

DOUGLAS SHIRE COUNCIL
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25 March 2026

Chief Executive Officer
Douglas Shire Council
64-66 Front Street
Mossman Qld 4873

By email enquiries@douglas.qld.gov.au and
express post

Dear Sir/Madam

NQ Asphalt Pty Ltd v Douglas Shire Council
Planning and Environment Court Appeal No 28 of 2026
Your Ref: MCUI 2024-5682/1
Our Ref: 10421-NQA001-00001

We act for the appellant NQ Asphalt Pty Ltd.

Pursuant to section 230(3)(a) of the *Planning Act 2016* (Qld), we **enclose** by way of service a copy of the Notice of Appeal which was filed in the Cairns Registry of the Planning and Environment Court on 24 March 2026.

If you have any questions or require any further information, please contact Sangeetha Badya.

Yours faithfully,



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Encl. Notice of Appeal 28 of 2026

In the Planning and Environment Court
Held at: Cairns

No 28 / 2026

Between: NQ Asphalt Pty Ltd ACN 625 248 179

Appellant

And: Douglas Shire Council

Respondent

NOTICE OF APPEAL

Filed on: 24 March 2026

Filed by: Sparke Helmore Lawyers
Service address: Level 11, 15 Lake Street, Cairns QLD 4870
Phone: +61 7 3001 9207
Email: Sangeetha.Badya@sparke.com.au

NQ ASPHALT PTY LTD ACN 625 248 179 c/- Sparke Helmore Lawyers, Level 11, 15 Lake Street, Cairns appeals to the Planning and Environment Court at Cairns against the Respondent's decision (**Decision**) contained in its decision notice dated 24 February 2026 (**Decision Notice**) to refuse the Appellant's development application for a Development Permit for Material Change of Use (Impact) for an Extractive Industry (**Development Application**) in respect of land located at Captain Cook Highway, Killaloe more particularly described as Lot 1 on RP893855 (**Land**) and seeks the following orders or relief:

- (a) the appeal be allowed;
- (b) an order, pursuant to s 47(1)(c)(i) of the *Planning and Environment Court Act 2016* (Qld) that the Decision be:
 - (i) set aside; and
 - (ii) replaced with a decision to approve the Development Application subject to appropriate and lawful conditions;
- (c) such further or other order as the Court deems appropriate.

The Appellant relies upon the following facts and circumstances:

1. The Land:
 - (a) has an area of 40.47 hectares;
 - (b) is currently vacant;



NOTICE OF APPEAL
Filed on behalf of the Appellant
Form PEC-1

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- (c) is primarily mapped as Category X (Exempt clearing) on the Regulated Vegetation Map and includes a small area of Category C (High-value regrowth) and Category R (Reef regrowth watercourse vegetation) on an area of the Land that is not part of the development footprint;
 - (d) contains a vegetated wetland in the south;
 - (e) has no services connections;
 - (f) is accessed via a gravel formed road on its northern boundary;
 - (g) is adjoined to the south, west and north by land traditionally used for cropping to supply the recently closed Mossman Mill;
 - (h) is adjoined by the Council owned Killaloe Waste Transfer Station to the south-east accessed by the Killaloe Dump Road;
 - (i) is adjoined by undeveloped unallocated State land to the east supporting mangroves and wetlands beyond which is the Conservation Zone of the Greater Barrier Reef Marine Park.
2. The Land is zoned Rural in the *Douglas Shire Planning Scheme 2018 Version 1.0 (Planning Scheme)*, the scheme in effect at the time the Development Application was made, and is within the Rural Area in the Strategic framework.
3. The Land is affected by the following Overlays:
- (a) Acid Sulfate Soils
 - (b) Bushfire Hazard
 - (c) Coastal Environment
 - (d) Flood and Storm Tide Hazard
 - (e) Landscape Values
 - (f) Natural Areas
 - (g) Transport Network

Development Application

4. The Development Application:
- (a) was accepted by the Respondent as properly made on 30 October 2024;
 - (b) required referral to the State Assessment and Referral Agency (**SARA**) pursuant to *Planning Regulation 2017 (Qld) Schedule 10, Part 9, Division 4, Subdivision 1, Table 1 – Material change of use impacting on state transport infrastructure (extractive industry using machinery having an annual throughput of product of over 10,000t)*;

- (c) was subject to impact assessment and received 23 properly made submissions.
5. On 12 December 2024 SARA issued its referral agency response with conditions.
 6. On 28 May 2025 the Department of Environment, Tourism, Science and Innovation (**DETSI**) issued Environmental Authority P-EA-100750656 for ERA 16 – Extraction and Screening 2(a) – Extracting, other than by dredging, in a year, the following quantity of material – 5,000t to 100,000t (**EA**).
 7. The EA includes conditions regarding, relevantly:
 - (a) Air quality;
 - (b) Biodiversity;
 - (c) Erosion and sediment control;
 - (d) Wet season flood management;
 - (e) Rehabilitation of disturbed areas;
 - (f) Noise; and
 - (g) The release of contaminants into water and groundwater.
 8. The EA also:
 - (a) limits extraction of material to 30,000 tonnes per annum;
 - (b) limits the total active extraction area to 1 hectare at any given time;
 - (c) limits the total former extraction area to 1 hectare at any given time;
 - (d) limits depth of extraction to 3 metres;
 - (e) requires extraction to be staged; and
 - (f) does not allow extraction to intercept groundwater.
 9. On 24 February 2026 a report from the Respondent's Senior Planning Officer recommending approval of the development was included in the agenda for the Respondent's Ordinary Council Meeting.
 10. On 24 February 2026 the Respondent refused the Development Application.
 11. The Appellant appeals against the Respondent's decision to refuse the Development Application on the grounds set out below and by reference to the schedule of assessment benchmarks in Annexure A.

The grounds of appeal are:

Land Use

12. The proposed sand extraction is a small-scale non-rural use contemplated by the Planning Scheme for the Rural Zone. The extent of extraction is significantly reduced by the limited depth and duration of extraction combined with setbacks from sensitive land uses, adjoining properties and the identified wetland. The total extraction area will be limited to 1 hectare at any given time with no extraction to be undertaken below a depth of 3 metres AHD. No

sorting or screening will occur on site. Only one small excavator will be required to operate on the site.

13. The proposed development:

- (a) does not impact community well-being, ecological, landscape, scenic amenity and rural production values (complies with 3.6.3(1); 3.6.4.1(2); 9.3.10.2(c), (d) and (e); and PO10 Extractive Industry Code);
- (b) will progressively rehabilitate the land to a natural state (complies with 3.6.4.1(3); 9.3.10.2(f));
- (c) will contribute to the management and protection of the economic values of extractive resources in the Shire which are recognised alongside the economic values of the Shire's agricultural land (complies with 3.6.1(1));
- (d) is a non-rural use compatible with agriculture, environmental features and landscape character where the long-term use of the land for rural purposes isn't compromised as a result of the land's rehabilitation post-development (complies with 3.6.3.1(1); 6.2.10.2(1)(b); and PO4 and PO5(c) Rural Zone Code);
- (e) is consistent with the local government purpose of the Rural Zone Code by implementing Theme 3: Natural resource management, Element 3.6.4 – Resource extraction;
- (f) is consistent with the overall outcomes of the Rural Zone Code as it avoids adverse impacts on-site and on adjoining areas through setbacks and screening (complies with 6.2.10.2(3)(c));
- (g) will be carried out in accordance with best practice management standards (complies with PO9 Extractive Industry Code);
- (h) is adequately separated from sensitive land uses, is located to avoid ecological values and will not impact landscape and rural values (complies with 9.3.10.2(a) and (b)); and
- (i) is not identified as an inconsistent use within the Rural Zone in Table 6.2.10.3.b (complies with PO4 Rural Zone Code).

14. To the extent that the proposed development does not comply with assessment benchmarks relevant to land use (which is not admitted), it can be conditioned to comply, by for example:

- (a) requiring the land to be suitably rehabilitated for primary production;
- (b) limiting the depth and extent of extraction;
- (c) requiring the ongoing rural use of non-active extraction areas; and
- (d) requiring the installation of landscape buffers to allow continued use of rural land external to the site.

Physical Setting and Landscape Value

15. While the Strategic Intent in the Planning Scheme identifies the sand ridges in the Shire as forming part of its scenic landscape, the same provisions recognise that most of the coastal plain has been cleared for cultivation, grazing and settlement (complies with 3.2.1.2(1)). The proposed development is located within an area that is already the subject of rural activities which have changed the landscape.
16. The proposed development is for extraction of sand from a low sand ridge. The ridge is not a prominent feature of the landscape. The proposed development is limited to extraction of up to 30,000t per annum.
17. The proposed development is located 500 metres from the Captain Cook Highway. The development is also set back and screened from Bonnie Doon Road by an existing vegetated buffer.
18. The Development Application was supported by visual assessment reports considering views from Bonnie Doon Road and the Captain Cook Highway. The assessment confirmed that the extraction activities would not be discernible from Bonnie Doon Road or the Captain Cook Highway.
19. The proposed development is therefore small-scale, visually unobtrusive and will not impact public viewing points. Extraction will be staged and each stage rehabilitated at its conclusion. Because of the small-scale nature of the development there will be limited stockpiling and vehicles on site.
20. The proposed development is sufficiently set back from adjoining property boundaries and can be conditioned to require a ten metre landscaped set back with deep planting from the boundary of Lot 2 on RP893855 and Lot 33 on USL8687.
21. The proposed development therefore:
 - (a) does not unduly compromise natural landscape values (complies with 3.6.1(3) and 8.2.6.2(2)(e)).
 - (b) achieves an acceptable standard of visual amenity (complies with PO5 Extractive Industry Code);
 - (c) implements Element 3.6.4 – Resource extraction of the Strategic Framework (and complies with the purpose of the Landscape Values Overlay Code 8.2.6.2(1));
 - (d) will be screened from view (complies with PO2(b) and (g) Landscape Values Overlay Code; and PO6 Extractive Industry Code); and
 - (e) is proportionate to and avoids detrimental impacts on surrounding landscape values (complies with PO2(a), (d) and (e) Landscape Values Overlay Code).
22. To the extent the proposed development does not meet the assessment benchmarks relevant to landscape values (which is not admitted), the development can be conditioned to comply.

Ecology and Coastal Values

23. The proposed development is located outside of mapped areas of environmental significance (PO2 Extractive Industry Code). The land is predominantly cleared of vegetation and was previously used for cropping.
24. A site and development specific Environmental Management Plan (**EMP**) has been prepared for the proposed development (PO1 Extractive Industry Code). The environmental impacts of the development were considered by DETSI in its EA assessment. As a result of this assessment a 10 metre buffer on the eastern boundary of the Land has been included in the proposed development to address storm tide inundation concerns and prevent impacts to the adjoining mangrove forest.
25. The development will be setback from sensitive areas and can be conditioned to require landscape setbacks from property boundaries and nearby wetlands that feed into the Greater Barrier Reef Marine Park World Heritage area to ensure the ecological values of these areas is maintained.
26. The proposed development therefore:
 - (a) will not impact the Shire's biodiversity values (complies with 3.2.1.3(3); 6.2.10.2(2)(c); and PO3 Extractive Industry Code);
 - (b) will not interfere with waterways or wetlands in a way that will diminish the quality and quantity of water delivered to the Coral sea (complies with 3.5.4.1(3));
 - (c) will achieve the rehabilitation outcomes of the Extractive Industry Code (complies with PO10); and
 - (d) avoids development within areas of ecological significance (complies with 8.2.7.2(2)(a); AO2, AO3.1 and AO4.1 Natural Areas Overlay Code or the corresponding POs).
27. The EMP addresses stormwater management and sediment and erosion control in accordance with the purpose of the Environmental Performance Code and complies with AO7.2 and AO7.3 or PO7.
28. The EMP was considered by DETSI as part of the EA assessment. The EA assessment considered the water quality and stormwater impacts of the proposed development. The proposed development satisfies the requirements of AO5.3, AO5.4 and AO5.5 or PO5 of the Infrastructure Works Code.
29. The proposed development will not interact with Potential Acid Sulfate Soils material (**PASS**) (complies with 3.5.4.1(8)). The sand extraction is not proposed to occur below the highest level of groundwater and there will be no dewatering of the landform.

30. The proposed development is not identified within the Coastal Management District and is located outside the mapped erosion prone area. As a result, the proposed development:
- (a) will not result in the loss of coastal ecosystem extent and function (complies with 3.5.4.1(1)); and
 - (b) does not interfere with or intervene in a natural coastal process (complies with 3.5.4.1(2)).
31. To the extent the proposed development does not meet the assessment benchmarks relevant to ecological and coastal values (which is not admitted), the development can be conditioned to comply by, for example, requiring the appropriate management of PASS material if it is encountered on site.

Amenity

32. The proposed development is set back from sensitive receptors with a proposed distance of 200 metres from the nearest sensitive use on Lot 54 on SP292874. Therefore the proposed development is adequately separated from sensitive land uses to minimise the potential for nuisance (complies with PO4 and PO7 Extractive Industry Code).
33. The setback formed part of the EA assessment undertaken by DETSI. DETSI's assessment considered the impacts of the proposed development on air (dust) and noise and found the impacts to be acceptable.
34. To the extent the proposed development does not meet the assessment benchmarks relevant to amenity (which is not admitted), the development can be conditioned to comply by, for example, requiring the appropriate management of noise and dust emissions as evidenced by the EA conditions.

Natural Hazards

35. The proposed development mitigates any impacts of natural hazards in the following ways:
- (a) the proposed development does not propose any net increase in filling;
 - (b) sand will not be extracted below the ground level;
 - (c) overland flow from storm events will be captured in a sediment basin;
 - (d) campaign extraction and stockpiling is proposed to occur during the dry season.
36. Therefore:
- (a) The proposed development achieves the specific and overall outcomes of the Flood and Storm Tide Hazard Overlay Code (complies with 3.4.7.1(1); 8.2.4.2(1)(a)(i); and 8.2.4.2(2)(c) and(e)); and

- (b) The proposed development complies with AO5.2 of the Flood and Storm Tide Hazard Overlay Code.
37. To the extent the proposed development does not meet the assessment benchmarks relevant to natural hazards (which is not admitted), the development can be conditioned to comply by, for example:
- (a) requiring screened storage areas for machinery capable of providing refuge in storm tide inundation events;
 - (b) requiring drainage channels to mitigate ponding of overland flow and storm tide inundation; and
 - (c) requiring the lodgement of a sediment and erosion control plan to ensure external stormwater flow does not adversely affect surrounding or downstream properties.

Traffic and Access

38. The haul vehicle and light vehicle trips proposed as part of the operation of the development are consistent with a small-scale operation.
39. SARA has assessed the traffic impact of the development on the state transport network. The SARA conditions require access to the site via Bonnie Doon Road and the unnamed road to the north of the site.
40. An operational works application will be required to upgrade the unnamed road to the north and its intersection with Bonnie Doon Road in accordance with the requirements of the FNQROC Development Manual. The upgrade will correct the alignment of the existing gravel driveway from its location outside the road corridor to sit fully within the road corridor.
41. The proposed development will not give rise to unacceptable traffic impacts because the upgrading of the road will:
- (a) ensure that suitable and safe access is provided to the proposed development;
 - (b) integrate the access into the surrounding transport network, including through an intersection upgrade; and
 - (c) ensure operational safety and amenity of the surrounding road network.
42. To the extent the proposed development does not meet the assessment benchmarks relevant to traffic and access (which is not admitted), the development can be conditioned to comply.

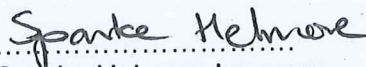
Relevant Matters

43. The proposed development seeks to extract sand from the Land to facilitate the manufacture of asphalt to support road construction projects, including the reconstruction of the Captain Cook Highway between Cairns and Port Douglas in the aftermath of Tropical Cyclone Jasper.

44. There is a need for the development as demonstrated by:
- (a) sand being a critical resource for the manufacture of asphalt and sand resources in Far North Queensland being limited;
 - (b) the availability of locally sourced sand eliminating the need for resources to be sourced and transported long distances from outside Far North Queensland;
 - (c) the Queensland Quarry Demand and Supply Risks Report 2023 commissioned by the Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development forecasting an increase in demand for quarry material.

Exercise of the Discretion

45. The Respondent's reasons for refusal do not warrant, individually or cumulatively, the refusal of the Development Application.
46. The Appellant's position is that:
- (a) the Development Application proposes a land use consistent with the zoning of the Land;
 - (b) the Development Application will not result in any adverse impacts on physical setting and landscape values, ecology and coastal values, amenity, natural hazards or traffic and access that warrant refusal of the development;
 - (c) the Development Application can be conditioned to comply with assessment benchmarks relevant to these issues;
 - (d) to the extent there are non-compliances with the Planning Scheme, those non-compliances are not determinative; and
 - (e) need is a relevant matter supporting approval of the development.
47. Taking into account the grounds set out in this Notice of Appeal, it is an appropriate exercise of the Court's discretion for:
- (a) the Respondent's Decision to be set aside; and
 - (b) the Development Application to be approved, subject to appropriate and lawful conditions.


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Sparke Helmore Lawyers
Solicitors for the Appellant

If you are named as a respondent in this notice of appeal and wish to be heard in this appeal you must:

- (a) within 10 business days after being served with a copy of this Notice of Appeal, file an Entry of Appearance in the Registry where this notice of appeal was filed or where the court file is kept; and**
- (b) serve a copy of the Entry of Appearance on each other party.**

The Entry of Appearance should be in Form PEC – 5 for the Planning and Environment Court.

If you are entitled to elect to be a party to this appeal and you wish to be heard in this appeal you must:

- (a) within 10 business days of receipt of this Notice of Appeal, file a Notice of Election in the Registry where this Notice of Appeal was filed or where the court file is kept; and**
- (b) serve a copy of the Notice of Election on each other party.**

The Notice of Election should be in Form PEC – 6 for the Planning and Environment Court.

ANNEXURE ASchedule of Assessment Benchmarks

Strategic Framework	
3.2.1 Douglas Profile	
3.2.1.2 Physical setting	Element (1)
3.2.1.3 Environment	Element (3)
3.4 Theme 1 – Settlement Pattern	
3.4.7.1 Element – Mitigation of hazards	Specific Outcome (1)
3.5 Theme 2 – Environment and landscape values	
3.5.4.1 Element – Coastal Zones	Specific Outcome (1), (2), (3) and (8)
3.6 Theme 3 – Natural resource management	
3.6.1	Strategic Outcome (1) and (3)
3.6.3 Element – Primary production, forestry and fisheries	Value (1)
3.6.3.1 Element – Primary production, forestry and fisheries	Specific Outcome (1)
3.6.4.1 Element – Resource extraction	All
3.6.4.1 Element – Resource extraction	Specific Outcome (2) and (3)
Rural Zone Code	
6.2.10.2 Purpose	Purpose (1)(b), (2)(c) and (3)(c)
6.2.10.3 Criteria for assessment	PO4 and PO5(c)
Flood and Storm Tide Hazard Overlay Code	
8.2.4.2 Purpose	Purpose (1)(a)(i) Overall Outcome (2)(c) and (e)
8.2.4.3 Criteria for assessment	AO5.2 PO5

Landscape Values Overlay Code	
8.2.6.2 Purpose	Purpose (1) Overall Outcome (2)(e)
8.2.6.3 Criteria for assessment	PO2(a), (b), (c), (d), (e) and (g)
Natural Areas Overlay Code	
8.2.7.2 Purpose	Overall Outcome 2(a)
8.2.7.3 Criteria for assessment	AO2, AO3.1 and AO4.1 PO2, PO3 and PO4
Extractive Industry Code	
9.3.10.2 Purpose	Overall outcomes (2)(a) – (f)
9.3.10.3 Criteria for assessment	PO1, PO2, PO3, PO4, PO5, PO6, PO7, PO9 and PO10
Environmental Performance Code	
9.4.3.3 Criteria for assessment	AO7.2, AO7.3 PO7
Infrastructure Works Code	
9.4.5.3 Criteria for assessment	AO5.3, AO5.4, AO5.5 PO5