

Decision Notice for Development Permit 2008/005811 - Approval

s 3.5.15 Integrated Planning Act 1997

1. Application information

- 1.1. **Applicant's name:** Colin Roebuck
- 1.2. **Date application received:** 3 July 2008
- 1.3. **Date of Decision:** 1 August 2008
- 1.4. **Development Permit Expiry date:** 31st July 2013
- 1.5. **Property Description:** Lot 2 RP607651 and Lot 3 LN1743 – Rockhampton Regional Council
- 1.6. **Our reference number:** 2008/005811; ROC/022771
- 1.7. The development proposed in the application is for operational works that is the clearing of native vegetation for the following purpose/s under s.22A of the *Vegetation Management Act 1999 (VMA)*:
 - To control non-native plants or declared pests
- 1.8. **Referral Agencies:** Nil

2. Development Permit

- 2.1. **Decision made:**
 - Application is approved subject to the conditions in 2.3 and 2.4 and the development permit plan.
- 2.2. **Type of development approval granted:**
 - Development permit
- 2.3. **Assessment Manager Conditions:**

Terms underlined in conditions are defined in "Definitions" at the end of this section.

- 2.3.1. This Development Permit ("the permit") authorises the clearing of native vegetation in the area/s shown as "**Area W**" on the attached Development Permit Plan ("DPP") number 2008/005811/1
- 2.3.2. The permit is issued for the land currently described as **Lot 2 RP607651 and Lot 3 LN1743 – ROCKHAMPTON REGIONAL COUNCIL**
- 2.3.3. This permit does not authorise the clearing of any native vegetation that is:
 - 2.3.3.1. on any land not nominated as being within "**Area W**" on the DPP.
 - 2.3.3.2. that is on any road reserve—regardless of whether a formed road exists on the road reserve—and/or stock route.

- 2.3.4. Within “**Area W**” on the DPP:
- 2.3.4.1 Clearing operations MUST retain all mature trees; and
 - 2.3.4.2 Where non-native woody species crown cover is LESS THAN 50% of the total ground cover, clearing operations must retain 125 immature trees per 50 metre x 50 metre (0.25 hectare) area, spread evenly across the landscape; and
 - 2.3.4.3 Vegetation retained in the above condition must contain representative of the following size classes: 5-10cm and 11-20cm DBH; and
 - 2.3.4.4 Clearing on slopes over 12% must occur by chemical clearing methods only; and
 - 2.3.4.5 Clearing operations within 50 metres from the field location of the high bank of each stream order 1 watercourse, marked as ‘X’ on the DPP must only occur by chemical clearing methods within a 1.5 metre radius from the base of the stem of the individual lantana plant; and
 - 2.3.4.6 Clearing operations within 100 metres of the field location of the wetland areas, the approximate location shown as ‘A’ on the DPP, must occur only by chemical clearing methods only; and
 - 2.3.4.7 The above conditions do not prevent vegetation being cleared for a purpose described in Schedule 8, Part 1, Table 4, Item 1A of the *Integrated Planning Act 1997* or if cleared in accordance with any subsequent development approval.
- 2.3.5. Clearing under this permit is only approved if it occurs prior to 31 July 2013.
- 2.3.6. Where any person—other than the applicant—is engaged or employed to carry out the clearing of vegetation under this permit, the applicant is to provide them with a copy of this permit, including the conditions and the DPP, and ensure that they are aware of what clearing is authorised by this permit.
- 2.3.7. The Applicant shall ensure that any person engaged or employed to carry out the clearing of vegetation under this permit comply at all times with the requirements of this permit.

Definitions

Particular words and terms used in the above conditions are defined as follows:

'Clear' and **'Clearing'** for vegetation means clear as defined under the Vegetation Management Act 1999.

'Chemical clearing methods' means poisoning vegetation by applying poisonous chemicals to leaves or cut stumps, applying poisonous chemicals by stem injection or applying poisonous chemicals to ring-barked trees and shrubs. It specifically does not include the use of root absorbed herbicides.

'DBH' means diameter of a tree at breast height where breast height is 1.3 metres from the ground.

'High bank' means the terrace or bank—or if no terrace or bank is present the point on the active floodplain—which confines the average annual peak flow.

'Immature trees' means woody vegetation greater than 2 meters high other than mature trees.

'Mature trees' means for species of the genera Eucalyptus, Corymbia, Angophora and Lophostemon trees greater than 30cm at DBH. For species of ALL other genera, trees greater than 20cm at DBH

'Non-native woody species crown cover' is determined by estimating or measuring the area of the ground covered by the canopy of the non-native woody species, ignoring overlap and gaps within the individual canopies and is measured over each 50 metre x 50 metre (0.25 hectare) area.

'Remnant vegetation' means remnant vegetation as defined under the Vegetation Management Act 1999.

'Retained trees' means the trees remaining in the areas approved after clearing has occurred.

'Root absorbed herbicide' means the aerial or ground application of poisonous chemicals in liquid or granule form, to the soil, which are subsequently absorbed by plant roots and result in the death of the vegetation.

'Slope' means the measure of the upward or downward incline of the land surface over any 30 metre length in the application area

'Watercourse' means the area of land between the high banks of a natural channel—whether artificially improved or not—in which water flows permanently or intermittently

'Vegetation' means vegetation as defined under the Vegetation Management Act 1999.

2.4 Approved plans and specifications:

The following plans and specifications have been approved by the assessment manager in relation to this permit:

- The attached DPP number 2008/005811/1.

3. Other development permits required

Not Applicable

4. Advice

4.1 This Development Permit does not authorise the clearing of any vegetation that would constitute a contravention of other laws. This includes:

- the *Coastal Protection and Management Act 1995*;
- the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003*;
- the *Environmental Protection Act 1994* which regulates environmentally relevant activities;
- the *Environment Protection and Biodiversity Conservation Act 1999 (Cwlth)* regarding the protection of listed threatened species and ecological communities;
- the *Fisheries Act 1994* regarding the management of marine plants including mangroves;
- Local laws established by local government under the *Local Government Act 1993*;
- the *Nature Conservation Act 1992* regarding the management of protected plants and animals;
- the *Queensland Heritage Act 1992* which regulates the management of heritage sites;
- the *Soil Conservation Act 1986*; and
- the *Water Act 2000* regarding the removal of vegetation from the bed and banks of a watercourse.
- the *Wild Rivers Act 2005*

It is recommended that you check with relevant authorities including your local government before undertaking any clearing to ensure compliance with other laws.

4.2 Cultural Heritage

Under section 23 of the *Aboriginal Cultural Heritage Act 2003*, a person who carries out an activity must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage (the "cultural heritage duty of care"). Maximum penalties for breaching the duty of care are \$750,000 for a corporation and \$75,000 for an individual.

You will comply with the cultural heritage duty of care if you are acting in accordance with gazetted cultural heritage duty of care guidelines. An assessment of your proposed activity against the duty of care guidelines will help determine whether or to what extent Aboriginal cultural heritage may be harmed by your activity. It will also help determine whether you need to undertake a search of the cultural heritage database and register.

If following an assessment of the duty of care guidelines you believe cultural heritage may be harmed by your proposed activity, you should contact the Cultural

Heritage Coordination Unit for further advice on 3238 3838 or e-mail cultural.heritage@nrw.qld.gov.au. Further information on cultural heritage, together with a copy of the duty of care guidelines and cultural heritage search forms, may also be obtained from www.nrw.qld.gov.au.

5. Appeal rights

5.1 Refusal on grounds of code assessment

Under the VMA, an applicant may appeal the refusal or partial refusal of a Vegetation Clearing application on the grounds that the application did not meet the performance requirements of the relevant assessment code. This appeal may only be made to the Planning and Environment Court.

However, no appeal may be made to the Planning and Environment Court unless the applicant has first made representations about the matter to the assessment manager, in accordance with the provisions of section 22C(3) of the *Vegetation Management Act 1999* (VMA).

Representations are made by writing to the assessment manager stating the grounds for seeking a review of the original decision. These representations must be received during the applicant's appeal period.

For Vegetation Clearing applications, the appeal period is 20 business days after the applicant is given a decision notice. This appeal period can also be suspended for up to 20 days to allow more time to make the representations. To suspend the appeal period, the applicant must give the assessment manager a written notice before the appeal period expires.

Applicants who may wish to appeal a decision to the Planning and Environment Court should obtain the guide to making appeals from Natural Resources and Water.

The applicable provisions of the IPA and the VMA are attached in Appendix 1.

Peter Hall

Senior Vegetation Management Officer
Central West Region

1 August 2008

Integrated Planning Act 1997

Chapter 3, Part 5, Division 4—Representations about conditions and other matters

3.5.17 Changing conditions and other matters during the applicant's appeal period

- (1) This section applies if the applicant makes representations to the assessment manager about a matter stated in the decision notice, other than a refusal or a matter about which a concurrence agency told the assessment manager under section 3.3.18(1).
- (2) If the assessment manager agrees with any of the representations, the assessment manager must give a new decision notice (the “**negotiated decision notice**”) to—
 - (a) the applicant; and
 - (b) each principal submitter; and
 - (c) each referral agency; and
 - (d) if the assessment manager is not the local government and the development is in a local government area—the local government.
- (3) Only 1 negotiated decision notice may be given.
- (4) The negotiated decision notice—
 - (a) must be given within 5 business days after the day the assessment manager agrees with the representations; and
 - (b) must be in the same form as the decision notice previously given; and
 - (c) must state the nature of the changes; and
 - (d) replaces the decision notice previously given.
- (5) If the assessment manager does not agree with any of the representations, the assessment manager must, within 5 business days after the day the assessment manager decides not to agree with any of the representations, give a written notice to the applicant stating the decision about the representations.
- (6) Before the assessment manager agrees to a change under this section, the assessment manager must reconsider the matters considered when the original decision was made, to the extent the matters are relevant.

3.5.18 Applicant may suspend applicant's appeal period

- (1) If the applicant needs more time to make the written representations, the applicant may, by written notice given to the assessment manager, suspend the applicant's appeal period.
- (2) The applicant may act under subsection (1) only once.
- (3) If the written representations are not made within 20 business days after the day written notice was given to the assessment manager, the balance of the applicant's appeal period restarts.
- (4) If the written representations are made within 20 business days after the day written notice was given to the assessment manager—
 - (a) if the applicant gives the assessment manager a notice withdrawing the notice under subsection (1)—the balance of the applicant's appeal period restarts the day after the assessment manager receives the notice of withdrawal; or
 - (b) if the assessment manager gives the applicant a notice under section 3.5.17(5)—the balance of the applicant's appeal period restarts the day after the applicant receives the notice; or

- (c) if the assessment manager gives the applicant a negotiated decision notice—the applicant's appeal period starts again the day after the applicant receives the negotiated decision notice.

Chapter 4, Part 1, Division 8, - Appeals to court relating to development applications

4.1.27 Appeals by applicants

- (1) An applicant for a development application may appeal to the court against any of the following –
 - (a) the refusal, or the refusal in part, of a development application;
 - (b) a matter stated in a development approval, including any condition applying to the development, and the identification of a code under section 3.1.6;
 - (c) the decision to give a preliminary approval when a development permit was applied for;
 - (d) the length of a period mentioned in section 3.5.21;
 - (e) a deemed refusal.
- (2) an appeal under subsection (1)(a) to (d) must be started within 20 business days (the applicant's appeal period) after the day the decision notice or negotiated decision notice is given to the applicant.
- (3) An appeal under subsection (1)(e) may be started at any time after the last day a decision on the matter should have been made.

Chapter 4, Part 1, Division 10 – Making an appeal to court

4.1.39 How appeals to the court are started

- (1) An appeal is started by lodging written notice of appeal with the registrar of the court.
- (2) The notice of appeal must state the grounds of the appeal.
- (3) The person starting the appeal must also comply with the rules of the court applying to the appeal.
- (4) However, the court may hear and decide an appeal even if the person has not complied with subsection (3).

4.1.42 Notice of appeals to other parties

- (1) An appellant under division 9 must, within 10 business days after the day the appeal is started give written notice of the appeal to –
 - (a) If the appellant is a person to whom a notice mentioned in section 4.1.31 has been given the entity that gave the notice; or
 - (b) If the appellant is a person to whom an enforcement notice is given – the entity that gave the notice and if the entity is not the local government, the local government; or
 - (c) if the applicant is a person dissatisfied with a decision about compensation – the local government that decided the claim; or
 - (d) If the applicant is a person dissatisfied with a decision about acquiring designated land—the designator; or
 - (e) if the appellant is a party to a proceeding decided by a tribunal—the other party to the proceeding

Vegetation Management Act 1999

Part 2, Division 6—Modifying effect of Planning Act

22C Modifying Planning Act effect of appeal rights on Vegetation Clearing applications (assessment manager)

- (1) This section applies for a Vegetation Clearing application that is for a relevant purpose under section 22A if the chief executive is the assessment manager for the application.
- (2) An appeal about an application for which this section applies may only be made to the Planning and Environment Court under the Planning Act, section 4.1.27.
- (3) However, an appeal, other than for a deemed refusal, may not be made unless the applicant has made representations about the matter.
- (4) The representations may also be about a refusal.
- (5) The Planning Act, section 3.5.17, applies for the representations, including representations about a refusal.

22D Modifying Planning Act effect of appeal rights on Vegetation Clearing applications (concurrence agency)

- (1) This section applies for a Vegetation Clearing application that is for a relevant purpose under section 22A if the chief executive is a concurrence agency for the application.
- (2) Before an appeal may be made in relation to the application, the applicant must first make representations under the Planning Act, section 3.5.9 about the matter being appealed.