

10 November 2015

**ProjexPartners**



PROJECT MANAGEMENT | ENGINEERING | PLANNING

The CEO  
Douglas Shire Council  
PO Box 723  
MOSSMAN Q 4873

Attention: Jenny Elphinstone  
Email: Jenny.Elphinstone@douglas.qld.gov.au

Dear Jenny

**APPLICATION FOR MATERIAL CHANGE OF USE FOR PHILLIP WREN  
CAPTAIN COOK HIGHWAY, MOWBRAY – MCUI 777/2015(731167)**

I refer to Council's Decision Notice received in this office on the 13<sup>th</sup> October 2015 and request a Negotiated Decision Notice with respect to certain conditions of the approval.

By way of background, the applicants and their associated businesses are involved in landscaping and landscape maintenance largely in the Port Douglas area. Due to the size of the community served, the business is necessarily of modest scale. The applicants recognised the benefits both to the community through diverting of material from the waste stream treated by Council and to the environment of re-using vegetation sourced through their maintenance operation to produce mulches and other products that could be used for landscaping purposes.

The application material provided a comprehensive description of the project and the extent to which it was expected to grow over time. Some of the conditions of approval seem to have ignored the information provided unnecessarily restricting the operation or require a degree of complexity which is both unnecessary and financially difficult to support given the scale of the operation.

Despite enquiry, no particular explanation has been given as to why the conditions are necessary or lawful.

A more detailed explanation of the changes to conditions are set out in the Appendix to this letter.

Condition 4 – requires a comprehensive and detailed Environmental Management Plan prepared by a qualified person – no one person is qualified in all the matters listed. The applicant intends to meet his environmental duties at law and responsibilities to the community more generally. The issues are simple and common for a rural activity. There seems no justification for expensive specialist's reports and plans.

During the assessment process the applicant submitted a set of 'deemed to comply' provisions which when undertaken will reasonably mitigate any impacts.

It is requested the condition be amended to incorporate the 'deemed to comply' provisions as provided.

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Condition 5 is totally unreasonable and unjustified.

It reduces allowed traffic to less than half the predicted levels and an average of one delivery (in or out) per hour. There is no justification on traffic grounds or safety or amenity for this extremely low figure in the context of the traffic on the Highway or Trezise Road.

What is totally unacceptable and in effect constitutes refusal of the application is the last sentence which sale of material from the site by either retail or wholesale.

The whole purpose of the application is to convert the unwanted product of landscape maintenance to a saleable material that can be recycled and reused in new landscaping projects.

Condition 5 should be deleted.

Condition 12 should be amended to specify the purpose of the landscaping eg to render the operations unobtrusive when viewed from the highway

Condition 16 is totally unacceptable and unlawful. It prohibits 'manufacturing a product' which is the purpose of the application. Like Condition 5 the effect of the condition is to refuse the application.

Condition 16 should be deleted.

I request a meeting with Council officers to discuss this request for a Negotiated Decision Notice and if necessary a deputation to Council to address the matters raised in the conditions.

Yours faithfully,

**PETER ROBINSON**  
Senior Planner





## **Supplementary comments on the particular conditions that the applicant would like to see revised.**

Condition 4 requires an Environmental Management Plan.

The applicant is well aware of their environmental duties and intend to operate the business in a manner that complies with those duties and does not adversely impact on the environment or adjoining owners.

The condition requires an Environmental Management Plan to be prepared by a series of consultants in specialist fields. The applicant believes this is unnecessary given the context and circumstances and the proliferation of information available dealing with the management of the aspects identified in the condition.

In this regard, the applicant had already prepared and submitted to Council a series of controls that he was prepared to abide by. It was requested that these controls be incorporated into the condition as a deemed to comply mechanism which would satisfy the condition. The condition incorporating the deemed to comply conditions is set out below.

It is requested that Council amend Condition 4 accordingly and adopt the deemed to comply provisions nominated.

### **Environmental Management Plan**

4 An Environmental Management Plan for the site must be prepared with respect to the potential environmental impacts of the development and compliance with 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.

#### **This condition is deemed to be complied with if:-**

- Stockpiles of accumulated vegetation are limited to a maximum horizontal dimension of 30m and a maximum height of 3m
- Stockpiles of mulch and blended materials are limited to a maximum horizontal dimension of 20m and a maximum height of 3m
- The minimum separation distance between stockpiles is 5m
- Stockpiles are not mechanically compacted
- 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.
- Flammable liquids shall not be stored within 15m of any stockpile

#### **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 (e.g. potting mixtures). The plan must include details of how the generation of dust and other airborne materials will be minimized.

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
- 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.

This condition is deemed to be complied with if:-

- a densely grassed or landscaped area with a minimum width of 20m, measured across the overland flow direction, is maintained downslope from the part of the site in which there are stockpiles or production operations

#### d. Noise Control

The use of heavy machinery and vehicles on the site during hours of operation have the potential to generate nuisance noise for surrounding residences. The plan must include details of how noise emissions can be minimised.

Delete d – covered by condition 3

#### e. 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 **minimised**.

This condition is deemed to be complied with if:-

- 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.
- The activity area is to be self-draining and no ponding created

#### f. 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 measures put in place to ensure the facility does not accept material sourced from movement control areas (see attached document movement control flow chart) what measures will be put in place to monitor the facility and respond to any identified presence of electric ants.

This condition is deemed to be complied with if:-





- Signs are erected at the entrance to the site PROHIBITING the bringing 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.
- A sign indicating that the land is private property and access is prohibited other than to authorised persons.
- The operator advising 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
- 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. Take such actions as required by Biosecurity Queensland.

#### g. 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.

This condition is deemed to be complied with if:-

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

Two (2) copies of the Environmental Management Plan must be submitted and endorsed by the Chief Executive Officer within 4 months of the development approval being issued. 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.

Condition 5 seeks to minimize the supply of vegetation material to the site by restricting the number and size of delivery vehicles.

It is not known where these restrictions came from but they are contrary to the information provided in supporting documents to the application.

A traffic analysis was undertaken and supplied to Council. The analysis was undertaken on the basis that the existing access to the Captain Cook Highway would be used and that the Department of Transport and Main Roads would require significant upgrading if the amount of right turn traffic into the site was significant.

The Department has denied direct access to the Captain Cook Highway and required access to the operation to be via Trezise Road which has an intersection designed and constructed to meet traffic demand generated by a large number of allotments up the Mowbray Valley. The additional traffic generated by the operations on site is so small that upgrading of the intersection is unnecessary.

In any case, it was anticipated and noted in the supporting report that the operation on the site would grow and ultimately be about 20 inbound and 20 outbound movements per day (page 11).



The number of movements allowed by the condition is half that nominated in the application. The capacity is further restricted by limiting the capacity of the truck doing the deliveries.

Condition 5 as it is structured is not justified on traffic safety grounds or on any other ground and it should be deleted.

The worst part of Condition 5 is the last sentence which prohibits the sale of material from the site either by wholesale or retail. This effectively negates the whole of the application and is a deemed refusal.

The purpose of the business is to take surplus vegetation material resulting from landscape maintenance and using that material to manufacture mulch and other like products for sale back into the community. If the material cannot be sold either by wholesale or retail, then it will just accumulate on site and the whole exercise is pointless.

Condition 5 should be deleted.

Condition 16 should be deleted as it is unlawful.

The whole 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.

It is requested that the condition be deleted.