed drainage works.

In response the applicant did not provide any additional technical reports, merely stating '*once the sand extraction activity has been completed it is understood that the lower ground elevation will increase the potential for the land to be inundated during a 100 year ARI flood event and significant storm tide event*'.

Consistent with the Council's preliminary assessment, it is considered fundamental that the development application material does not adequately address the flood and storm tide inundation impacts.

The development proposal will result in a change to a natural forming coastal landform with unknown impacts on the hydrological characteristics of the site and ecological values of the coastal environment. A report by a suitably qualified person is required to identify and assess those impacts.

Our assessment of the application points to an over-reliance by the applicant on the sand extraction being, in their opinion, small in scale and consistent with other rural activities. In our opinion the removal of a sand dune formation with an excavation across approximately 20 hectares of coastal frontage in a sensitive environment is not small in scale. This can clearly be distinguished from historic, traditional cane farming operations in the locality.

In our opinion, Impacts on the environment and residential amenity have the potential to be significant and should not be deferred to conditions.

In summary, there is insufficient information to enable Council to make an informed assessment and decision, and it is considered the application in its current form should be refused.

Yours faithfully,



Greg Ovenden

Director | REEL PLANNING PTY LTD