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YOUR REF:

Mulch Facility Mowbray

OUR REF:

MCUI 777/2015 (833827) 5

12 December 2017

Mr Phillip Wren 294 Port Douglas Road PORT DOUGLAS QLD 4877

coconuthut4877@hotmail.com

Dear Sir

NEGOTIATED DECISION NOTICE GIVEN UNDER S 363 SUSTAINABLE PLANNING ACT 2009 DEVELOPMENT APPLICATION FOR L47 CAPTAIN COOK HIGHWAY, MOWBRAY

At the Ordinary Meeting held on 12 December 2017 Council considered your request for amended conditions and resolved to issue a Negotiated Decision Notice. Please find attached the relevant Negotiated Decision Notice.

The Negotiated Decision Notice replaces the Decision Notice issued by Council on 7 October 2015 (Council electronic document D#731167).

The Negotiated Decision Notice includes extracts from the Planning Act 2016 with respect to lodging an Appeal.

Should you have any enquiries in relation to this Negotiated Decision Notice, please contact Jenny Elphinstone of Sustainable Communities on telephone number 07 4099 9482.

Yours faithfully

Paul Hoye

Manager Sustainable Communities

Department of Infrastructure, Local Government and Planning SARA Cairns Ref: SDA-0615-021351

Att

43.2015.777 1/29 (D#833827)



APPLICANT DETAILS

Phillip Wren 294 Port Douglas Road Port Douglas QLD 4877

ADDRESS

L47 Captain Cook Highway, Mowbray

REAL PROPERTY DESCRIPTION

Lot 47 on RP749351

PROPOSAL

Industry (Vegetation Mulching and Blended Materials for Sale)

DECISION

Approved subject to conditions (refer to approval package below).

DECISION DATE

This Negotiated Decision Notice replaces the Decision Notice issued on 7 October 2015 from Council's decision on 29 September 2015.

TYPE

Material Change of Use (Development Permit)

REFERRAL AGENCIES

For an application involving	Name of referral agency	Advice agency or concurrence agency	Address
State- controlled road	Department of Infrastructure, Local Government and Planning	Concurrence	Far North Queensland Regional Office PO Box 2358 CAIRNS QLD 4870 Ref: SDA- 0615-021351

SUBMISSIONS

There were no submissions for this application.

FURTHER DEVELOPMENT PERMITS REQUIRED

Development Permit for Operational Work

CODES TO COMPLY WITH FOR SELF-ASSESSABLE DEVELOPMENT None.

DOES THE ASSESSMENT MANAGER CONSIDER THE APPLICATION TO BE IN CONFLICT WITH APPLICABLE CODES, PLANNING SCHEME, STATE PLANNING POLICIES OR PRIORITY INFRASTRUCTURE PLAN (IF YES, INCLUDE STATEMENT OF REASONS)

Not in conflict.

APPROVED DRAWING(S) AND/OR DOCUMENT(S)

The term 'approved drawing(s) and/or document(s)' or other similar expression means:

Drawing or Document	Reference	Date
Designated Development Projex Partners drawing 63		7 July 2015
Area	SK2 Revision A dated 7 July 2015	23 January 2017
	and as varied by the Amended	
The state of the s	Extent of Site Plan received by	
	Council on 23 January 2017	
	(Council electronic document	
	<u>D#802482)</u>	
Generalised Activity Area	Projex Partners drawing 637-001-	7 July 2015
	SK1 Revision A <u>and as varied by</u>	23 January 2017
	the Amended by the Extent of Site	
	Plan received by Council on 23	
	January 2017 (Council electronic	
	<u>document D#802482).</u>	
<u>Landscape Plan</u>	As received by Council on 23	23 January 2017
	January 2017 (Council electronic	
	document D#802482).	
Internal Road Plan	As received by Council on 23	23 January 2017
	January 2017 (Council electronic	
	document D#802482).	
Stormwater Drainage Plan	As received by Council on 23	23 January 2017
	January 2017 (Council electronic	
	document D#802482).	

ASSESSMENT MANAGER CONDITIONS

- 1. Carry out the approved development generally in accordance with the approved drawing(s) and/or document(s), and in accordance with:
 - a. The specifications, facts and circumstances as set out in the application submitted to Council;
 - b. The following conditions of approval and the requirements of Council's Planning Scheme and the *FNQROC Development Manual*.

Except where modified by these conditions of approval

Timing of Effect

2. The conditions of the Development Permit must be effected prior to Commencement of Use, except where specified otherwise in these conditions of approval.

Noise Emissions

3. <u>Noise emissions from m</u>Machinery and equipment operated at the approved facility <u>must</u> 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.

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:

- <u>i.</u> Stockpiles of accumulated vegetation are limited to a maximum horizontal dimension of 30m and a maximum height of 3m;
- <u>ii.</u> 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;
- <u>iv.</u> 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;
- <u>vi.</u> 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
- <u>viii.</u> 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 (e.g., 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
- <u>ii.</u> 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;
- <u>ii.</u> 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 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 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
- <u>iv.</u> 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.

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.

Damage to Council Infrastructure

6. In the event that any part of Council's existing road infrastructure is damaged as a result of construction activities occurring on the site, including but not limited to; mobilisation of heavy construction equipment, stripping and grubbing, the applicant/owner must notify Council immediately of the affected infrastructure and have it repaired or replaced at the developer's/owner's cost, prior to the Commencement of Use.

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.

Vehicle Parking

- 8. The following must be provided:
 - A hard standing area with a rock gravel road base for the parking of at least one truck together with a suitable turning movement area; and
 - b. A driveway access connecting the hard standing area to the access.

The hard standing area, turning area and driveway must be constructed of a suitable rock gravel road base to the satisfaction of the Chief Executive Officer prior to the Commencement of Use.

Signage

9. Erect signs advising that 'No Public Dumping is Permitted'. The signs must be erected prior to Commencement of Use. One (1) sign must be located on the Captain Cook Highway frontage and the other to Trezise Road frontage. The signs must be of an appropriate size comparative to adjacent traffic speeds to the satisfaction of the Chief Executive Officer. The signs must be erected prior to the Commencement of Use.

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 causeing a nuisance to surrounding properties.

Storage of Machinery and Plant

11. The storage of any machinery, material and vehicles must not cause a nuisance to surrounding properties, to the satisfaction of the Chief Executive Officer.

Landscaping Plan

- 12. <u>Within six months of the Commencement of Use from the issue of this approval the site must be landscaped whereby in accordance with details included on a Landscaping Plan. The Landscaping Plan must show:</u>
 - a. Deep planting of <u>a 6m wide</u> setback areas <u>adjacent to where the activity occurs on</u> 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.

Stormwater

13. Any mounding of mulch, fencing, landscaping or other activities on the land must not interfere with stormwater being accepted or discharged from the property such that it does not adversely affect surrounding properties or properties downstream from the development, all to the requirements and satisfaction of the Chief Executive Officer.

Fence Off Existing Access to State Controlled Road

14. The land must be satisfactorily fenced and/or landscaped to prevent vehicle access from the Captain Cook Highway and be designed to permit access only from the point on Trezise Road approved by the State.

Fuel Storage

- 15. Any fuels must be stored in an undercover and secure location at all times.
- 16. This Development Permit <u>provides for the collection and storage of green waste, the tub</u> <u>grinding of the collected green waste, the storage of mulch and resultant soil/compost.</u>

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.

REFERRAL AGENCY CONDITIONS & REQUIREMENTS

Referral Agency	Referral Agency Reference	Date	Council Electronic Reference
State Assessment & Referral Agency (Department of Infrastructure, Local Government & Planning	SDA-0615-021351	27 July 2015	461345

Refer to Appendix 2: Referral Agency Requirements. (Please note that these conditions / requirements may be superseded by subsequent negotiations with the relevant referral agencies).

ADVICE

- 1. This approval, granted under the provisions of the *Sustainable Planning Act* 2009, shall lapse four (4) years from the day the approval takes effect in accordance with the provisions of Section 339 and Section 341 of the *Sustainable Planning Act* 2009.
- 2. All building site managers must take all action necessary to ensure building materials and/or machinery on construction sites are secured immediately following the first potential cyclone warning and that relevant emergency telephone contacts are provided to Council officers, prior to commencement of works.
- 3. This approval does not negate the requirement for compliance with relevant Local Laws and statutory requirements. To access the *FNQROC Development Manual*, Local Laws and other applicable Policies log on to www.douglas.qld.gov.au.
- 4. For information relating to the *Sustainable Planning Act* 2009 log on to http://www.statedevelopment.qld.gov.au/planning/planning-framework/legislation.html.
- 5. Mulching of green waste is a prescribed recycling activity under the *Waste Reduction* and *Recycling Act* 2011 (Qld) and subordinate legislation, therefore the processing of more than 1000 tonnes per financial year is required to be reported to the Department of Environment and Heritage Protection.
- 6. Your attention is drawn to the subject site being located nearby to Electric Ant Movement Control Areas declared under the *Plant Protection Act* 1989 to prevent the spread of electric ants from known infested areas of Queensland. Restrictions apply to the movement of materials that pose a high risk of spreading electric ants within and from these control areas. For further information on the consult the Department of Agriculture and Fisheries (telephone 13 25 23) and the following website: www.daf.gld.gov.au.

RIGHTS OF APPEAL Attached

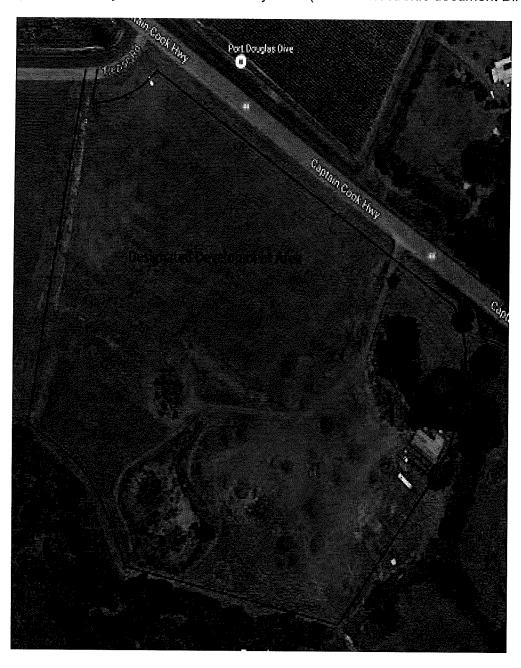
End of Negotiated Decision Notice



Projex Partners



Amended Extent of Site Plan - Designated Development Area Plan (As received by Council on 23 January 2017 (Council electronic document D#802482).



Landscape Plan
As received by Council on 23 January 2017 (Council electronic document D#802482).



Internal Road Plan
As received by Council on 23 January 2017 (Council electronic document D#802482).



Stormwater Drainage PlanAs received by Council on 23 January 2017 (Council electronic document D#802482).



APPENDIX 2: REFERRAL AGENCY REQUIREMENTS



Department of Infrastructure, Local Government and Planning

Our reference: SDA-0615-021351

Your reference: MCU1 777/2015

27 July 2015

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

Attn: Jenny Elphinstone

Dear Sir / Madam

Concurrence agency response—with conditions

Captain Cook Highway, Mowbray more particularly known as Lot 47 on RP749351 (Given under section 285 of the Sustainable Planning Act 2009)

The referral agency material for the development application described below was received by the Department of Infrastructure, Local Government and Planning under section 272 of the Sustainable Planning Act 2009 on 22 June 2015.

Applicant details

Applicant name:

Phillip Wren

Applicant contact details:

C/- Projex Partners Pty Ltd

PO Box 2133 Caims QLD 4870

peterrobinson@projexpartners.com.au

Paget	Far North Queensland Regional Office Ground Floor, Caims Port Authority Corner Grafton and Hartley Streets PO Box 2368 Caims QLD 4870
•	

Site details

Street address:

Captain Cook Highway, Mowbray

Lot on plan:

Lot 47 on RP749351

Local government area:

Douglas Shire Council

Application details

Proposed development:

Development permit for Material change of use (industry – processing vegetation mulch and blended materials for sale)

Aspects of development and type of approval being sought

 Nature of Development	Approval Type	Brief Proposal of Description	Level of Assessment
Material Change of Use	Development permit	Producing vegetation mulch and blended materials for	Impact Assessment
	•	sale	

Referral triggers

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

Referral trigger

Schedule 7, Table 3 Item 1-State-controlled roads

Conditions

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

Reasons for decision to impose conditions

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

Relevant period

Under section 287(1)(d) of the Sustainable Planning Act 2009, the relevant period for any development approval is to be four years from the date this approval takes effect.

Further advice

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

Approved plans and specifications

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

Department of Infrastructure Local Government and Planning

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Drawing/Report Title	Prepared by	Date	Reference no.	Version/Issue
Aspect of development: r Blended Materials for Sal	naterial change of us e)	e (Industry (Pro	cessing Vegetatio	n Mulch &
Generalised Activity Area (Access)	Projex Partners	07/07/15	637-001-SK1	A
Designated Development Area (DDA)	Projex Partners	07/07/15	637-001-SK2	Α

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

For further information, please contact Michele Creecy, A/ Senior Planning Officer, SARA Far North QLD on 4037 3206, or email michele.creecy@dilgp.qld.gov.au who will be pleased to assist.

Yours sincerely

Robin Clark

ĆC:

Manager (Planning)

Alsa Clare

Phillip Wren, Cf- peterrobinson@projexpartners.com.au Attachment 1—Conditions to be imposed Attachment 2—Reasons for decision to impose conditions Attachment 3—Further advice Attachment 4—Approved Plans and Specifications

Attachment 1—Conditions to be imposed

No.	Conditions	Condition timing
	t of development: - Material Change of Use (Industry (Processing ed Materials for Sale)	Vegetation Mulch &
<i>Planni</i> Depar which	ule 7, Table 3, Item 1 – State-controlled roads—Pursuant to section 2: ng Act 2009, the chief executive administering the Act nominates the I Iment of Transport and Main Roads to be the assessing authority for the this development approval relates for the administration and enforcement to the following condition(s):	Director-General of ne development to
1.	The development must be carried out generally in accordance with the following plans: Generalised Activity Area (Access) prepared by Projex Partners, dated 07/07/15, Drawing Number 637-001-SK1 and Revision A. Designated Development Area (DDA) prepared by Projex Partners, dated 07/07/15, Drawing Number 637-001-SK2 and Revision A.	At all times.
2.	The existing vehicular property access located between Lot 47 on RP749351 and Captain Cook Highway must be permanently closed and removed.	Prior to the commencement of use.

Attachment 2—Reasons for decision to impose conditions

The reasons for this decision are:

- To ensure the development is carried out generally in accordance with the plans of development submitted with the application.
- To maintain the safety and efficiency of the state-controlled road by reducing the number of road accesses.

Attachment 3—Further advice

General advice

Advertising Device

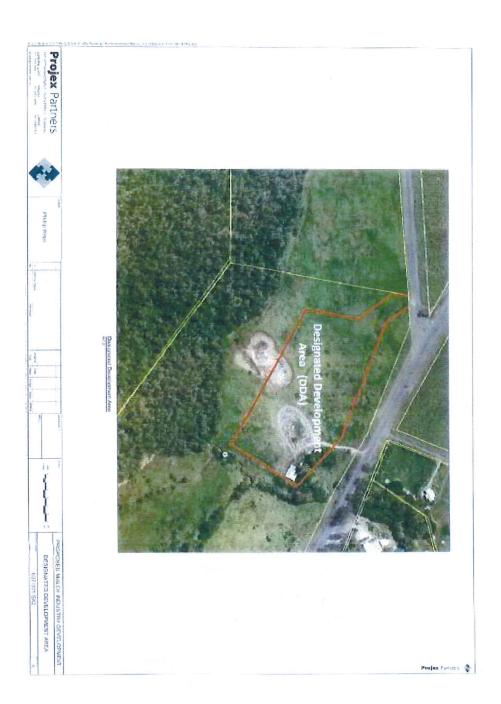
1. A local government should obtain advice from Department of Transport and Main Roads (TMR) if it intends to approve the erection, alteration or operation of an advertising sign or another advertising device that would be visible from a statecontrolled road, and beyond the boundaries of the state-controlled road, and reasonably likely to create a traffic hazard for the state-controlled road.

Note: TMR has powers under section 111 of the *Transport Operations (Roads Use Management – Accreditation and Other Provisions) Regulations 2005* to require removal or modification of an advertising sign and / or a device which is deemed that it creates a danger to traffic.

Attachment 4—Approved plans and specifications



Department of Infrastructure, Local Government and Planning



Department of Infrastructure, Local Government and Planning

Planning Act 2016 Chapter 6 Dispute resolution

is 2291

- (2) The person is taken to have engaged in the representative's conduct, unless the person proves the person could not have prevented the conduct by exercising reasonable diligence.
- (3) In this section—

conduct means an act or omission.

representative means-

- (a) of a corporation—an executive officer, employee or agent of the corporation; or
- (b) of an individual—an employee or agent of the individual.

state of mind, of a person, includes the person's-

- (a) knowledge, intention, opinion, belief or purpose; and
- (b) reasons for the intention, opinion, belief or purpose.

Chapter 6 Dispute resolution

Part 1 Appeal rights

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states-
 - (a) matters that may be appealed to-
 - (i) either a tribunal or the P&E Court; or
 - (ii) only a tribunal; or
 - (iii) only the P&E Court; and
 - (b) the person—
 - (i) who may appeal a matter (the appellant); and
 - (ii) who is a respondent in an appeal of the matter; and

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Authorised by the Paritamentary Counsel

- (iii) who is a co-respondent in an appeal of the matter;and
- (iv) who may elect to be a co-respondent in an appeal of the matter.
- (2) An appellant may start an appeal within the appeal period.
- (3) The appeal period is—
 - for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency; or
 - (b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
 - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or
 - (d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
 - (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or
 - (f) for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

Note-

See the P&E Court Act for the court's power to extend the appeal period.

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.

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Authorised by the Parliamentary Counsel

- (6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—
 - (a) the adopted charge itself; or
 - (b) for a decision about an offset or refund—
 - the establishment cost of trunk infrastructure identified in a LGIP; or
 - the cost of infrastructure decided using the method included in the local government's charges resolution.

230 Notice of appeal

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—
 - (a) is in the approved form; and
 - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar, must, within the service period, give a copy of the notice of appeal to—
 - (a) the respondent for the appeal; and
 - (b) each co-respondent for the appeal; and
 - (c) for an appeal about a development application under schedule 1, table 1, item 1—each principal submitter for the development application; and
 - (d) for an appeal about a change application under schedule
 1, table 1, item 2—each principal submitter for the change application; and
 - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph
 (c) or (d); and

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Authorised by the Parliamentary Counsel

- (f) for an appeal to the P&E Court—the chief executive;
- (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.

(4) The service period is-

- if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started;
- (b) otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.
- (7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department's website for this purpose.

231 Other appeals

- (1) Subject to this chapter, schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
- (2) The Judicial Review Act 1991, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section—

decision includes-

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Authorised by the Paritamentary Counsel

- (a) conduct engaged in for the purpose of making a decision; and
- (b) other conduct that relates to the making of a decision;
 and
- (c) the making of a decision or the failure to make a decision; and
- (d) a purported decision; and
- (e) a deemed refusal.

non-appealable, for a decision or matter, means the decision or matter—

- (a) is final and conclusive; and
- (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the *Judicial Review Act 1001* or otherwise, whether by the Supreme Court, another court, any tribunal or another entity; and
- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, any tribunal or another entity on any ground.

232 Rules of the P&E Court

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with rules of the P&E Court.

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