



Tablelands Regional Council

Atherton Service Centre
PO Box 573, Atherton QLD 4883
Telephone: 1300 362 242

Urban & Regional Planning Department

Gary Searle, Planning Officer
Telephone: (07) 4043 4372
Facsimile: (07) 4092 3223
Email: info@trc.qld.gov.au

8 July 2009

File Ref: MCU/09/0005
Our Ref: GS:kc

JS & LD & GS Dixon
PO Box 2393
MAREEBA QLD 4880

Negotiated Decision Notice Approval

Integrated Planning Act 1997 S 3.5.17

Dear Sir/Madam

**APPLICATION FOR MATERIAL CHANGE OF USE – RESTAURANT
LOT 28 ON SP160169
SITUATED AT 3950 KENNEDY HIGHWAY, MAREEBA**

I wish to advise that at Council's Ordinary Meeting held 1 July 2009, a decision was made to issue a negotiated decision notice. This negotiated decision notice replaces the decision notice previously issued and dated 11 May 2009. The above development application was –

- Approved in full with conditions.

The conditions relevant to this approval are included in section 5 of this notice. These conditions are clearly identified to indicate whether the assessment manager or a concurrence agency imposed them.

1. Nature of the changes

The nature of the changes are – *Condition 3.6- Hours of Operation and Condition 4- Carparking/Internal Driveways.*

2. Details of the approval

The application seeks a **Development Permit for Material Change of Use – Restaurant made assessable by the Mareeba Shire Planning Scheme 2004.**

3. The relevant period for the approval -

The relevant periods stated in section 3.5.21 of the *Integrated Planning Act 1997* (IPA) apply to each aspect of development in this approval, as outlined below—

- Material Change of Use – four (4) years;

If there is one (1) or more subsequent related approvals¹ for a development approval for a Material Change of Use or a reconfiguration, the relevant period for the approval will be taken to have started on the day the latest related approval takes effect.

4. The approved plans -

The approved plans and / or documents for this development approval are listed in the following table –

Plan / Document Number	Plan / Document Name	Date
001	Site Plan	October 2008
ARK-001	Layout Plan	September 2007

5. Conditions –

(A) DETAILS OF PREMISES AND APPROVED USE

LOCATION:	3950 Kennedy Highway, Mareeba
PROPERTY DESCRIPTION:	Lot 28 on SP160169, Parish of Tinaroo
AREA OF LAND:	3.556 hectares
MATERIAL CHANGE OF USE:	Restaurant (retail ice-creamery)
APPROVED PLANS:	October 2008 Site Plan September 2007 Layout Plan

(B) ASSESSMENT MANAGER'S CONDITIONS (COUNCIL)

1. Development must be carried out substantially in accordance with the approved plans and the facts and circumstances of the use as submitted with the application, subject to any alterations:
 - found necessary by the Council's delegated officer at the time of examination of the engineering plans or during construction of the development because of particular engineering requirements; and
 - to ensure compliance with the following conditions of approval.
2. Timing of Effect
 - 2.1 The conditions of the development permit must be complied with to the satisfaction of Council's delegated officer prior to the commencement of the use except where specified otherwise in these conditions of approval.
 - 2.2 Prior to the commencement of use, the applicant must notify Council that all the conditions of the development permit are complied with, except where specified otherwise in these conditions of approval.
 - 2.3 Prior to the commencement of use, the applicant must provide a letter from the Department of Main Roads confirming that all conditions of that Department have been complied with to the Department's satisfaction.

¹ For the meaning of 'related approval', refer to section 3.5.21(7) of IPA

3. General

- 3.1 The applicant/developer is responsible for the cost of necessary alterations to existing public utility mains, services or installations required by works in relation to the proposed development or any works required by the condition(s) of this approval.
- 3.2 All payments required to be made to the Council (including contributions, charges and bonds) pursuant to any condition of this approval must be made prior to the issue of a building permit (if no building permit required then prior to the commencement of the use) and at the rate applicable at the time of payment.
- 3.3 All works must be designed, constructed and carried out in accordance with FNQROC Development Manual requirements (as amended) and to the satisfaction of Council's delegated officer.

3.4 Noise Nuisance

Refrigeration equipment, pumps, compressors and mechanical ventilation systems must be located, designed, installed and maintained to achieve a maximum noise level of 3dB(A) above background levels as measured from noise sensitive locations and a maximum noise level of 8dB(A) above background levels as measured from commercial locations.

Install and maintain suitable screening to all air conditioning, lift motor rooms, plant and service facilities located at the top of or on the external face of the building. The screening structures must be constructed from materials that are consistent with materials used elsewhere on the facade of the building. There are to be no individual external unscreened air conditioning units attached to the exterior building facade.

3.5 Waste Management

An on site refuse storage area must be provided and be screened from view from adjoining properties and road reserve by a 1 metre wide landscaped screening buffer or 1.8m high solid fence.

Certification by a Registered Professional Engineer Queensland (RPEQ) must be provided to Council which demonstrates that internal access is of adequate design and construction to allow waste collection/delivery vehicles to enter and exit the site in a forward gear, prior to the issue of a building permit.

3.6 Hours of Operation

The operating hours shall be between 9:00am and 5:30pm Monday to Friday and between 9:00am and 6:00pm on Weekends and Public Holidays.

3.7 Signage

One (1) sign is to be in accordance with:

- (1) The sign must not exceed 2.4 metres x 1.2 metres or a maximum area of 2.9m².
- (2) The sign must relate to businesses or companies and is not to advertise products only.
- (3) The sign must be kept clean, in good order and safe repair for the life of the approval. If evidence is obtained that the sign is not being well maintained in an appropriate clean and safe condition, Council may take action towards revoking the approval.

- (4) The sign must be removed when no longer required.
- (5) The erection and use of the advertisement must comply with the Building Act and all other relevant Acts, Regulations and these approval conditions.

4. Car Parking/Internal Driveways

- 4.1 The developer must ensure that the development is provided with a minimum of 10 on-site car parking spaces which are available for use solely for the parking of vehicles associated with the use of the premises. All car parking spaces must be delineated and appropriately drained prior to the commencement of the use, to the satisfaction of Council's delegated officer.

Prior to works commencing, the developer must submit engineering plans and specifications for the construction of proposed car parking facilities and internal driveways demonstrating:

- Compliance with Australian Standard AS2890:1 Off Street Parking - Car Parking Facilities;
 - Compliance with Australian Standard AS1428:2001 - Design for Access and Mobility;
 - A sign must be erected in proximity to the access driveway indicating the availability of on-site car parking.
- 4.2 The developer must ensure that the development is provided with a mini-bus turn around area available solely for the use of vehicles associated with the use of the premises.
- 4.3 All access driveways, car parking areas, delivery areas and the like must be paved with dust free material to the satisfaction of Council's delegated officer. As a trial, Council will permit the use of 20mm pebbled aggregate for the surfacing of the driveways, car parking areas and delivery areas, however, should this prove unsuccessful and complaints are received in relation to dust emanating from the use of the driveways and parking areas, the applicant must bitumen seal all trafficable areas in accordance with the FNQROC Development Manual to the satisfaction of Council's delegated officer.

5. Water Supply

The applicant/developer must demonstrate that the proposed water supply must be of a standard for drinking water set by the Australian Drinking Water Guidelines 2004 (National Health and Medical Research Council and the National Resource Management Ministerial Council).

6. Landscaping

Prior to the commencement of use, a detailed landscape plan (including species) for the required 3 metre wide landscape buffer between the western boundary and the access driveway and car parking areas (for the full length of the access driveway and car parking area) must be submitted to Council's delegated officer for consideration and approval.

7. Lighting

Where outdoor lighting is required the developer shall locate, design and install lighting to operate from dusk to dawn within all areas where the public will be given access, which prevents the potential for light spillage to cause nuisance to neighbours and must be provided in accordance with Australian Standard 1158.1 – Lighting for Roads and Public Spaces.

Illumination resulting from direct, reflected or other incidental light emanating from the subject land does not exceed 8 lux when measured at any point 1.5m outside the property boundary of the subject site. The lighting fixtures installed on site must meet appropriate lux levels as documented within Australian Standard 4282 – Control of the Obtrusive Effects of Outdoor Lighting.

(C) REFERRAL AGENCY RESPONSES

Department of Main Roads conditions dated 2 March 2009 regarding Kennedy Highway access.

Department of Environment & Resource Management conditions dated 14 April 2009 regarding remnant vegetation clearing

(D) ASSESSMENT MANAGER'S ADVICE

- (1) In carrying out the activity the applicant must take all reasonable and practicable measures to ensure that no harm is done to Aboriginal cultural heritage (the "cultural heritage duty of care"). The applicant will comply with the cultural heritage duty of care if the applicant acts in accordance with gazetted cultural heritage duty of care guidelines. An assessment of the proposed activity against the duty of care guidelines will determine whether or to what extent Aboriginal cultural heritage may be harmed by the activity. Further information on cultural heritage, together with a copy of the duty of care guidelines and cultural heritage search forms, may be obtained from www.nrw.qld.gov.au.
- (2) The change in the use of the building may also require a change in the classification of the building under the Building Act. The applicant is advised to contact a Building Certifier to establish if a change in the classification of the building is required.

6. Other necessary development permits -

Listed below are other development permits that are necessary to allow the development to be carried out –

- Development Permit for Building Work
- Development Permit for Plumbing and Drainage Work

7. IDAS referral agencies –

The IDAS Referral Agencies applicable to this application are –

For an application involving	Name of referral agency	Status	Address
MATERIAL CHANGE OF USE			
On land contiguous to a <u>State-controlled road</u>	Department of Main Roads	Concurrence or Advice	Department of Main Roads Peninsula District PO Box 6185 CAIRNS QLD 4870
On land containing a category 1, 2, or 3 area as shown on a property map of assessable vegetation or containing <u>remnant vegetation</u> , and (i) the existing use is rural or environmental use, and	Department of Natural Resources & Water	Concurrence	Department of Natural Resources & Water Administration Officer Planning & Environment PO Box 5318 TOWNSVILLE QLD 4810

For an application involving	Name of referral agency	Status	Address
(ii) the lot is 2ha or larger			

8. Submissions -

There **was one (1)** properly made submission about the application. In accordance with s 3.5.15(2)(j) of the IPA, the name and address of the principal submitter for each properly made submission are as follows —

Name of principal submitter	Address
1. R & C Henry	PO Box 109, MAREEBA, QLD 4880

9. Appeal rights –

In accordance with the *Integrated Planning Act 1997* you may appeal to the Planning and Environment Court. A copy of the **Implementation Note, Note 20 – Appeal and Declaratory Powers under the IPA** and the form 'Notice of Appeal' is enclosed for your information.

10. When the development approval takes effect -

This development approval takes effect –

- if there is a submitter and the applicant does not appeal the decision, the earlier date of either:
 - when the submitter's appeal period ends; or
 - the day the last submitter gives the Assessment Manager written notice that the submitter will not be appealing the decision.

OR

- subject to the decision of the court, when the appeal is finally decided, if an appeal is made to the court.

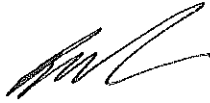
This approval will lapse if—

- for a Material Change of Use, the first change of use under the approval does not start within the relevant period stated in section 2 of this decision notice;
- for a reconfiguration, a plan for the reconfiguration is not given to the local government within the relevant period stated in section 2 of this decision notice;
- for a development approval other than a Material Change of Use or reconfiguration, the development does not substantially start within the relevant period stated in section 2 of this decision notice.

Note that in the case of a development approval for a Material Change of Use or for Reconfiguring a Lot, if there is one or more subsequent related approvals the relevant period for the Material Change of Use or reconfiguration will restart from the date of the related approval taking effect. Please refer to section 3.5.21 of IPA for further information.

Should you require any further information please contact Council's **Planning Officer, Gary Searle** on the above telephone number.

Yours faithfully

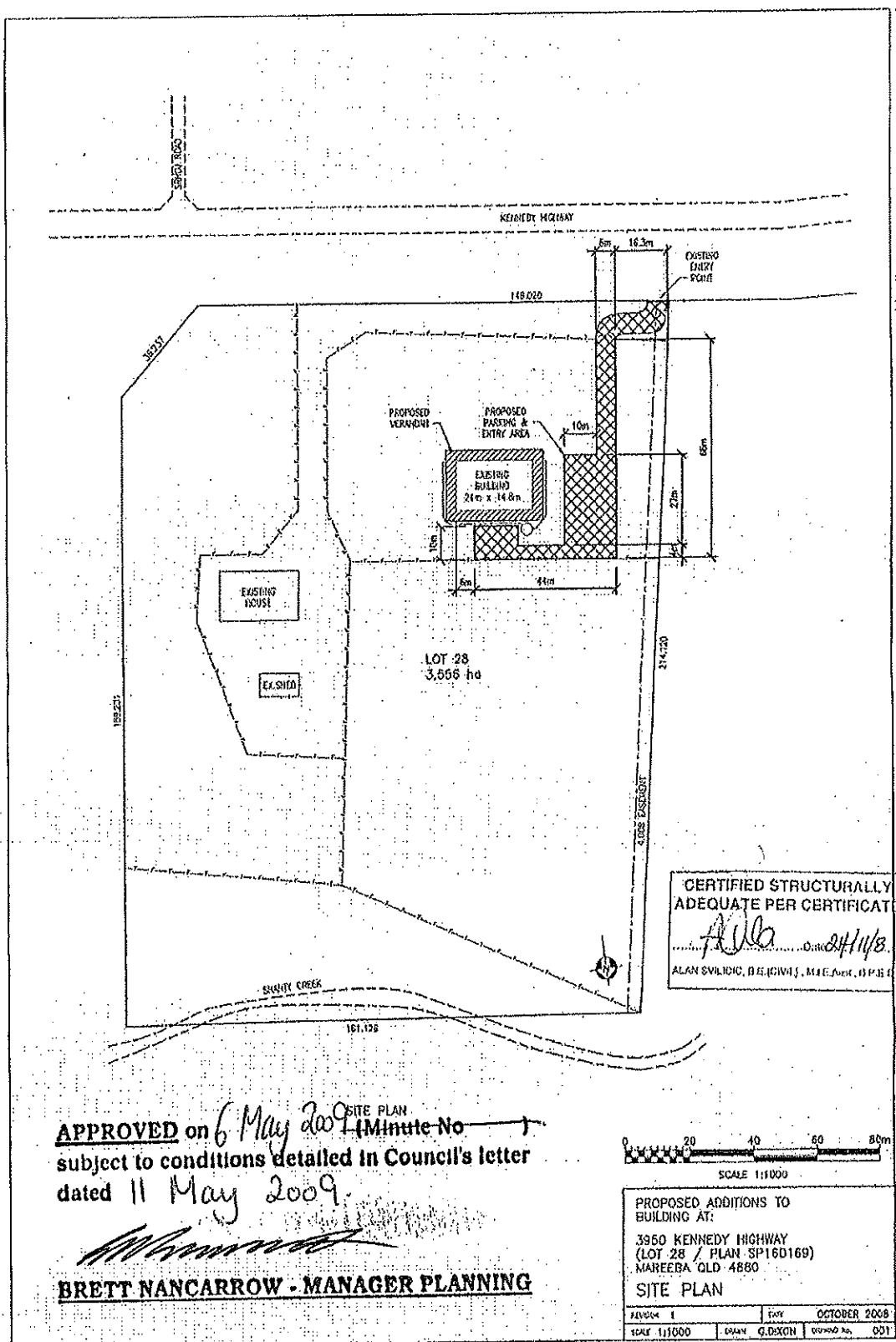


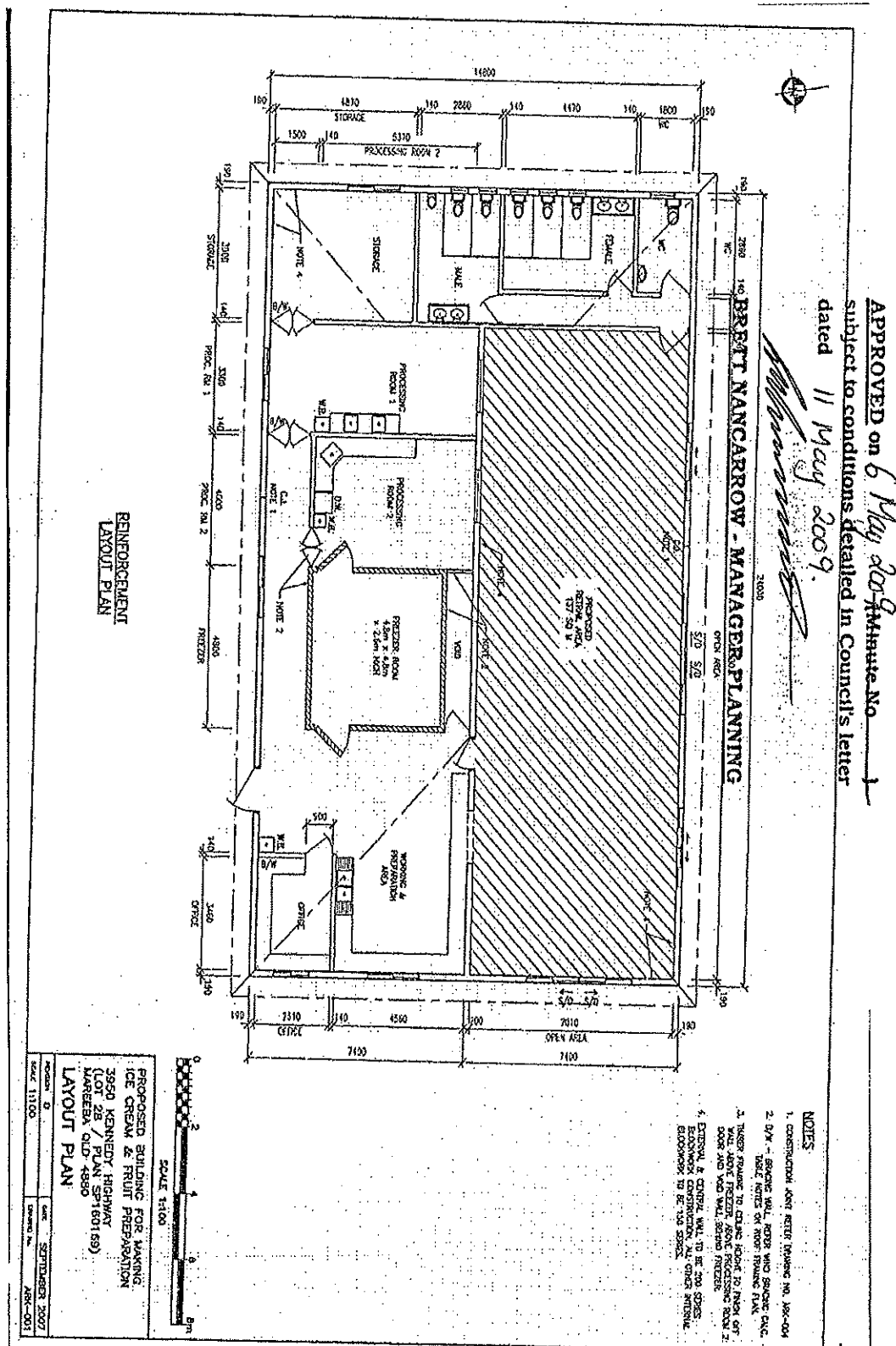
BRETT NANCARROW
MANAGER URBAN & REGIONAL PLANNING

Enclosures: Approved plan/s of development, Implementation Note, Note 20 – Appeal and Declaratory Powers under the IPA and the form 'Notice of Appeal'

Copy: **Mr Malcolm Hardy**
 Department of Main Roads
 Peninsula District
 PO Box 6185
 CAIRNS QLD 4870

Department of Environment and Resource Management
Administration Officer
Planning & Environment
PO Box 5318
TOWNSVILLE QLD 4810



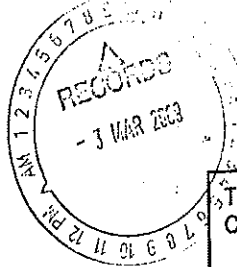


**Queensland
Government**

2 March 2009

Ian Church
Chief Executive Officer
Tablelands Regional Council
PO Box 154
Mareeba Qld 4880

Department of Main Roads

**THE ORIGINAL OF THIS DOCUMENT
CAN BE FOUND ON PHYSICAL FILE**

MCU/09/0005

LOCATION PLANNING - MBA

Dear Mr Church

Tablelands Regional Council : Kennedy Highway (Cairns-Mareeba)
Situating about 500m north of Kovacic Road, Kennedy Highway, via Mareeba
Lot 28 on SP 160169, Parish of Tinaroo
Geoff Dixon
Proposed Material Change of Use (Restaurant) Application
Referral Agency Response (conditions apply)

I refer to the above application received at the Department 27 February 2009 requesting consideration of the above development.

Pursuant to sections 3.3.15, 3.3.16 and 3.3.18 of the *Integrated Planning Act 1997*, the Queensland Department of Main Roads, as a Concurrence Agency, has assessed the impact of the proposed development on the State-controlled road network and requires that Council include the following attached conditions of development for the subject application

Should you have any queries regarding the response please contact Malcolm Hardy on telephone 4050 5511.

Council is requested to reflect the conditions on its Rates Record, to ensure that the planning intentions of the conditions are secured.

This Department would appreciate a copy of Council's decision notice regarding the application.

A copy of this letter has been sent to the applicant.

Yours sincerely

Malcolm Hardy
SENIOR PLANNER FAR NORTH

Roads Business Group
Far North Regional Office
Floor 4 Cairns Corporate Tower 15 Lake Street
PO Box 6185 CAIRNS Queensland 4870
ABN 67 836 727 711

Our ref 264/32A/102(1224.03)
Your ref MCU/09/0005
Enquiries MALCOLM HARDY
Telephone +61 7 4050 5511
Facsimile +61 7 4050 5438

Conditions of Development and Statement of Reasons

Council Ref: MCU/09/0005 **Date:** 2 March 2009
State-controlled road: Kennedy Highway (Cairns-Mareeba)
Proposal: Material Change of Use (Restaurant)
Real property description: Lot 28 on SP 160169, Parish of Tinaroo
Site locality: Situated about 500m north of Kovacic Road, Mareeba
Applicant: Geoff Dixon

Conditions of Development	Reasons	Condition Basis
Layout 1. Unless otherwise approved in writing by Main Roads the development site layout must generally comply with G. Dixon Drawing No. 001 "Site Plan" dated October 2008.	To ensure the development proceeds in accordance with the proposal	
Permitted Road Access Location 2. Vehicular access between the state-controlled road (Kennedy Highway) and the Subject Land shall be via the existing access shared with the adjoining Lot 512 on SP 145485 at the western side boundary of the Subject Land only.	Main Roads must ensure that access between to the Subject Land does not adversely impact the safe and efficient operation of the state-controlled road	s. 62 <i>Transport Infrastructure Act 1994</i> (Qld)
3. No additional direct vehicular access between the state-controlled road (Kennedy Highway) and the Subject Land is permitted.		

Conditions of Development	Reasons	Condition Basis
<p>Road Access Works</p> <p>4. Road access works at the permitted road access location, pursuant to Condition 2, are required and shall be constructed in accordance with:</p> <ul style="list-style-type: none"> • Main Roads <i>Road Planning and Design Manual</i>, and • Current Main Roads standards <p>A recent site inspection indicates the access works require the provision of the following within the state-controlled road reserve (Kennedy Highway):</p> <ul style="list-style-type: none"> (i) widening of the existing access driveway on the eastern side to a minimum width of 6 metres with an extension of the existing culvert with sloping endwalls, (ii) a minimum radius of turnout of 10m, and (iii) relocation of road edge guide posts. <p>5. The applicant/landowner shall obtain the written approval of Main Roads for road access works prior to works commencing within the state-controlled road reserve (Kennedy Highway).</p> <p>6. All required road access works must be completed to the written approval of Main Roads prior to the commencement of the approved use.</p>	<p>Access works at the permitted access location are required to mitigate the impacts of development generated traffic onto the state-controlled road.</p>	<p>s. 33 <i>Transport Infrastructure Act 1994</i> (Qld) Main Roads' <i>Road Planning and Design Manual</i></p> <p>s. 50 <i>Transport Infrastructure Act 1994</i> (Qld)</p>

Conditions of Development	Reasons	Condition Basis
<p>Visual Amenity Treatments</p> <p>7. The applicant/landowner shall provide a 2m wide landscaped strip along the Subject Land's frontage to the Kennedy Highway, except for the access driveways, to screen the onsite vehicular circulation. The landscaping shall be designed and planted such that when the landscaping matures, it provides a minimum 1m high screening and complementary screen trees approximately 6m tall at 7m spacings.</p> <p>The species of plants used in the landscaping works shall be in accordance with Council's standards. If Council does not have standards, then the only requirements are that the species are native, low maintenance species that are effective at providing the necessary screening specified above and do not create a safety risk (that is, no thorns, poisonous fruits or berries or large nuts).</p> <p>All landscaping works shall be completed prior to the commencement of the approved use to the written approval of Main Roads.</p> <p>Building Alignment Setback</p> <p>8. A minimum building alignment setback of 40m from the boundary of the state-controlled road shall apply to any and all structure(s) intended to be located on the Subject Land.</p> <p>Advertising</p> <p>9. No advertising device for the proposed development is permitted within the state-controlled road reserve (Kennedy Highway).</p> <p>Parking</p> <p>10. No parking associated with the development is permitted within the state-controlled road reserve (Kennedy Highway).</p>	<p>To screen onsite vehicular circulation.</p> <p>Main Roads has determined the land described in the condition as being within a proposed future land requirement area.</p> <p>Advertising devices may obscure signage and distract motorists.</p> <p>Lack of on-site parking can cause vehicle queuing and conflict at an access to the state-controlled road.</p>	<p>Main Roads Road Landscape Manual</p> <p>s. 50 Transport Infrastructure Act 1994 (Qld)</p>

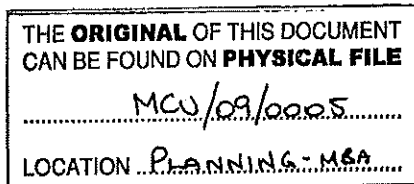


Author : Craig Cruickshank
File / Ref number : 2009/001929:554800
Recfind No: MBA/000691
Trackjob No: IC0309MBA0002
Unit : Vegetation Management Unit
Phone : (07) 47997003

Department of
**Environment and Resource
Management**

14 April 2009

Chief Executive Officer
Tablelands Regional Council
PO Box 154
Mareeba QLD 4880



Attention: Gary Searle

Dear Sir

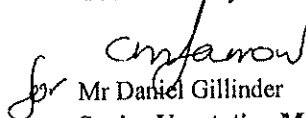
Application to Material Change of Use on Lot/s 28 SP160169 - Tablelands Regional Council - Referral Agency Response

The Department of Environment and Resource Management (acting as a Concurrence Agency), has completed the assessment of the above application against the purposes of the Vegetation Management Act 1999 in accordance with the Concurrence Agency Policy for MCU (Concurrence-Single Issue).

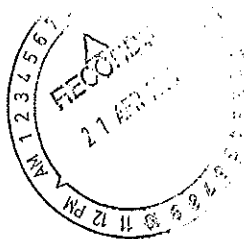
The Referral Agency Response, prepared pursuant to section 3.3.16(1) of the *Integrated Planning Act 1997*, is enclosed. I look forward to receiving a copy of the decision notice for the application in due course.

If you wish to discuss this matter further, please contact Mr Craig Cruickshank, Vegetation Management Officer, and North Region of the department on telephone number (07) 4799 7003 quoting the above reference number

Yours sincerely


Mr Daniel Gillinder
Senior Vegetation Management Officer
North Region

Att. Referral Agency Response



DERM Townsville
3rd Floor, State Govt Building
187-209 Stanley Street
PO Box 5318 Mc
Townsville 4810 Qld
Telephone (07) 4799 7003
Facsimile (07) 47997125
Website www.derm.qld.gov.au
ABN 83 705 537 586

Referral Agency Response – Material Change of Use / Reconfiguring a Lot

s 3.3.16 Integrated Planning Act 1997

1. Application information

- 1.1. Applicant's name: JS, LD & GS Dixon
- 1.2. Property description: Lot 28 on SP 160169 – Tablelands Regional Council
- 1.3. Assessment Manager/Reference: Tablelands Regional Council :Ref: MCU/09/0005
- 1.4. Date application was referred to Department: 4 March 2009
- 1.5. Departmental Reference: eLVAS Case No: 2009/001929, File Ref. No: MBA/000691, Trackjob No: IC0309MBA0002
- 1.6. Type/s of development sought by the application:
 - Material Change of Use

2. Concurrence Agency response:

The Chief Executive of the Department of Environment and Resource management directs that the following conditions must be imposed on any approval given by the Assessment Manager:

- 2.1 There must be no clearing of remnant vegetation as a result of the material change of use.
- 2.2 No clearing of native vegetation as a result of the material change of use is to occur within 50 metres of the high bank of the defined watercourse at the rear of the property, known as Shanty Creek.
- 2.3 The material change of use of Lot 28 on SP160169—must remain consistent with the submitted plan: Drawn by G. Dixon in October 2008, drawing number. 001 Revision 1 for 'Site Plan' for proposed additions to building at 3950 Kennedy Highway, Mareeba. The submitted plan forms part of this referral agency response.

3. Reasons:

A Statement of Reasons is attached at Schedule 1.

4. Additional comments or information:

Third Party Response – Cultural Heritage

A search has been performed on the inventory of recorded Aboriginal cultural heritage sites over Lot 28 on SP 160169 and no Aboriginal cultural heritage notings were found. However, the Chief Executive of DERM advises all Aboriginal cultural heritage in Queensland is protected under the *Aboriginal Cultural Heritage Act 2003*, and penalty provisions apply for any unauthorised harm. A person carrying out an activity must take all reasonable and practical measures to ensure the activity does not harm Aboriginal cultural heritage (the "cultural heritage duty of care"). Maximum penalties for breaching the duty of

IDAS Referral Agency Response

care are \$750,000 for a corporation and \$75,000 for an individual. This applies whether or not such places are recorded in an official register and whether or not they are located in, on or under private land.

The gazetted cultural heritage Duty of Care Guidelines sets out how you can comply with the cultural heritage duty of care. An assessment of the proposed activity against the Duty of Care Guidelines will help determine whether, or to what extent, Aboriginal cultural heritage may be harmed. Upon assessment, if you believe cultural heritage may be harmed by the proposed activity, you should contact the Cultural Heritage Coordination Unit for further advice on (07) 3238 3838 or e-mail: cultural.heritage@nrw.qld.gov.au.

Further information on cultural heritage a copy of the Duty of Care Guidelines or cultural heritage search forms visit: http://www.nrw.qld.gov.au/cultural_heritage/index.html.

5. Authorised Officer Signature:



Mr Daniel Gillinder
Senior Vegetation Management Officer
North Region

15 April 2009

15/4/2009

Att. Schedule 1 – Statement of Reasons

eLVAS Case No:	2009/001929
File Ref. No:	MBA/000691
Trackjob No:	IC0309MBA0002

Schedule 1

Statement of Reasons
Referral Agency Response
Application for Material Change of Use / Reconfiguring a Lot
JS, LD & GS Dixon

The following Statement of Reasons is provided pursuant to s. 3.3.18(8) of the *Integrated Planning Act 1997*

Introduction

1. The Department of Environment and Resource management (DERM) received an application from JS, LD and GS Dixon on 4 March 2009
2. The application is for 4 March 2009 MCU (Concurrence-Single Issue) on Lot 28 SP160169 - Tablelands Regional Council.
3. An Assessment Report was sent to the Delegate of the Chief Executive, Mr Daniel Gillinder, on 15-04-2009
4. The Delegate determined the Referral Agency Response on 15 April 2009.

Evidence

1. Application dated 4 March 2009
 - a) Completed IDAS Form 1 Part "J".
 - b) Property Vegetation Management Plan.
2. *Integrated Planning Act 1997 & Integrated Planning Regulation 1998 (Schedule 2)*
3. *Vegetation Management Act 1999*
4. *Department of Natural Resources and Water Concurrence Agency Policy for Material Change of Use dated 23 August 2007*
5. IPA delegation No2 (2008)
6. 2006 Ortho_Imagery 8064-333_2006.ecw
7. Assessment Report dated 15-04-2009

Findings of fact

1. An application was received from JS, LD and GS Dixon for the subject Lot 28 on SP 160169 – Tablelands Regional Council. This was assessed by DERM as a Concurrence Agency against the objectives of the *Vegetation Management Act*, as provided for under the *Integrated Planning Act* and the *Regulations* attached to that act.
2. The application was assessed against the Criteria Table A of the *Concurrence Agency Policy for Material Change of Use 23 August 2007*.
3. The proposed application for material change of use is to change the existing use from Wholesale use to Retail Use
4. Available evidence indicates there will be no clearing of assessable vegetation as a result of the proposed Material Change of Use as the defined area will be over mapped non-remnant areas