

16 February 2022

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MAREEBA QLD 4880

Email: brunostaxiservice@gmail.com

Senior Planner: Brian Millard
Our Reference: MCU/21/0011

Dear Sir

Decision Notice Refusal

Planning Act 2016

I refer to your application and advise that on 16 February 2022 Council decided to refuse the application.

Details of the decision are as follows:

APPLICATION DETAILS

Application No:	MCU/21/0011
Street Address:	Sunrise Close, Mareeba
Real Property Description:	Lot 8 on SP183708
Planning Scheme:	Mareeba Shire Council Planning Scheme 2016

DECISION DETAILS

Type of Decision:	Refused
Type of Application:	Development Permit for Material Change of Use - Transport Depot (Taxi Depot)
Date of Decision:	16 February 2022

REASONS FOR REFUSAL

(A) ASSESSMENT MANAGER'S REASONS FOR REFUSAL:

- The proposed development is in conflict with the following aspects of the Strategic Framework:*
 - 3.3.8 Element - Urban expansion and investigation areas*
 - 3.3.8.1 Specific outcomes*

- (1) *Urban expansion areas and investigation areas are anticipated to provide for development beyond the life of the planning scheme and are preserved for this purpose, with interim development not compromising future residential development.*

3.3.8.2 Land use strategies

- (1) *Investigation areas are to be investigated to accommodate future development beyond the life of the planning scheme. Investigation areas are not to be developed unless there is an insufficient supply of land for the purpose intended to be developed. The purpose of development in an investigation area should promote a logical land use pattern, having regard to nearby land use and the established hierarchy of activity centres. In the instance that new or expanded areas are investigated, these are to be supported by detailed land use investigations that must demonstrate:*

- (a) *need for land for the proposed land use;*
- (b) *mitigation or avoidance of impacts on sensitive receiving environments;*
- (c) *where involving good quality agricultural land:*
 - (i) *there is no alternative land available that is not good quality agricultural land; and*
 - (ii) *the need for future development represents a public benefit.*
- (d) *suitable mitigation or offset arrangements in respect to impacts on areas of high ecological significance*
- (e) *consistency with the Strategic Framework.*
- (f) *consistency with State and Regional Planning requirements.*

- 3.4.8 Element - Air and noise quality

3.4.8.1 Specific outcomes

- (1) *The health, well-being, amenity and safety of the community and the environment is protected from the impacts of air emissions, noise and odour through appropriate management and adequate separation distances.*

2. *The proposed development conflicts with Overall outcome (h), Performance outcome PO7 and Performance outcome PO9 of the Emerging Community zone code:*

- (h) *Non-residential development may be supported where such uses directly support the day to day needs of the immediate residential community or the precinct is identified for non-residential uses and is planned for as part of a structure plan.*

PO7

Development occurs as outlined in a Structure Plan that:

- (a) *is prepared in accordance with Planning Scheme Policy 8 Structure Planning;*
- (b) *takes into consideration land use need and the type, scale, density of proposed urban development;*
- (c) *includes a road network that:*
 - (i) *is logically designed;*
 - (ii) *can be delivered sequentially;*
 - (iii) *includes an urban morphology that is consistent with the surrounding area;*
 - (iv) *provides pedestrian links to centres and open space;*

- (d) *locates any non-residential development:*
 - (i) *on major roads;*
 - (ii) *where not introducing non-residential traffic to residential streets; and*
 - (iii) *to provide the day to day needs of the immediate residential community;*
- (e) *scales any non-residential development to:*
 - (i) *be consistent with the scale of surrounding residential development;*
 - (ii) *not undermine the viability of nearby centres or the centres network; and*
 - (iii) *not unduly detract from the amenity of nearby residences.*

Amenity**PO9**

Development must not detract from the amenity of the local area, having regard to:

- (a) *noise;*
- (b) *hours of operation;*
- (c) *traffic;*
- (d) *advertising devices;*
- (e) *visual amenity;*
- (f) *privacy;*
- (g) *lighting;*
- (h) *odour; and*
- (i) *emissions.*

3. *The proposed development conflicts with Performance outcome PO17 of the Mareeba local plan code:*

If in the Northern investigation precinct**PO17**

Development does not compromise the long term future urban intent of this precinct.

4. *The proposed development conflicts with Performance outcome PO1 of the Industrial activities code:*

Separation**PO1**

Industrial activities are appropriately separated from sensitive uses to ensure their amenity is maintained, having regard to:

- (a) *noise;*
- (b) *odour;*
- (c) *light; and*
- (d) *emissions*

5. *There are not sufficient town planning grounds to justify approval of the application despite these identified conflicts.*

REFERRAL AGENCIES

Nil

SUBMISSIONS

There were eight (8) properly made submissions about the application. In accordance with the *Planning Act 2016*, the name and address of the principal submitter for each properly made submission is provided below;

Name of Principal submitter	Address
1. Wendy Ann Gerdes	PO Box 2202, Mareeba QLD 4880
2. Richard Beechey	PO Box 2415, Mareeba QLD 4880
3. Patricia Fraser	Lot 9 Sunrise Close, Mareeba QLD 4880
4. Marie Beechey	PO Box 2415, Mareeba QLD 4880
5. Emmalyn Kraushaar	PO Box 2271, Mareeba QLD 4880
6. Brian Fraser	Lot 9 Sunrise Close, Mareeba QLD 4880
7. Glen Kraushaar	PO Box 2271, Mareeba QLD 4880
8. Vanessa & John Rosset	7 Sunrise Close, Mareeba QLD 4880

RIGHTS OF APPEAL

You are entitled to appeal against this decision. A copy of the relevant appeal provisions from the *Planning Act 2016* is attached.

OTHER DETAILS

If you wish to obtain more information about Council's decision, electronic copies are available online at www.msc.qld.gov.au, or at Council Offices.

Yours faithfully



BRIAN MILLARD
SENIOR PLANNER

Enc Appeal Rights

Appeal Rights

PLANNING ACT 2016 & THE PLANNING REGULATION 2017

Chapter 6 Dispute resolution

Part 1 Appeal rights

229 Appeals to tribunal or P&E Court

(1) Schedule 1 of the Planning Act 2016 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
 - (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.

(Refer to Schedule 1 of the Planning Act 2016)

(2) An appellant may start an appeal within the appeal period.

(3) The **appeal period** is –

- (a) 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.

(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-
 - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
 - (ii) 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 and 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
 - (f) for an appeal to the P&E Court – the chief executive; and
 - (g) for an appeal to a tribunal under another Act – any other person who the registrar considers appropriate.
- (4) The *service period* is –
 - (a) if a submitter or advice agency started the appeal in the P&E Court – 2 business days after the appeal has started; or
 - (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.

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-
 - (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 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 1991* or otherwise, whether by the Supreme Court, another court, a tribunal or another entity; and
 - (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a 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 the rules of the P&E Court.