

# Decision Notice

## Planning Act 2016

5<sup>th</sup> May, 2020.

Ben Moran Engineering  
PO Box 1133  
AYR. Q4807

Dear Sir,

I refer to your application and advise that Development Application No. **MCU19/0009** was assessed and approved in full subject to conditions. The decision was made by the Assessment Manager on the date below.

Details of decision are as follows:

### Application Details

Application Number:	MCU19/0009
Street Address:	70 Klondyke Road, Ayr
Real Property Description:	Lot 7 on SP251206
Planning Scheme	Burdekin Shire IPA Planning Scheme

### Decision Details

Type of Decision:	Approval With conditions
Type of Approval:	Development Permit Approval for Material Change of Use for General Industry(Fabrication Business)
Date of Decision:	28 <sup>th</sup> April, 2020

### Currency Period of Approval

The currency period for this development approval is six years starting the day that this development approval takes effect. (Refer to Section 85 "Lapsing of approval at end of currency period" of the *Planning Act 2016*.)

Please note that in terms of the Planning Act, the currency period can only be extended if the request is received before the approval lapses (see Section 85 "Lapsing of approval at end of currency period")

### Infrastructure

Where conditions relate to the provision of infrastructure, these are non-trunk infrastructure conditions unless specifically nominated as a "**necessary infrastructure condition**" for the provision of trunk infrastructure as defined under Chapter 4 of the *Planning Act 2016*.

## Assessment Manager Conditions

### General

- 1.1 A Site Based Management Plan (SBMP) shall be developed, implemented, and complied with, which deals with controls on:
- External lighting;
  - Noise emissions;
  - Dust emissions; and
  - Odour emissions.

The SBMP will need to be submitted and approved by the Chief Executive Officer prior to commencement of any lawful use is to be carried out on the subject land.

- 1.2 An Environmental Management Plan (EMP) shall be developed, implemented and complied with, which deals with controls on:
- Liquid and solid waste;
  - Chemical storage and disposal;
  - The emission of odours from spray-painting; and
  - Maintenance of water quality in terms of ground water, surface water and stormwater runoff.

The EMP will need to be submitted and approved by the Chief Executive Officer prior to commencement of any lawful use is to be carried out on the subject land.

- 1.3 The activities associated with the use may operate only between the hours of 7.00a.m. to 5.00p.m. Monday to Friday and 9.00a.m. to 1.00p.m. Saturday. There must be no operation on Sundays or public holidays.
- 1.4 The maximum number of employees allowed onsite during these hours of operation is 5.
- 1.5 All deliveries associated with the operation of the business must occur during these hours.
- 1.6 The use of the development must not cause an unreasonable nuisance to the surrounding area.
- 1.7 The operator of the Fabrication Business must keep a Complaints Register on the land at all times, for the inspection of an authorised office of the Council identifying:
- The time, date and detail of any complaint made to the operator relating to the use of the workshop; and
  - Any action or response taken by the operator to rectify or reasonably deal with the complaint.
- 1.8 A landscaping plan shall be submitted and approved by the Chief Executive Officer. This plan must be prepared by a suitably experienced person detailing the following:
- the location of existing and proposed plantings;
  - proposed fencing and screens, including rubbish bin locations;
  - describe on-going maintenance tasks to be implemented for landscaped and turfed areas.

### Approved Plans

- 2.1 The development and conduct of the approved use of the premises, the carrying out and maintenance of any works on the premises and construction and maintenance of any building on the premises must be generally in accordance with the applications supporting material, except where modified by the conditions of this Development Permit and any approval issued there under.
- 2.2 Where a discrepancy or conflict exists between the written condition(s) of the approval and the approved plans, the requirements of the written condition(s) will prevail.
- 2.3 The proposed development must comply with all Planning Scheme requirements as applying at the date of this approval, except as otherwise specified by any condition.



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**Compliance with conditions**

3. The proposed development must comply with all conditions of this development permit prior to the commencement of the use.

**Outstanding charges**

4. All rates and charges (including regulated infrastructure charges), in arrears in respect of the land, subject of the application, are paid in full prior to the commencement of the proposed use.

**Notice of Intention to commence the use**

5. Prior to the commencement of the use on the site, written notice must be given to Council that the use (development and/or works) fully complies with the decision notice issued in respect of the use.

**Public Utility Services/Damage**

- 6.1 The developer must at its own cost undertake all necessary alterations to public utility mains and services as are rendered necessary by the carrying out of any required external works or other works associated with the approved development.
- 6.2 Any damage which is caused to Council's infrastructure as a result of the proposed development must be repaired immediately.

**Building Work**

7. A development permit for Building Works and final certificate or certificate of classification is to be obtained. Proposed buildings to be constructed within allowable setbacks must achieve acceptable solutions in accordance with the requirements of Section C; Building Code of Australia – (Siting provisions and fire resistance).

**Access and Parking**

- 8.1 The construction of any new crossovers to give access to the land is to be the owner's responsibility and to the satisfaction of the Chief Executive Officer.
- 8.2 Parking space and layout must be designed in accordance with the provisions contained in Schedule 2 – Vehicle Parking Rates & Standards of the Planning Scheme.
- 8.3 Access to the premises, car parking and manoeuvring areas must be constructed in an all-weather low glare paving, exposed aggregate concrete or suitable dust suppressant material to the satisfaction of the Chief Executive Officer.

**Drainage**

- 9.1 The approved development and use(s) must not interfere with the natural flow of stormwater in the locality in such a manner as to cause ponding or concentration of stormwater on adjoining land or roads.
- 9.2 Any external catchments discharging to the premises must be accepted and accommodated within the development's stormwater drainage system.

**Operational Works**

10. Where operational works are required to be carried out, the developer must, within the timeframe required by the *Planning Act 2016* and prior to the commencement of any work, lodge with council an application for a development permit for operational works. As part of such an application, the developer must submit:



- (a) detailed and complete engineering drawings and specifications of the proposed works prepared by a civil engineer, who is both registered under the Professional Engineer's Act 2002 and is current Registered Professional Engineer of Queensland; and
- (b) certificate from the engineer who prepared the drawings stating that the design and specifications have been prepared in accordance with these conditions, relevant Council Codes and Planning Scheme Policies and the relevant Australian Standard Codes of Practice;

## Environment and Health

- 11.1 No release of contaminants, including, but not limited to dust, fumes, odour or aerosols or emission of noise is to cause or be likely to cause an environmental nuisance beyond the boundaries of the premises to which this development permit relates.
- 11.2 Upon receipt of a complaint regarding the emission of dust, light, odour or other air or noise emission, the operator must within a reasonable period of time:
  - a. take any actions necessary to resolve the complaint, and
  - b. implement abatement measures to minimise the emissions from the site.
- 11.3 Where a complaint is made about noise from the activity, that is considered reasonable by an authorised officer and cannot be resolved by the operator of the activity subject of this approval, the emission of noise from the development must not result in levels greater than those specified in Table 1 until the circumstances which gave rise to the complaint are resolved.

Table 1: Noise Limits (dBA)

NOISE LIMITS MEASURED AT THE FACADE OF THE NEAREST NOISE SENSITIVE PLACE		
Period	Measured as $L_{Aeq}$	Measured as $maxL_{pA}$
7am – 6pm	55	60
6pm – 10pm	50	55
10pm – 7am	45	50

- 11.4 All spillage of waste, oils, chemicals or similar materials shall be cleaned up as soon as practical. Such spillage shall not be cleaned up by hosing, sweeping or otherwise releasing such wastes or contaminants to the land, stormwater or any roadside.
- 11.5 A spill kit must be maintained on site for use on spillages of any materials stored on site and be readily accessible at all times.
- 11.6 Chemicals must be stored in a bunded area undercover or other location whereby any spillage will not discharge to the ground or any area subject to stormwater or stormwater runoff.
- 11.7 Oils, fuels, other liquids must be stored in a bunded area undercover or other location whereby any spillage will not discharge to the ground or any area subject to stormwater or stormwater runoff. Any bunding provided shall be constructed and sized in accordance with AS 1940- The storage and handling of flammable and combustible liquids.
- 11.8 All fabrication is to be conducted in a dedicated workshop area.
- 11.9 All wash-down waters from the washing of vehicles, trailers, plant or equipment must be contained and collected and disposed of to an approved facility. Wash-down waters must not be discharged to stormwater or on land subject to stormwater runoff.
- 11.10 All solid wastes or other materials likely to produce contaminates shall be stored in bins with lids in a place to prevent the ingress of stormwater.



- 11.11 There shall be no release of litter or contaminates from the site to any roadside, drain or waters.
- 11.12 Lighting used to illuminate any areas of the premises shall be angled or shaded in such a way that lighting does not directly illuminate any nearby premises or roadways in such a manner as to constitute an environmental nuisance.
- 11.13 Spray painting is not permitted to be conducted at the site other than for minor touch-ups.
- 11.14 Abrasive blasting is to be conducted within a fully enclosed chamber, vented to the atmosphere through an effective dust extraction system and designed to enable frequent or continuous recovery of spent abrasives.

### Referral Agencies

Not Applicable.

### Approved Plans

The approved plans for this development approval are as submitted with the application.

### Referenced Documents

Not Applicable.

### Advisory Notes

The following notes are included for guidance and information purposes only and do not form part of the assessment manager conditions:

- *General waste and recycling services must comply with Council's Waste Management Policy.*
- *Pursuant to the Environmental Protection Act 1994, all development involving the emission of noise and dust from building and/or construction activities must ensure that the emissions are in accordance the Environmental Protection (Noise) Policy 2008 and the Environmental Protection (Air) Policy 2008.*
- *Regulated wastes are to be removed for disposal by a licenced waste transporter.*
- *The property is unable to be connected to Council's Water Supply or Sewerage Infrastructure.*
- *There must be no release that has been in contact with any contaminants at the site to any waters, watercourse, or stormwater drain.*
- *Any fixed noise emitting device (eg air conditioning unit, refrigeration unit, compressor, generator etc) located outside the workshop/facility must be placed within an appropriate acoustic enclosure. (use appropriate source noise where applicable)*

### Property Notes

Not Applicable.

### Variation Approval

Not Applicable.

### Further Development Permits Required

- Development Permit for Building Work

## Submissions


Olive Breadsell  
C/- Milford Planning  
PO Box 5463  
Townsville. Q4810

## 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.

During the appeal period, you as the applicant may suspend your appeal period and make written representations to council about the conditions contained within the development approval. If council agrees or agrees in part with the representations, a "negotiated decision notice" will be issued. Only one "negotiated decision notice" may be given. Taking this step will defer your appeal period, which will commence again from the start the day after you receive a "negotiated decision notice".

**Assessment Manager**  
**Signature:**



Date: 5<sup>th</sup> May, 2020

Enc: Approved Plans/Documents

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 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
  - (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.



## Statement of Reasons

Planning Act 2016 & The Planning Regulation 2017

This Notice is prepared in accordance with s63(5) and s83(7) of the Planning Act 2016 to inform the public about a decision that has been made in relation to a development application. The purpose of the Notice is to enable a public understanding of the reasons for the planning decision, specifically having regard to:

- the relevant parts of the Planning Scheme and Assessment Benchmarks against which the application was assessed; and
- any other information, documents or other material Council was either required to, or able to, consider in its assessment.

All terms used in this Notice have the meanings given them in the Planning Act 2016.

## Assessment Benchmarks

The following assessment benchmarks applied to the proposed development:

- Strategic Framework
- Desired Environmental Outcomes (DEO's)
- Rural Zone Code

## REASONS FOR THE DECISION

Following an assessment of the development application against all of the assessment benchmarks listed above, it was determined the proposed development:

Assessment of the development against the relevant zone purpose, planning scheme codes and planning scheme policies demonstrates that the proposed development will not cause significant adverse impacts on the surrounding natural environment, built environment and infrastructure, community facilities, or local character and amenity.

- The development design is considered appropriate to allow effective use of the land in accordance with the provisions of the Planning Scheme;
- The proposed activities will not restrict or adversely impact on the nearby rural uses or the capacity and safety of the road network; and
- The proposal is well buffered to sensitive uses by distance.

## MATTERS RAISED IN SUBMISSIONS

Issue	How matter was dealt with
<b><u>Conflict with adjoining and surrounding land uses:</u></b> <i>The proposed development is in direct conflict with the rural amenity of the surrounding area and is near existing residential dwellings and rural uses.</i>	<p><b>Response</b></p> <p>The new shed that the business is going to operate from is approximately 170m from the existing dwellings on Klondyke Road. Physical separation from existing residential dwellings is increased by this re-location of the previous rural industry use. An indication from the applicant has stated that he is not aware of any complaints ever being received from nearby residents.</p> <p>The type of work proposed to be undertaken is not significantly different to that which would be undertaken by harvesting and haul out maintenance operations throughout the shire's rural zoned areas. Therefore, it</p>



	is reasonable to expect higher levels of emissions such as dust and noise in rural areas of the shire when compared to residential areas.
<b><u>Locational Need:</u></b> <i>There is no demonstrated overriding need for the proposed development to be located in this area nor why it cannot be located in a more appropriately zoned area i.e. industrial.</i>	There currently exists a very limited supply of appropriately zoned industrial land in Ayr. The existing Ayr Industrial Estate has no suitably sized lots currently available. In addition, locating this proposed use in an Industry zone may not necessarily restore the land to its predeveloped condition. An industry which is ancillary to a rural use may start up in its place and Council may have a limited ability to regulate it.
<b><u>Visual amenity:</u></b> <i>The proposed development seeks to increase the scale of the built form on the subject site. The application fails to demonstrate how the existing visual amenity will be screened from the proposed development.</i>	The new shed is set back to the rear of the subject site and the applicant states that they have made provisions to install gardens to minimise effect on the visual amenity. The requirement for a landscaping plan is also included in the conditions that will need to be complied with.
<b><u>Noise:</u></b> <i>The application states the proposed development will emit noise at a maximum of 80 decibels 10m from the exterior of the building. No supporting data to correlate this has been provided.</i>	In the applicant's response to a Council Information request, evidence was provided of noise levels within the workshop and 10m from the shed during normal operating conditions. Both readings were below 80db. Council Officers have considered this data and although are within the stated levels acknowledge that they have not been carried out by appropriate persons. Noise management conditions have been included as part of the recommendation to ensure that any unacceptable noise emissions can be controlled.
<b><u>Traffic:</u></b> <i>The proposed development provides for an increase in employees from 3 to 10. This anticipated increase would result in an increase of customer and employee traffic attending the site. The proposal does not outline the vehicle types attending the site.</i>	The applicant has stated that they only expect the customer traffic flow to increase from 1-2 per day to 3-4 per day. The number of deliveries will remain the same as the delivery vehicles have the capacity to carry any increase in materials. As a further control measure, a condition has been proposed that restricts the total number of employees to 5 and not 10 as the applicant has requested. This will ensure that the business will remain at a scale that is unlikely to have any negative impacts on existing amenity.
<b><u>Dust:</u></b> <i>The existing internal driveway and proposed parking area is unsealed. Substantial traffic increase on the unsealed surface as a result of the proposed development has the potential to significantly increase dust emission from the subject site, adversely affecting the adjacent residential properties.</i>	The applicant has stated in his response to the submission that daily farm practices (e.g. cultivation, harvesting, chemical spraying etc) emanating from rural farm practices contributes as much or more to the dust emissions in this locality. Conditions have been included as part of the recommendation to ensure any unacceptable levels of dust can be mitigated.
<b><u>Chemical Storage:</u></b> <i>Concerns that, safety mitigation measures in regard to the hazardous material/chemicals are not addressed in the development application supporting material.</i>	All chemicals will be stored in a container in accordance with the manufacture's recommendations.
<b><u>Servicing arrangements:</u></b> <i>Water and sewer arrangements are not specified for the proposed development.</i>	The applicant has advised that potable water is provided from an onsite storage tank. An on-site effluent disposal system has been installed and approved at the property to treat wastewater.