

29th August 2016

Department of Infrastructure,
Local Government and Planning
State Assessment and Referral Agency (SARA)
PO Box 825
TOOWOOMBA QLD 4350

By Email: toowoombasara@dssip.qld.gov.au

RECEIVED
29/08/2016
TOOWOOMBA
REGIONAL COUNCIL

Dear Sir/Madam,

REFERRAL OF REQUEST TO EXTEND RELEVANT PERIOD – SECTION 383(1) SUSTAINABLE PLANNING ACT 2009 – DEVELOPMENT PERMIT – MATERIAL CHANGE OF USE – FOOD OUTLET (CAFÉ / RESTAURANT) – 795-797 RUTHVEN STREET, SOUTH TOOWOOMBA – LOT 8 ON SP202999 AND EASEMENT B & C ON SP209454 (Council Ref: MCUI/2011/4311)

I act for the applicants, Etna Investments Pty Ltd & Nina Investments Pty Ltd, in the above matter.

On behalf of the applicants, and pursuant to the requirements of Section 383(1)(a) of the *Sustainable Planning Act 2009*, please find enclosed the Concurrence Agency referral copy of a request to extend the 'relevant period' for Development Permit MCUI/2011/4311, being a Negotiated Decision Notice dated 29 June 2012, for a Material Change of Use for a Food Outlet (Café / Restaurant) over land at 795-797 Ruthven Street, South Toowoomba, being that land described as Lot 8 on SP202999 and Easement B & C on SP209454.

This request has been made to the Assessment Manager, Toowoomba Regional Council on 29 August 2016 and a copy of the application documentation is attached to this correspondence at **Appendix A** for your information.

The original development approval was decided by Council on 16 February 2012 (Council Ref: MCUI/2011/4311) and a Negotiated Decision Notice was issued on 29 June 2012. The submitters appeal period ended on the 28 September 2012 and accordingly, the development approval had force and effect from this date.

The Department of Transport and Main Roads was a Concurrence Agency for the original approval given the proximity of the subject land to a State-controlled Road (Ruthven Street).

The applicant has lodged a request seeking to extend the relevant period for this approval for an additional **two (2) years** until **28 September 2018** for the reasons outlined at section 2.0 of the correspondence attached at **Appendix A**.

The applicant would like to confirm they are committed to undertaking this development and would be grateful for Concurrence Agency support for this request to extend the relevant period by a further **two (2) years**.

Should you require any additional information or clarification please do not hesitate to contact the undersigned on telephone (07) 4632 2535 or by email on andrew@precinctplan.com.au

Yours sincerely



Andrew Bullen
Precinct Urban Planning

Appendix A: Request to Extend Relevant Period

29th August 2016

The Assessment Manager
Toowoomba Regional Council
PO Box 3021
TOOWOOMBA QLD 4350

Dear Sir/Madam,

REQUEST TO EXTEND RELEVANT PERIOD – SECTION 383 SUSTAINABLE PLANNING ACT 2009 – DEVELOPMENT PERMIT – MATERIAL CHANGE OF USE – FOOD OUTLET (CAFÉ RESTAURANT) – 795-797 RUTHVEN STREET, SOUTH TOOWOOMBA – LOT 8 ON SP202999 AND EASEMENTS B & C ON SP209454 (Council Ref: MCUI/2011/4311)

I act for the applicants, Etna Investments Pty Ltd & Nina Investments Pty Ltd, in the above matter.

On behalf of the applicants, and pursuant to the requirements of Section 383 of the *Sustainable Planning Act 2009*, we request an extension to the 'relevant period' for Development Permit MCUI/2011/4311, being a Negotiated Decision Notice dated 29 June 2012, for a Material Change of Use for a Food Outlet (Café Restaurant) over land at 795-797 Ruthven Street, South Toowoomba, being that land described as Lot 8 on SP202999 and Easement B & C on SP209454.

This request seeks an extension to the period of approval for two (2) years from the end of the current relevant period which expires on 28 September 2016.

The applicable background information, legislative provisions and reasons for the request are provided below:

1.0 BACKGROUND AND APPLICABLE LEGISLATIVE PROVISIONS

1.1 Background

- On 16 February 2012, Toowoomba Regional Council issued Development Permit MCUI/2011/4311, authorising a Material Change of Use for a Food Outlet (Café Restaurant) on the subject land. The approval facilitated the development of 415m² building proposed to accommodate up to six (6) separate food and drink outlet tenancies.
- On 29 June 2012, Toowoomba Regional Council issued a Negotiated Decision Notice approving amendments to Conditions 13 and 53; refer to **Appendix B**.
- On 28 September 2012, Toowoomba Regional Council issued a notice confirming that the submitters appeal period had ended for the application and that the development approval had force and effect from this date; refer to **Appendix C**.

1.2 WHEN APPROVAL TAKES EFFECT

Section 339 of the *Sustainable Planning Act 2009* identifies the time at which a development approval takes effect. This section is reproduced in part as follows:

339 When approval takes effect

(1) If the application is approved, or approved subject to conditions, the decision notice, or if a negotiated decision notice is given, the negotiated decision notice, is taken to be the development approval and has effect—

(a) if there is no submitter and the applicant does not appeal the decision to the court or a building and development committee, from when—

(i) the decision notice is given; or

(ii) if a negotiated decision notice is given—the negotiated decision notice is given; or

(b) if there is a submitter and the applicant does not appeal the decision to the court or a building and development committee—

(i) when the submitter's appeal period ends; or

(ii) if the last submitter gives the assessment manager written notice that the submitter will not be appealing the decision before the period mentioned in subparagraph (i) ends—on the day the last submitter gives the notice.....

In this instance, it is noted that the submitters appeal period ended on the 28 September 2012 and the development approval had force and effect from this date.

1.3 WHEN APPROVAL LAPSES IF DEVELOPMENT NOT STARTED

Section 341 of the *Sustainable Planning Act 2009* identifies the timeframes for when an approval lapses if the development has not been completed. This section is reproduced in part as follows:

341 When approval lapses if development not started

*(1) To the extent a development approval is for a material change of use of premises, the approval lapses if the first change of use under the approval does not start within the following period (the **relevant period**)—*

(a) 4 years starting the day the approval takes effect;

(b) if the approval states a different period from when the approval takes effect—the stated period.

*(2) To the extent a development approval is for reconfiguring a lot, the approval lapses if a plan for the reconfiguration is not given to the local government within the following period (also the **relevant period**)—*

(a) for reconfiguration not requiring operational works—2 years starting the day the approval takes effect;

- (b) for reconfiguration requiring operational works—4 years starting the day the approval takes effect;
- (c) if the approval states a different period from when the approval takes effect—the stated period.....

To the extent this section applies to Council's Decision Notice MCUI/2011/4311, the 'relevant period' for the development is four (4) years and will expire on 28 September 2016. This request has been made within the required period.

1.4 REQUEST TO EXTEND PERIOD IN s341

Section 383 of the *Sustainable Planning Act 2009* identifies the requirements for making an application to extend the 'relevant period' mentioned under section 341 above. This section is reproduced in part as follows:

383 Request to extend period in s 341

(1) *If, before a development approval lapses under section 341, a person wants to extend a period mentioned in that section, the person must, by written notice—*

- (a) *advise each entity that was a concurrence agency that the person is asking for an extension of the period; and*
 - (b) *ask the assessment manager to extend the period.*
- (2) *The notices must be given at about the same time.*
- (3) *The notice to the assessment manager must—*
- (a) *if the assessment manager has a form for the request—be in the form; and*
 - (b) *include a copy of each notice given under subsection (1)(a); and*
 - (c) *be accompanied by the fee—*

In this instance:

- (i) The request to extend the relevant period has been made to the Assessment Manager, Toowoomba Regional Council;
- (ii) The relevant Concurrence Agency has been advised via the State Assessment and Referral Agency (SARA); refer to the notice attached at **Appendix D**. The Department of Transport and Main Roads was a Concurrence Agency for the original approval given the proximity of the subject land to a State-controlled Road (Ruthven Street);
- (iii) The application has been made on the prescribed form; refer to **Appendix A**; and
- (iv) The request is accompanied by the applicable fee (attached cheque for [REDACTED]).

2.0 REASONS FOR THE REQUEST

The applicants are making this request for an extension to the 'relevant period' for Development Permit MCUI/2011/4311 based on the following reasons:

1. The applicants have endured an economic down turn which has precluded the commercially viable development of the approved project for an extended period.
2. The applicants have evaluated their development options and have now decided to proceed with the development in its current, or in an as yet to be amended form based on renewed interest in the project, the availability of finance and an increased level of economic confidence.

The applicants are seeking an extension to the relevant period to allow for the development to be undertaken.

3.0 CONCLUSION

The applicants seek Council's favourable consideration of this request to extend the relevant period for Development Approval MCUI/2011/4311 for a further two years until **28 September 2018**.

Should you require any additional information or clarification please do not hesitate to contact the undersigned on telephone (07) 4632 2535 or by email on andrew@precinctplan.com.au

Yours sincerely



Andrew Bullen
Precinct Urban Planning

Appendix A: Request to Extend Relevant Period Form
& Land Owner's Consent

REQUEST TO EXTEND PERIOD

APPLICATION FORM

TOOWOOMBA REGIONAL COUNCIL, TOOWOOMBA REGIONAL COUNCIL, TOOWOOMBA REGIONAL COUNCIL, TOOWOOMBA REGIONAL COUNCIL
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(Section 383 Sustainable Planning Act 2009)

You **MUST** complete **ALL** questions unless the form indicates otherwise.

All terms used on this form have the meaning given in the *Sustainable Planning Act 2009* or the *Sustainable Planning Regulation 2009*.

1. Details of person making the request

Applicant Details

Full Name/s (individuals or company)	Etna Investments Pty Ltd & Nina Investments Pty Ltd
Contact Person	Andrew Bullen
Postal Address	C/- Precinct Urban Planning, PO Box 3038 Toowoomba QLD 4350
Phone	(07) 4632 2535
Mobile	
Fax	(07) 4632 4465
Email Address	andrew@precinctplan.com.au

2. What are the details of the approval sought to be extended?

Type of approval	Development approval No.	Date Issued
<input checked="" type="checkbox"/> Development permit	MCUI/2011/4311	29 June 2012 (NDN)
<input type="checkbox"/> Preliminary approval		

3. Does the approval involve only a mobile and temporary environmentally relevant activity (ERA)?

<input checked="" type="checkbox"/> No
<input type="checkbox"/> Yes - complete Table A

Table A - name of each local government area in which the mobile and temporary ERA is proposed to operate

4. Location of the premises (complete Table B. Identify each lot in a separate row)**Table B - street address/lot for the premises**

<input checked="" type="checkbox"/> street address/lot on the plan			
Number	795-797	Street	Ruthven Street
Suburb/Town	South Toowoomba		Postcode 4350
Lot #	8	Plan #	SP202999 (and Easement B & C on SP209454)

5. What are the details of the request and the reasons or justification for the extension?

Details of request	Reasons or justification
Refer to attached correspondence	

6. Were one or more Concurrence agencies involved in the original approval?

No

Yes - complete Table D. Submit with the request a copy of the notice required to be sent to the Concurrence agency under SPA Section 383 (1)(a)

Table D

Concurrence agency	Date notice sent
State Assessment and Referral Agency on behalf of Department of Transport and Main Roads	29 August 2016

7. Does the request relate to an aspect of the approval that involved another entity prescribed by Regulation?

No

Yes-complete Table E. Submit the with request a copy of the notice required to be sent to the entity under SPA Section 372 (1)(d)

Table E

Entity name	Date notice sent

8. Is owner's consent required for this request?

- No
- Yes - complete either Table F, Table G or Table H as applicable

Table F

Name of owner/s of the land	
Consent	I/We, the above-mentioned owner/s of the land, consent to the making of this request
Signature of owner/s of the land	
Date	

Table G

Name of owner/s of the land	Nina Decision Holdings Pty Ltd & Etna Decision Holdings Pty Ltd
<input checked="" type="checkbox"/>	The owner's written consent is attached or will be provided separately to the assessment manager

Table H

Name of owner/s of the land	
<input type="checkbox"/>	By making this request, I declare that the owner has given written consent to the making of the request

9. Does the development involve a state resource? (e.g. the application involves state land)

- No
- Yes - complete Table I

Table I - state owned resources (provide details for each state resource in a separate table)

Nature of state owned resource	
Nature of evidence required (tick the applicable box and attach a copy of the evidence to this form)	Evidence of an allocation of, or an entitlement to, the resource Evidence the chief executive of the department administering the resource has agreed to the request

10. Applicant's declaration

- By making this request, I declare that all information in this request is true and correct (note: it is unlawful to provide false or misleading information)

Company owner's consent to the making of a development application under the *Sustainable Planning Act 2009*

I, ALFREDO GERALDO GUARDALA [insert name in full]
Director of the below mentioned company and

I, _____ [insert name in full]
Director /Secretary of the below mentioned company

Etna Decision Holdings Pty Ltd
of _____

as owner of premises identified as follows:

795-797 Ruthven Street, South Toowoomba, being that land described as Lot 8 on SP202999 and Easement B & C on SP202994

consent to the making of a development application under the *Sustainable Planning Act 2009* by

Etna Investments Pty Ltd & Nina Investments Pty Ltd C/- Precinct Urban Planning

on the premises described above for the purposes of

Request to Extend the Relevant Period pursuant to section 383 of the *Sustainable Planning Act 2009*.

Alfredo Guardala [signature of Director]

signed on the 26 day of August 20 16.

_____ [signature of Director/company secretary]

signed on the _____ day of _____ 20 _____

Company seal [if used]

8. Is owner's consent required for this request?

- No
- Yes - complete either Table F, Table G or Table H as applicable

Table F	
Name of owner/s of the land	Etna Family Trust & Nina Family Trust
Consent	I/We, the above-mentioned owner/s of the land, consent to the making of this request
Signature of owner/s of the land	A.G. Guardala R. Guardala
Date	26/8/2016

Table G	
Name of owner/s of the land	Nina Decision Holdings Pty Ltd & Etna Decision Holdings Pty Ltd
<input checked="" type="checkbox"/> The owner's written consent is attached or will be provided separately to the assessment manager	

Table H	
Name of owner/s of the land	A.G. GUARDALA & R. GUARDALA
<input type="checkbox"/> By making this request, I declare that the owner has given written consent to the making of the request	

9. Does the development involve a state resource? (e.g. the application involves state land)

No

Yes - complete Table I

Table I - state owned resources (provide details for each state resource in a separate table)	
Nature of state owned resource	
Nature of evidence required (tick the applicable box and attach a copy of the evidence to this form)	<input type="checkbox"/> Evidence of an allocation of, or an entitlement to, the resource <input type="checkbox"/> Evidence the chief executive of the department administering the resource has agreed to the request

10. Applicant's declaration

By making this request, I declare that all information in this request is true and correct (note: it is unlawful to provide false or misleading information)

Appendix B: Negotiated Decision Notice
MCU1/2011/4311
Toowoomba Regional Council

Our Reference: MCUI/2011/4311
Contact Officer: Michael St. Clair
Contact: Toowoomba Office, 4688 6710

Development Application Decision Notice
NEGOTIATED DECISION NOTICE
Sustainable Planning Act 2009 Section 363

29 June 2012

Etna Investments Pty Ltd and Nina Investments Pty
C/- Precinct Urban Planning
PO Box 3038
TOOWOOMBA VILLAGE FAIR QLD 4350

Dear Sir/Madam

Location: 795-797 Ruthven Street, SOUTH TOOWOOMBA QLD 4350
Property Description: Lot 8 SP202999, Emt B SP209454, Emt C SP209454
Relevant Planning Scheme: *Toowoomba Planning Scheme 2003*

I wish to advise that on 22 June 2012, a decision was made to issue a Negotiated Decision Notice. This Negotiated Decision Notice replaces the Decision Notice previously issued and dated 14 February 2012.

Nature of Changes

All deletions are identified by strikethrough of text in the attached Schedule/s.

All additions are identified by bolded text in the attached Schedule/s.

Details of Approval

Development Permit – Material Change of Use - Impact

Referral Agencies

Concurrence Agencies Name & Address: Department of Transport & Main Roads
PO Box 645
TOOWOOMBA QLD 4350

Advice Agencies Name & Address: N/A

Conditions and Advices

Assessment Manager's Conditions: As per attached Schedule 1

Concurrence Agency Conditions: As per attached Schedule 2

Rights of Appeal

Attached is an extract from the *Sustainable Planning Act 2009* which details your appeal rights regarding this decision.

Yours faithfully

.....
David Hursthouse
Senior Planner, Development Assessment



TOOWOOMBA REGIONAL COUNCIL

A.B.N. 997 8830 5360

SCHEDULE 1

DEVELOPMENT PERMIT FOR MATERIAL CHANGE OF USE - IMPACT

APPLICATION NUMBER:	MCUI/2011/4311
APPLICANT:	Etna Investments Pty Ltd and Nina Investments Pty
LOCATION:	795-797 Ruthven Street, SOUTH TOOWOOMBA QLD 4350
PROPERTY DESCRIPTION:	Lot 8 SP202999, Emt B SP209454, Emt C SP209454
DECISION DATE:	22-Jun-2012
APPROVED USE:	Food Outlet Cafe Restaurant
ZONING:	Mixed Housing/Suburban Centre

A. ASSESSMENT MANAGER'S CONDITIONS:

PARAMETERS OF APPROVAL

1. The development must comply with the provisions of Council's Local Laws, Planning Scheme Policies, Planning Scheme and Planning Scheme Codes to the extent they have not been varied by this approval.
2. Unless otherwise stated, all conditions must be complied with prior to the commencement of use and thereafter.

GENERAL

APPROVED AND AMENDED PLANS

3. The development must be carried out generally in accordance with the Approved Plan/s listed below, subject to and modified by the requirements listed below, and by other conditions of this approval:

Plan No: 9495.01, DA01, Revision C

Description: Site Plan, prepared by Thomson Adsett dated June 2011 and received by Council on the 11 August 2011

Plan No: 9495.01, DA02, Revision A

Description: Floor Plan, prepared by Thomson Adsett dated June 2008 and received by Council on the 11 August 2011

Plan No: 9495.01, DA04, Revision A

Description: Elevations, prepared by Thomson Adsett dated June 2008 and received by Council on the 11 August 2011

Plan No: 9495.01, DA06, Revision A

Description: Perspectives, prepared by Thomson Adsett dated June 2008 and received by Council on the 11 August 2011

Plan No: 9495.01, DA05, Revision A

Description: Sections, prepared by Thomson Adsett dated June 2008 and received by Council on the 11 August 2011

PARTICULAR USE

4. This Development Permit is for a Food Outlet (Cafe Restaurant) of 415m² GFA as shown on the Approved Plans (as amended), and does not imply or comprise an approval for any other use(s).

APPROVED DOCUMENTATION

5. A legible copy of the Approved Plans and Approved Documents bearing Council's approved stamp endorsement and the Decision Notice must be available on the subject land and available for inspection at all times during construction and earthworks.

MAINTENANCE

6. The development must be maintained in accordance with the Approved Plans and Approved Documents subject to and modified by any conditions of this approval.

AMENITY

VISUAL AND GENERAL AMENITY

7. Any graffiti on the buildings/structures/fences on the subject land must be immediately removed.
8. All buildings/structures and the subject land must be maintained in a clean and tidy manner, at all times.
9. All plant, air-conditioning equipment and the like must be visually screened from all street frontages.
10. Any plant located on the roof top of buildings/structures must be enclosed by visual screening devices equal to height of the highest part of that plant.
11. Open storage areas, loading areas, refuse storage areas and other unsightly areas, must be screened from view from all street frontages and public places.

FENCING

FENCING – COMMERCIAL OR INDUSTRIAL DEVELOPMENT ADJOINING RESIDENTIAL USES

12. The height of the existing solid screen fence immediately adjacent the existing use onsite on the northern common boundary with residential uses to the north must be continued the entire length of the boundary. The solid screen fence must have a minimum density of 11kg/m².
13. *A 1.8m high solid screen fence with a minimum density of 11kg/m² must be provided along ~~all other boundaries of the subject land that adjoin any residential premises~~ **the western boundary of the subject site as shown on Floor Plan, Job No 9495.01 DA02 Revision A, prepared by Thomson Adsett and dated June 2009. with the exception of those boundaries within the front setback of the development or, in the case of a corner allotment adjacent to a road frontage, the fence must not exceed a maximum height of 1.2m.***
 - 13.1 **All “refrigeration equipment”, “pumps”, “regulated devices”, and “airconditioning equipment” as defined by the *Environmental Protection Act 1994* must not be located on or behind the western building line of the proposed Food Outlet (Café/Restaurant).**
14. Fencing materials must be non-reflective and compatible with other fences and buildings in the locality. Compatibility of fences is determined by compatibility of fence heights, style, material and degree of articulation along the fence line. The existing fencing on the boundaries of the subject land must be replaced, where required, to match the materials and style of the fence provided for the development. For the purposes of this condition, the 'locality' includes all properties either side of the street within the block (ie. that section of the street between two intersecting streets) that the subject land is located.

15. Where a retaining wall exists or is required along an existing property boundary, and a solid screen fence is required along this boundary, a solid screen fence must be erected at the top of the retaining wall/s to ensure a minimum height of 1.8m is achieved on both sides of the fence.

Note: A separate Building Works application will be required where the fence is erected along the common boundary with a residential property, if the combined height of the wall/fence, where measured from natural ground level, exceeds 2.0m.

16. Boundary fences must not be erected in a parallel arrangement with existing fences or retaining walls erected along the same boundary. That is, the old fence is to be completely removed.
17. Where timber paling fences are provided, the palings must be lapped so that no gaps will result due to the natural shrinkage of timber.
18. Pay the total cost of the new fencing and the removal of any existing fencing.

LANDSCAPING

LANDSCAPING – GENERAL

19. Submit to the Manager, Development Assessment for approval, a Landscape Plan for all landscaping associated with the development. The plan must be prepared by a suitably qualified and experienced Landscape Architect, horticulturist, or other person experienced in landscape design and construction. The Landscape Plan must be submitted to Council prior to the commencement of any works on the subject land.
20. The Landscape Plan must provide for deep, dense and complete screening of the development when viewed from adjoining residential areas.
21. The Landscape Plan must show the function of planting areas (e.g. screen planting, enhancement etc.), plant spacing and species to be used.
22. The Landscape Plan must also detail:
 - 22.1 The typical species to be planted, consisting mainly of drought-tolerant species suitable to their individual location on site; and
 - 22.2 The number and size of plants; and
 - 22.3 The typical planting detail including preparation, backfill, staking and mulching.
23. Landscape areas must be maintained as per the approved Landscape Plan, and the site must remain in a clean and tidy state at all times.

LIGHTING

OUTDOOR LIGHTING – IMPACT MITIGATION

24. The outdoor lighting of the development must mitigate adverse lighting and illumination impacts by:
 - 24.1 Providing Outdoor Lighting that is designed, installed and regulated in accordance with the parameters outlined in *Australian Standard AS 4282 – Control of the Obtrusive Effects of Outdoor Lighting*; and
 - 24.2 Installation of outdoor lighting that:
 - (i) Provides graduated intensity lighting with lower level brightness at the perimeter of the subject land and higher intensities at the centre of the subject land;
 - (ii) Is directed onto the subject land and away from neighbouring properties; and

- (iii) Uses shrouding/baffling devices to preclude light overspill onto surrounding properties where necessary.

REFUSE

WASTE MANAGEMENT

- 25. All waste generated from construction of the development must be effectively controlled on site before disposal. All waste must be disposed of in accordance with the *Environmental Protection (Waste Management) Regulation 2000*.
- 26. All waste generated on site must be managed in accordance with the waste management hierarchy as detailed in the *Environmental Protection (Waste Management) Policy 2000*.

REFUSE STORAGE AREA - GENERAL

- 27. Refuse storage areas must be provided on the premises within a building, outbuilding or other enclosed structure so that they are screened from public view with a minimum 1.5m high solid fence or wall.
- 28. The size and capacity of the refuse storage areas must be sufficient to accommodate:
 - 28.1 The level of waste likely to be generated from the development having regard to the frequency of refuse collection;
 - 28.2 General refuse bins of an industrial type appropriate to the nature and scale of the use;
 - 28.3 Recycling bins appropriate to the nature and scale of the use; and
 - 28.4 A floor area with dimensions which exceed the size of the nominated bin size by at least 300mm at the rear and both sides and 600mm at the front.

WASTE COLLECTION

- 29. The refuse and recycling bins must be located in a manner that allows the refuse vehicle to pick them up automatically without the driver or any other person having to relocate them.
- 30. The collection of putrescible waste arising from the activities undertaken on this development must be collected and removed at periods not exceeding seven days.
- 31. The waste collection method must ensure that waste is adequately managed to prevent escape of contamination.
- 32. Waste removal is to be conducted between the hours of 7.00am and 6.00pm, excluding Sundays and Public Holidays.
- 33. Refuse and recycling bin collection areas must be maintained to ensure that:
 - 33.1 Waste containers are kept in a clean state and in good repair;
 - 33.2 Waste containers are provided with tight-fitting lid assemblies designed to prevent ingress of pests and water;
 - 33.3 All waste containers supplied are kept within the boundaries of the premises; and
 - 33.4 There is unobstructed access to the containers for the removal of waste.

ENVIRONMENTAL MANAGEMENT

AIR QUALITY

34. No particulate matter or visible contaminant, including dust, smoke, fumes and aerosols likely to cause environmental harm or environmental nuisance as defined in the *Environmental Protection Act 1994* must at any time emanate beyond the boundaries of the subject land.

ODOUR

35. Noxious or offensive odours must not be emitted beyond the boundaries of the premises.
36. Emissions from the use must be in compliance with those acceptable limits specified within the *Environmental Protection (Air) Policy 2008*. Conduct an emission assessment within three (3) months of the use commencing and thereafter once every twelve (12) months to ensure emissions are within the acceptable limits of the above policy. Council must be advised immediately should a non-conforming emission be identified during testing.

ACOUSTIC IMPACT MITIGATION – OPERATIONS

37. Unless otherwise approved in writing by Council, building work (as per the definition of the *Environmental Protection Act 1994*) that creates audible noise must be confined to:
- 37.1 Monday to Saturday:
- 6.30am to 6.30pm
- 37.2 Sundays and Public Holidays:
- Nil
38. Unless otherwise approved in writing by Council, the approved use/s must only operate between the following hours:
- 38.1 Monday to Saturday:
- 7.00am to 10.00pm
- 38.2 Sundays and Public Holidays:
- 7.00am to 10.00pm
39. Refuse vehicle and service vehicle deliveries and/or pick-up for the development must only be made on the following days and during the following hours:
- 39.1 Refuse Vehicles:
- Mondays to Saturday – 7.00am to 6.00pm; and
 - Sundays and public holidays – 8.00am to 6.00pm.
- 39.2 Service Vehicles
- Mondays to Saturdays – 7.00am to 6.00pm; and
 - Sundays and public holidays 8.00am to 6.00pm.

WATER CONSERVATION

40. The building must be provided with rainwater storage tank/devices that:
- 40.1 receives the rainfall from a roof catchment area of at least 50% of the total roof area;

40.2 are plumbed to all internal toilets, all wash-down and external taps; and

40.3 have a minimum storage capacity of 3000 litres per 100m² of total roof area.

PROTECTION AND REPAIR OF DAMAGE TO COUNCIL AND PUBLIC UTILITY SERVICES INFRASTRUCTURE AND ASSETS

41. The applicant is to undertake all reasonable measures to protect Council and public utility services infrastructure during construction of the development.
42. The alignment and level of any services/assets above or below ground, likely to be affected by the proposed development, must be identified prior to detailed design or building work. Any conflict between the development and an existing or proposed service must be referred to the relevant service authority for determination.
43. Any building or works undertaken near Council services must be in accordance with the Toowoomba Planning Scheme or Policy.
44. The applicant is to meet any costs to repair damage to any Council and public utility services infrastructure and asset where damage is a result of the proposed development. Damage to infrastructure assets must be repaired immediately where it creates a hazard to the community, including a pedestrian or vehicular safety hazard. In circumstances where the damage does not create a hazard to the community, it must be repaired immediately on completion of the works associated with the development.

SEWERAGE

INFRASTRUCTURE SEWERAGE (CONNECTION TO RETICULATED SYSTEM)

45. The development must be connected to Council's existing sewerage reticulation system at 313 Alderley Street at no cost to Council. This includes augmentation works external to the development as required to adequately service the development.
46. A development application for a Development Permit for Operational Works must be submitted to, and approved by, Council for the abovementioned sewerage work. The design and construction of the works must be certified by a RPEQ – Civil.
47. The design and construction of the works must be in accordance with Council's requirements as set out in Council's Waste Water Infrastructure Asset Management Policy 2.4 and relevant development standards used by Council. The works must include, but not be limited to, the construction of pipework, manholes, upstream connection points, connection to the existing system, relocation of utility and Council services, reinstatement of all properties and road reserve affected by the works, and all costs including any compensation/costs associated with obtaining agreement from owners/trustees of properties affected by the construction of the works within the properties.
48. Any connection to or modification of Council's live sewerage infrastructure must be undertaken by Council. The applicant must request a Private Works Quotation from Council, make payment for the works, and have the works completed by Council, prior to the issuing of the final in relation to the Compliance Certificate/Permit for Plumbing and Drainage for the proposed development.

SEWERAGE (APPROVAL OF LAND OWNER)

49. Where it is necessary for any proposed sewer to be constructed through land not part of the development, the applicant is to obtain the written approval of the owner of the land and provide evidence of such written approval to Council prior to endorsement of engineering plans and specifications for the works or prior to any request for Council to prepare a quotation for works.

STORMWATER

STORMWATER INFRASTRUCTURE DRAINAGE (DESIGN AND CAPACITY)

50. The applicant is to construct a stormwater drainage system to service the development on the subject land which complies with the requirements of State Planning Policy 4/10 (Healthy Waters).
51. The system must be designed taking into account surface and underground stormwater drainage structures and appurtenances to cater for all stormwater runoff, including surcharge flows, to a storm return frequency period of once in 100 years. The stormwater drainage system must collect all runoff falling on and coming to the proposed development site, and convey it to a point of legal discharge.
52. Design and construction of all internal and any external stormwater drainage works must comply with the relevant sections of AS/NZS 3500.3.2:1998 as well as the QUDM.
53. ~~The stormwater drainage system must be designed so that peak flows from the developed site do not exceed pre-developed peak flows from the site to Alderley Street, for storm events with an ARI of 2 years, up to and including 100 years. That is, there is to be a “no-worsening” effect in Alderley Street as a result of this development.~~

The stormwater system is to be designed so that any surcharge from the system does not impact on any neighbouring property. The proposed stormwater tank system is to be designed so as to provide additional storage volume within the tank to be retained as spare capacity to cater for the runoff from extreme storm events.

54. The internal works are to generally conform to the Preliminary Stormwater Layout Plan prepared by Opus (Australia) Pty Ltd with the clarification (as provided by Opus Engineer Asif Sadiq on 6th September 2011) that the stormwater drainage facility adjacent to the western boundary is to be by way of underground pipe with a spoon channel constructed on the surface.
55. External to the site the stormwater drainage is to be connected to council's underground system in Alderley Street.
56. The works must include the construction of pipework, manholes, connection to Council's existing underground system, provision of a gross pollutant trap, gully pits, surcharge pits, provision of bio-retention pods within applicable landscape areas, relocation of utility and Council services, reinstatement of all properties and road reserve affected by the works.
57. A Development Application for a Development Permit for Operational Works for the internal and external stormwater drainage works including internal stormwater quality works must be submitted to and approved by Council prior to the commencement of any works on site.
58. The design and the construction of the works must be certified by a Registered Professional Engineer Queensland – Civil as follows:
 - 58.1 A design certificate must be submitted with the application; and
 - 58.2 A construction supervision certificate must be submitted at the completion of the approved works.

STORMWATER

ENVIRONMENTAL MANAGEMENT – STORMWATER QUALITY MANAGEMENT

59. An on-site Gross Pollutant Trap (Humeceptor or similar) must be constructed on-site by the applicant, upstream of the connection to drainage system external to the subject site. The Gross Pollutant Trap (GPT) must be installed within the subject site at the downstream end of the internal underground stormwater system and must treat the stormwater runoff from all sealed areas of the site, excluding roof areas. The GPT must have capacity for hydrocarbon retention and be designed to achieve as a minimum the *Healthy Waterways* target of a minimum of 90% load reduction in gross pollutants for the developed site. Bio-retention pods must be incorporated into the landscape areas within/adjacent to the carparking, driveways and manoeuvring areas of the subject site for all stages of the development to achieve stormwater quality management targets as outlined in State Planning Policy 4/10 (Healthy Waters) and its referenced codes and guidelines.
60. Works must be completed prior to the commencement of use of the development.
61. The GPT must be maintained for the period of the use of the development of the subject land in accordance with the manufacturer's instructions and any bio-retention pods within the landscaping areas are to be maintained to ensure continuing level of performance for water quality for stormwater discharged from the subject land.
62. Contaminants or contaminated water must not be released from the subject land except for:
 - 62.1 Uncontaminated overland stormwater flow;
 - 62.2 Uncontaminated stormwater to the stormwater system; and/or
 - 62.3 Contaminants released to sewer in accordance with a trade waste permit granted by Council under the *Water Supply (Safety and Reliability) Act 2008*.
 - 62.4 The applicant is to ensure that:
 - 62.4.1 Any spillage or contaminates are cleaned up immediately by a method other than hosing, sweeping or otherwise releasing the contaminants into stormwater drainage, a roadside gutter or a water course;
 - 62.4.2 Contaminants such as cigarette butts and other gross pollutants do not enter the stormwater drainage systems.

STORMWATER – RE-USE SYSTEM

63. The development must incorporate a stormwater re-use system utilising stormwater detention structures and/or tanks to ensure water is reused throughout the site to supply amenities, facilities, landscaping areas, wash down areas and the like.

WATER INFRASTRUCTURE SUPPLY (CONNECTION TO RETICULATED SYSTEM)

64. The development must be connected Council's reticulated water supply in accordance with Council's Water Infrastructure Asset Management Policy 2.3 and other Council standards.
65. Should the development require the provision of a new-metered water service, and/or upgrading or extension of Council's existing reticulation main, then the connection of this service, the disconnection of any existing services, and/or upgrading/extension of Council's existing reticulation mains will be at no cost to Council.

PROVISION OF SEPARATE WATER SERVICES

66. Each individual tenancy must be provided with a separate system for the metering of water consumption in accordance with Council's Water Infrastructure Asset Management Policy 2.3.

APPROVAL OF WORKS (COUNCIL INFRASTRUCTURE)

67. Where works affecting Council's infrastructure are to be carried out by an entity other than Council:
- 67.1 All works must be designed and constructed in accordance with the requirements of Council's Water Infrastructure Asset Management Policy 2.3.
 - 67.2 A Development Application for a Development Permit for Operational Works for the works must be submitted to and approved by Council.
 - 67.3 The design and the construction of the works must be certified by a Registered Professional Engineer Queensland – Civil as follows:
 - (a) A design certificate must be submitted with the application; and
 - (b) A construction supervision certificate must be submitted at the completion of the approved works and prior to acceptance of the works on-maintenance.
 - 67.4 The applicant is to meet all checking and inspection fees at the time of submitting the Development Application to Council.
 - 67.5 The works must be completed and accepted on-maintenance prior to the commencement of the use.
 - 67.6 A defects liability security must be lodged for external works prior to Council accepting these works 'on-maintenance'. The amount of security required will be advised by Council following submission of engineering drawings for Council approval. This security will be released upon Council accepting the external works "off-maintenance", at the end of the defects liability period.
 - 67.7 The defects liability period must be a minimum period of 12 months.

AND

68. During the course of construction works, the applicant is to ensure that all works are carried out by a qualified contractor, be responsible for all aspects of the works, including public safety, and ensure adequate barricades, signage and other warning devices are in place at all times.

ROADWORKS (EXTERNAL)

PEDESTRIAN FOOTPATHS

69. Safe pedestrian access along Council's footpath/s must be maintained at all times. Should access to the footpath/s need to be restricted, a separate Hoarding Permit must be obtained from Council's *Regional Coordinator Traffic Management, prior to the commencement of the works.*

CAR PARKING AND MANOEUVRING

TRAFFIC WITHIN SITE CAR PARKING AND MANOEUVRING

- 70 The premises must be provided with a total of an additional 12 on-site car parking spaces, together with standing and manoeuvring for SRV service vehicles. Carparking and manoeuvring areas must:
- 70.1 Be provided with a sealed surface and be line marked or otherwise delineated to the minimum dimensions detailed in the Toowoomba Planning Scheme 2003 and AS2890 - Parking Facilities;
 - 70.2 Be designed and constructed in accordance with the requirements of AS2890.1.

- 70.3 Be designed to ensure disabled car parking spaces are located in close proximity to a primary building entrance and meet the requirements of AS2890.1 Clause 2.4.5 and AS1428.1 Clause 1.7.2 and AS2890.6:2009;
 - 70.4 Be provided with signage and pavement markings that indicate the location of parking areas and the proposed flow of traffic through the site;
 - 70.5 Be designed to enable all vehicles to enter and leave the site in a forward gear;
 - 70.6 Be kept and used exclusively for vehicle parking and manoeuvring; and
 - 70.7 Be accessible and available to the general public and staff during approved hours of operation.
71. The car parking and manoeuvring areas are to be maintained for the period of the use of the development site.

ENGINEER'S CERTIFICATION OF WORKS-

ENGINEER'S CERTIFICATION/SUPERVISION OF WORKS

- 72. Plans and specifications for all works associated with car parking and vehicular access, stormwater drainage, or any works required on Council infrastructure, must be prepared and certified by a Registered Professional Engineer Queensland – Civil (RPEQ). An RPEQ must supervise the execution of the works, with all executed works being detailed on a Certificate of Supervision, and a copy of the Supervision Certificate must be submitted to Council upon completion of the works.
- 73. Where any condition refers to, or requires, an Engineer to perform task or function, the Engineer must hold professional indemnity insurance to the value of \$2,000,000.
- 74. A copy of the 'Certificate of Currency' of Professional Indemnity Insurance must be submitted to Council prior to the commencement of the works and maintained during the development works.

BUILDING OVER, OR NEAR, COUNCIL SERVICES

- 75. Any construction carried out near existing Council services must be in accordance with Council's Planning Scheme 2003 Development Works Code 9.1 Development Near Underground Utility Services (Sewer, stormwater drain, water main or Associated Structure), Council's Water Infrastructure Asset Management Policy 2.3 and Council's Waste Water Infrastructure Asset Management Policy 2.4; and the *Water Supply (Safety and Reliability) Act 2008*. The following will apply:
 - 75.1 All connection points must be located/relocated to a minimum distance of 1000 mm clear of the proposed structure/s, at the applicant's expense.
 - 75.2 Any works on Council's existing 'live' sewers is to be carried out by Council at the applicant's expense.
 - 75.3 The Council sewer/s, and any interallotment stormwater drainage, are to be located accurately prior to the commencement of building works and all piers/foundations for all new structures positioned a minimum of 750mm clear of the Council sewer, (2500mm clear from the centre of the existing sewer/stormwater manhole). Structural protection must be provided for the Council sewer/stormwater infrastructure in accordance with the above Code.
 - 75.4 A minimum horizontal clearance of 750mm must be maintained to any part of the proposed structure/s less than 4.0m in height.

- 75.5 A minimum of 2500mm radius of clear level area must be maintained around any Council sewer/stormwater manhole upon completion of the works. Council must carry out any alterations required to sewer/stormwater manhole to suit finished levels for the development at the applicant's expense.
- 75.6 A minimum of 600mm of cover, (maximum depth of 4 metres), is to be maintained to the top of the Council sewer upon completion of the development.
- 76.7 The applicant is to meet all costs arising as a consequence of any damage to the existing sewer, either during construction or due to the movement of any buildings following completion of construction.

EARTHWORKS

SITWORKS / EARTHWORKS (BULK EARTHWORKS GREATER THAN 20 CUBIC METRES)

- 76. As earthworks for the development involve cut/fill greater than 1.0m in height and/or excavation of a quantity of material greater than 20 cubic metres is to be imported to or removed from the site, it is required that a Development Application for a Development Permit for Operational Works for bulk earthworks be submitted to and approved by Council.
- 77. All earthworks must be undertaken in accordance with the provisions of AS 3798 'Guidelines on Earthworks for Commercial and Residential Developments', with Geotechnical Testing undertaken in accordance with Section 8 of the Standard, and to a minimum of 'Level 2' as defined in Appendix B. Test results as required by AS 3798, and a certificate of quality and uniformity of fill must be provided by a RPEQ and submitted to Council upon completion of the works on site.
- 78. The design and the construction of the works must be certified by a Registered Professional Engineer Queensland (RPEQ) – Civil as follows:
 - (a) A design certificate shall be submitted with the application; and
 - (b) A construction supervision certificate shall be submitted at the completion of the approved works on the site.
- 79. Detailed plans of earthworks and associated batters must be submitted with the Development Application for Development Permit for Operational Works.
- 80. Proposed earthworks and batter designs must take into account existing retaining walls, structures and services within the vicinity.
- 81. All earthworks, including batters must be fully contained within the subject land and must not in any way impact on the properties or road reserve adjoining the subject land.
- 82. Cut, fill and other stored material must be contained wholly within the subject land.
- 83. Contaminated material must not be used as fill on the subject land. Any filling must be undertaken using inert materials only.
- 84. Waste material as a result of demolition works and excavation works must not be used as fill where the material includes the following as defined within the *Environmental Protection [Interim Waste] Regulation 1996*:
 - 84.1 Commercial waste;
 - 84.2 Construction or demolition waste;
 - 84.3 Domestic clean-up waste;
 - 84.4 Domestic waste;
 - 84.5 Garden waste;
 - 84.6 Industrial waste;
 - 84.7 Interceptor waste;
 - 84.8 Recyclable biodegradable waste;
 - 84.9 Recyclable waste; and
 - 84.10 Regulated waste.

85. All waste material above as defined within the *Environmental Protection (Interim Waste) Regulation 1996* must only be disposed at a waste facility approved for the receipt of waste.
86. A Development Application for a Development Permit for Operational Works for bulk earthworks must also be submitted to and approved by Council for any site proposed to source fill for, or receive fill from, the development.
87. In conjunction with an Operational Works application to Council, the following must be addressed:
 - 87.1 Details of the location of any material to be sourced for fill, including the volume of fill to be moved from any particular source site;
 - 87.2 Details of the final location for any material to be exported from the site from excavations;
 - 87.3 The haulage route/s that will be used. Approval for the haulage truck sizes and the final haul route(s) is to be obtained prior to works commencing; and
 - 87.4 Details identifying the source/disposal site(s) for material imported/exported as part of the development. The site(s) must have a current development approval enabling them to export/accept any material.

RETAINING WALLS AND BATTERS

88. Earthwork batters and retaining walls greater than 1.0m in height must be submitted as part of a Development Application for a Development Permit for Operational Works for bulk earthworks to Council for approval.

Advice: Retaining walls and earthworks batters designs shall take into account existing retaining walls, structures and services in the vicinity.
89. The design and the construction of the works must be certified by a RPEQ – Civil.
90. The construction of earthworks batters and retaining walls must be undertaken in accordance with Performance Criteria P12 to P18 of the Development Works Code 9.1 under the *Toowoomba Planning Scheme 2003*. In particular:
 - 90.1 All proposed retaining walls must not exceed 1.0 metre in height; and
 - 90.2 The slope of batters must not exceed a slope of 25% (1 in 4).
91. The proposed retaining walls must not impede, concentrate or pond stormwater from adjoining properties.
92. All components of retaining walls including subsoil drainage, drainage backfill material, ground/rock anchors, geogrid and footings must be fully contained within the subject land.
93. The construction of the retaining walls must not in any way impact or encroach on the properties adjoining the subject land or the road reserve.
94. Existing retaining walls on the subject land or in the vicinity must be taken into account when designing and constructing new retaining walls on the subject land.

EROSION AND SEDIMENT CONTROL

EROSION AND SEDIMENT CONTROL

95. All works necessary to control erosion and sedimentation and/or the loss and movement of soil during the period of construction must be provided. Such works must include, but not be limited to, the construction of sediment fences, earth berms and temporary drainage designed to prevent sediment being transported to adjoining properties, roads and/or drainage systems. All disturbed areas must be mulched or turfed/grassed as soon as possible during construction.

96. Erosion and sedimentation controls must be implemented as necessary, and must be maintained at all times during the course of the construction period. Should the proposed controls prove to be ineffective then Council will require the installation of additional measures.

SITE MANAGEMENT

97. Measures must be put in place to prevent site vehicles tracking sediment and other pollutants onto adjoining streets during the course of the construction period, and to prevent dust nuisance during construction and the ensuing 'on-maintenance' period.

CONSTRUCTION MANAGEMENT

98. Stockpiles of topsoil, sand, aggregate, spoil, or other material capable of being moved by the action of wind or running water must be stored clear of drainage paths, with appropriate measures to prevent entry into either the road and/or drainage system.

REINSTATEMENT OF ROAD/DRAINAGE SYSTEM

99. Should it be necessary for the road and/or drainage system to be reinstated or cleaned up due to erosion and/or sedimentation from the site, then such works must undertaken at no cost to Council.

Such works must be undertaken immediately where there is a potential hazard to pedestrians and/or passing traffic.

B. GENERAL ADVICES – MATERIAL CHANGE OF USE

Infrastructure Contributions / Charges

- 1) With the introduction of the *Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Act 2011*, an applicant's obligations with respect to infrastructure contributions/charges is now contained in a separate adopted infrastructure charges notice rather than in this development approval.

Fire Ants

- 2) The State of Queensland has been declared a quarantine area for the Red Imported Fire Ant. Should this approval involve the movement of restricted items from areas of known infestation the provisions of the *Plant Protection Act 1989* apply. Compliance with statutory provisions must be achieved.

Flammable and Combustible Liquids

- 3) Should flammable or combustible liquids be stored on the premises in quantities exceeding those deemed as a Minor Storage under Section 2 of AS 1940-1993 "The Storage and Handling of Flammable and Combustible Liquids", then the premises must be licensed in accordance with the *Dangerous Goods Safety Management Regulation 2001*.

Disposal of Construction & Demolition Material

- 3) Construction and demolition material must be lawfully disposed of with regard to the *Environmental Protection (Waste Management) Regulation 2000*.

On-Site Construction Waste Management

- 4) On-site construction waste management (including the storage and disposal of nightsoil) must comply with the *Environmental Protection (Waste Management) Regulation 2000*.

Refuse Disposal – Human Waste

- 5) The storage and disposal of human waste must comply with the *Environmental Protection (Waste Management) Regulation 2000*.

Advertising Signs

- 6) A separate Development Permit for Operational Works may be required for Advertising Signs regulated under the relevant Planning Scheme.
- 7) Temporary signage is regulated separately under Local Law No.8 (Control of Advertising).
- 8) A sign more than 2.0 metres in height from natural ground level may require a Development Permit for Building Work. The applicant must liaise directly with Council's Building Services Section to determine any requirement for a Development Permit for Building Work.

When Approval Takes Effect

- 9) This approval takes effect in accordance with the provisions of Section 339 of the *Sustainable Planning Act 2009*.

When Approval Lapses

- 10) This approval will lapse in accordance with the provisions contained Section 341 and 342 of the *Sustainable Planning Act 2009*, unless otherwise stated in the conditions of Development Approval.

Trade Waste Approval

- 11) This approval does not infer or give approval to the owners or occupiers of the subject land to discharge trade waste to Council's sewers. Council administers trade waste regulation as defined in the *Water Supply (Safety & Reliability) Act 2008* through its Trade Waste Policy and Trade Waste Environmental Management Plan.
- 12) By definition, 'trade waste' means "waterborne waste from a business, trade or manufacturing premises, other than-
 - 12.1 waste that is a prohibited substance; and
 - 12.2 human waste; and
 - 12.3 stormwater."
- 13) A separate approval must be obtained from Council's Trade Waste Services for such discharge from the proposed use/s. Each application will be assessed on the nature of the waste to be treated, the proposed treatment method and the site location. In general, a trade waste approval may require installation of:
 - 13.1 Separate trade waste drainage;
 - 13.2 Pre-treatment equipment depending on the type of business to be operated; and
 - 13.3 A sub water meter or meters to measure all incoming water (town and rainwater) as a means of measuring the discharge to sewer.
 - 13.4 Larger industries as defined in the Trade Waste Environmental Management Plan are subject to special requirements, e.g. supply of discharge flow meters, discrete sampling point, monitoring and sampling equipment at the cost of the Trade Waste Generator.
 - 13.5 Application forms and advice may be obtained from Council's Trade Waste Services.
- 14) Trade waste and contaminated wastewater must not be permitted to drain into a stormwater drain or place where it may move into stormwater and impact on the environment. (see the *Environmental Protection (Water) Policy 2009*).
- 15) The following requirements will apply to applications for trade waste discharge from minor category/low risk businesses (commercial and retail shops):

- 15.1 The trade waste drainage must be designed by a hydraulics engineer or hydraulics consultant. A copy of the hydraulics and floor plans must be submitted to Trade Waste Services for assessment;
 - 15.2 The trade waste stream and domestic waste stream must discharge separately to the sewer;
 - 15.3 The design, installation and capacity of grease arrestors, oily water separators and oil arrestors must be approved by Council.
 - 15.4 Grease arrestors with a capacity of 2000 litres or greater must be lined with an impermeable coating or membrane that prevents corrosion of the concrete surface. (eg epoxy lining);
 - 15.5 The maximum capacity of an individual grease arrestor must not exceed 2000 litres unless with the express written approval of Council. Where the capacity requirement is greater than 2000 litres, additional arrestors must be used with each arrestor acting as a discrete installation treating a defined waste stream;
 - 15.6 Pre-cast concrete arrestors must be fitted with full length and full width opening, gas tight covers and frames. A hose tap must be located within 5 metres of each trap; and
 - 15.7 Where it is intended that several generators share the use of a grease arrestor, the following information is required to be tabled on the plans submitted for approval:
 - 15.7.1 size of arrestor;
 - 15.7.2 total fixture loading in litres discharged by all generators (refer Trade Waste Pre-treatment Guidelines);
 - 15.7.3 names of businesses and shop numbers sharing the grease arrestor.
 - 15.8 A cleaner's sink or an in-floor bucket trap must be installed in each tenancy or the tenant must have access to communal cleaners facilities for the purpose of disposing floor washing wastewater.
- 16) Bin Wash/Bin Storage Areas Where it is not possible to connect to the kitchen grease arrestor, the bin storage area must drain to a separate 550 litre capacity grease arrestor via an in-floor bucket trap:
- 16.1 the bin store area must be bunded to capture spills and contaminated water as well as divert overland storm flows;
 - 16.2 the bin store area must also be roofed to prevent ingress of rainwater to the grease arrestor and sewer; and
 - 16.3 as an alternative to roofing, a "demand driven" stormwater diversion valve may be installed between the bucket trap and the grease arrestor.
- 17) Where there are multiple trade waste generators on one property, approved trade waste water meters must be installed for each generator's premises. Meters must be located in a position that is easily accessed at all times (not in ceiling or roof cavity).

Buildings

- 18) The proposed development has only been assessed in accordance with the provisions of the Planning Scheme. No assessment has been made in respect of the provisions of the *Building Code of Australia*.

Further Development Approvals *Sustainable Planning Act 2009*

- 19) Further Development Permits, as required by the *Sustainable Planning Act 2009* for work associated with this approval including Building Works, Operational Works, Plumbing and Drainage Works, must be obtained and associated works completed in accordance with those development permits prior to the commencement of the use or as otherwise stated. The further development permits required are also referenced in Section 4 – Further Development Permits Required, of this Decision Notice.

Environmental Protection Act 1994 – Environmental Management of Use

- 20) The use must be carried out in accordance with the provisions of the *Environmental Protection Act 1994*, *Environmental Protection Regulations 1998* and associated policies *Environmental Protection Policies for Air, Water, Noise and Waste Management*, to prevent the release of contaminants or environmental harm. The use must comply with the *Environmental Protection Act 1994*.

Sub-metering of all new multi-unit residential and non-residential premises

- 21) Any applications for a Development Permit for Building Works lodged for new premises drawing a water supply from a water service provider must include sub-meters for separate lots in any type of building under a community title scheme and sole occupancy units in new buildings under a single title. The provision of sub-meters will allow for the delivery of personalised information on water use to households and businesses in new multi-unit developments.

Food Premises

- 22) Prior to the operation of any Licensable food business an application must be submitted to Environment & Health Services to obtain a license under the *Food Act 2006*.

The Queensland Government has developed a waste strategy for Queensland which is due for release in the foreseeable future. The new strategy is likely to include an economic instrument (a levy) for disposal of waste into landfill.

- 23) Further information regarding licensable food businesses is available at www.lgtoolbox.qld.gov.au or by contacting Council.

C. ATTACHMENTS:

- Concurrence Agency Conditions Schedule 2
- Adopted Infrastructure Charges Notice
- Approved Development Plans
- Appeal provisions pursuant to the *Sustainable Planning Act 2009*.

List of Submitters:-

Jeanette Tindal
10 Meryll Street
SOUTH TOOWOOMBA QLD 4350

SCHEDULE 2

CONCURRENCE AGENCY CONDITIONS

DEPARTMENT OF TRANSPORT & MAIN ROADS

Division 8 Appeals to court relating to development applications and approvals

461 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 the development application;
 - (b) any condition of a development approval, another matter stated in a development approval and the identification or inclusion of a code under section 242;
 - (c) the decision to give a preliminary approval when a development permit was applied for;
 - (d) the length of a period mentioned in section 341;
 - (e) a deemed refusal of the development application.
- (2) An appeal under subsection (1)(a), (b), (c) or (d) must be started within 20 business days (the **applicant's appeal period**) after—
 - (a) if a decision notice or negotiated decision notice is given—the day the decision notice or negotiated decision notice is given to the applicant; or
 - (b) otherwise—the day a decision notice was required to be 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.

462 Appeals by submitters—general

- (1) A submitter for a development application may appeal to the court only against—
 - (a) the part of the approval relating to the assessment manager's decision about any part of the application requiring impact assessment under section 314; or
 - (b) the part of the approval relating to the assessment manager's decision under section 327.
- (2) To the extent an appeal may be made under subsection (1), the appeal may be against 1 or more of the following—
 - (a) the giving of a development approval;
 - (b) any provision of the approval including—
 - (i) a condition of, or lack of condition for, the approval; or
 - (ii) the length of a period mentioned in section 341 for the approval.
- (3) However, a submitter may not appeal if the submitter—
 - (a) withdraws the submission before the application is decided; or
 - (b) has given the assessment manager a notice under section 339(1)(b)(ii).
- (4) The appeal must be started within 20 business days (the **submitter's appeal period**) after the decision notice or negotiated decision notice is given to the submitter.

463 Additional and extended appeal rights for submitters for particular development applications

- (1) This section applies to a development application to which chapter 9, part 7 applies.
- (2) A submitter of a properly made submission for the application may appeal to the court about a referral agency's response made by a prescribed concurrence agency for the application.
- (3) However, the submitter may only appeal against a referral agency's response to the extent it relates to—
 - (a) if the prescribed concurrence agency is the chief executive (environment)—development for an aquacultural ERA; or
 - (b) if the prescribed concurrence agency is the chief executive (fisheries)—development that is—
 - (i) a material change of use of premises for aquaculture; or
 - (ii) operational work that is the removal, damage or destruction of a marine plant.
- (4) Despite section 462(1), the submitter may appeal against the following matters for the application even if the matters relate to code assessment—
 - (a) a decision about a matter mentioned in section 462(2) if it is a decision of the chief executive (fisheries);
 - (b) a referral agency's response mentioned in subsection (2).

464 Appeals by advice agency submitters

- (1) Subsection (2) applies if an advice agency, in its response for an application, told the assessment manager to treat the response as a properly made submission.

- (2) The advice agency may, within the limits of its jurisdiction, appeal to the court about—
 - (a) any part of the approval relating to the assessment manager's decision about any part of the application requiring impact assessment under section 314; or
 - (b) any part of the approval relating to the assessment manager's decision under section 327.
- (3) The appeal must be started within 20 business days after the day the decision notice or negotiated decision notice is given to the advice agency as a submitter.
- (4) However, if the advice agency has given the assessment manager a notice under section 339(1)(b)(ii), the advice agency may not appeal the decision.

465 Appeals about decisions relating to extensions for approvals

- (1) For a development approval given for a development application, a person to whom a notice is given under section 389, other than a notice for a decision under section 386(2), may appeal to the court against the decision in the notice.
- (2) The appeal must be started within 20 business days after the day the notice of the decision is given to the person.
- (3) Also, a person who has made a request under section 383 may appeal to the court against a deemed refusal of the request.
- (4) An appeal under subsection (3) may be started at any time after the last day the decision on the matter should have been made.

466 Appeals about decisions relating to permissible changes

- (1) For a development approval given for a development application, the following persons may appeal to the court against a decision on a request to make a permissible change to the approval—
 - (a) if the responsible entity for making the change is the assessment manager for the application—
 - (i) the person who made the request; or
 - (ii) an entity that gave a notice under section 373 or a pre-request response notice about the request;
 - (b) if the responsible entity for making the change is a concurrence agency for the application—the person who made the request.
- (2) The appeal must be started within 20 business days after the day the person is given notice of the decision on the request under section 376.
- (3) Also, a person who has made a request under section 369 may appeal to the court against a deemed refusal of the request.
- (4) An appeal under subsection (3) may be started at any time after the last day the decision on the matter should have been made.

467 Appeals about changing or cancelling conditions imposed by assessment manager or concurrence agency

- (1) A person to whom a notice under section 378(9)(b) giving a decision to change or cancel a condition of a development approval has been given may appeal to the court against the decision in the notice.
- (2) The appeal must be started within 20 business days after the day the notice of the decision is given to the person.

Division 10 Appeals to court about other matters

471 Appeal by applicant for approval of a proposed master plan

- (1) A person who has applied for an approval of a proposed master plan may appeal to the court against—
 - (a) the refusal, or the refusal in part, to give the approval; or
 - (b) a matter stated in the notice of decision about the application; or
 - (c) a deemed refusal of the master plan application.
- (2) An appeal under subsection (1)(a) or (b) must be started within 20 business days (the **applicant's appeal period**) after the day the applicant is given notice of the decision.
- (3) An appeal under subsection (1)(c) may be started at any time after the last day a decision on the matter should have been made.

472 Appeal about extension of period under s 98

- (1) A person who has requested an extension under section 98(2) may appeal to the court against a refusal of the request.
- (2) An appeal under subsection (1) must be started within 20 business days after the day the person is given notice of the refusal.
- (3) Also, a person who has made a request under section 98(2) may appeal to the court against a deemed refusal of the request.
- (4) An appeal under subsection (3) may be started at any time after the last day the decision on the matter should have been made.
- (5) However, an appeal under this section may only be about whether the refusal is so unreasonable that no reasonable relevant local government could have refused the request.

473 Appeals against enforcement notices

- (1) A person who is given an enforcement notice may appeal to the court against the giving of the notice.
- (2) The appeal must be started within 20 business days after the day notice is given to the person.

474 Stay of operation of enforcement notice

- (1) The lodging of a notice of appeal about an enforcement notice stays the operation of the enforcement notice until—
 - (a) the court, on the application of the entity issuing the notice, decides otherwise; or
 - (b) the appeal is withdrawn; or
 - (c) the appeal is dismissed.
- (2) However, subsection (1) does not apply if the enforcement notice is about—
 - (a) a work, if the enforcement notice states the entity believes the work is a danger to persons or a risk to public health; or
 - (b) stopping the demolition of a work; or
 - (c) clearing vegetation on freehold land; or
 - (d) the removal of quarry material allocated under the *Water Act 2000*; or
 - (e) extracting clay, gravel, rock, sand or soil, not mentioned in paragraph (d), from Queensland waters; or
 - (f) development the assessing authority reasonably believes is causing erosion or sedimentation; or
 - (g) development the assessing authority reasonably believes is causing an environmental nuisance.

475 Appeals against local laws

- (1) This section applies if—
 - (a) an applicant is dissatisfied with a decision of a local government or the conditions applied under a local law about the use of premises or the erection of a building or other structure; and
 - (b) the use is not prohibited development under the planning scheme or a temporary local planning instrument for the planning scheme area.
- (2) The applicant may appeal to the court against the decision or the conditions applied.
- (3) The appeal must be started within 20 business days after the day notice of the decision is given to the applicant.

476 Appeals against decisions on compensation claims

- (1) A person who is dissatisfied with a decision under section 710 or 716 for the payment of compensation may appeal to the court against—
 - (a) the decision; or
 - (b) a deemed refusal of the claim.
- (2) An appeal under subsection (1)(a) must be started within 20 business days after the day notice of the decision is given to the person.
- (3) An appeal under subsection (1)(b) may be started at any time after the last day a decision on the matter should have been made.

477 Appeals against decisions on requests to acquire designated land under hardship

- (1) A person who is dissatisfied with a designator's decision to refuse a request made by the person under section 222 may appeal to the court against—
 - (a) the decision; or
 - (b) a deemed refusal of the request.

- (2) An appeal under subsection (1)(a) must be started within 20 business days after the day notice of the decision is given to the person.
- (3) An appeal under subsection (1)(b) may be started at any time after the last day a decision on the matter should have been made.

478 Appeals about particular charges for infrastructure

- (1) This section applies to a person who has been given, and is dissatisfied with—
 - (a) an infrastructure charges notice, regulated infrastructure charges notice or regulated State infrastructure charges notice; or
 - (b) a negotiated infrastructure charges notice, negotiated regulated infrastructure charges notice or negotiated regulated State infrastructure charges notice.
- (2) The person may appeal to the court against the notice.
- (3) An appeal against a notice mentioned in subsection (1) must be started within 20 business days after the day the notice is given to the person.
- (4) An appeal under this section may only be about—
 - (a) whether a charge in the notice is so unreasonable that no reasonable relevant local government, State infrastructure provider or coordinating agency could have imposed it; or
 - (b) an error in the calculation of the charge.
- (5) To remove any doubt, it is declared that an appeal under this section can not be about the methodology used to establish the charge in the relevant infrastructure charges schedule, regulated infrastructure charges schedule or regulated State infrastructure charges schedule.

479 Appeals from building and development committees

- (1) A party to a proceeding decided by a building and development committee may appeal to the court against the committee's decision, but only on the ground—
 - (a) of an error or mistake in law on the part of the committee; or
 - (b) that the committee had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.
- (2) An appeal against a building and development committee's decision must be started within 20 business days after the day notice of the committee's decision is given to the party.

480 Court may remit matter to building and development committee

If an appeal includes a matter within the jurisdiction of a building and development committee and the court is satisfied the matter should be dealt with by a building and development committee, the court must remit the matter to the committee for decision.

Division 11 Making an appeal to court

481 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).

482 Notice of appeal to other parties—development applications and approvals

- (1) An appellant under division 8 must give written notice of the appeal to—
 - (a) if the appellant is an applicant—
 - (i) the chief executive; and
 - (ii) the assessment manager; and
 - (iii) any concurrence agency; and
 - (iv) any principal submitter whose submission has not been withdrawn; and
 - (v) any advice agency treated as a submitter whose submission has not been withdrawn; or
 - (b) if the appellant is a submitter or an advice agency whose response to the development application is treated as a submission for an appeal—
 - (i) the chief executive; and

- (ii) the assessment manager; and
- (iii) any referral agency; and
- (iv) the applicant; or
- (c) if the appellant is a person to whom a notice mentioned in section 465(1) has been given—
 - (i) the chief executive; and
 - (ii) the assessment manager for the development application to which the notice relates; and [s 482]
 - (iii) any entity that was a concurrence agency for the development application to which the notice relates; and
 - (iv) the person who made the request under section 383 to which the notice relates, if the person is not the appellant; or
- (d) if the appellant is a person mentioned in section 466(1)—
 - (i) the chief executive; and
 - (ii) the responsible entity for making the change to which the appeal relates; and
 - (iii) the person who made the request to which the appeal relates under section 369, if the person is not the appellant; and
 - (iv) if the responsible entity is the assessment manager—any entity that was a concurrence agency for the development application to which the notice of the decision on the request relates; or
- (e) if the appellant is a person to whom a notice mentioned in section 467 has been given—the entity that gave the notice.

- (2) The notice must be given within—
 - (a) if the appellant is a submitter or advice agency whose response to the development application is treated as a submission for an appeal—2 business days after the appeal is started; or
 - (b) otherwise—10 business days after the appeal is started.
- (3) The notice must state—
 - (a) the grounds of the appeal; and
 - (b) if the person given the notice is not the respondent or a co-respondent under section 485—that the person may, within 10 business days after the notice is given, elect to [s 483] become a co-respondent to the appeal by filing in the court a notice of election in the approved form.

483 Notice of appeals to other parties—compliance assessment

- (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 an action notice, compliance permit or compliance certificate has been given—
 - (i) the compliance assessor who gave the notice, permit or certificate; and
 - (ii) if the compliance assessor was a nominated entity of a local government and a copy of the request for compliance assessment was given to the local government under section 402—the local government; or
 - (b) if the appellant is a person to whom a notice mentioned in section 470(1) has been given—
 - (i) the entity that gave the notice; and
 - (ii) if the entity that gave the notice was a nominated entity of a local government and the written agreement of the local government was required to give the notice—the local government.
- (2) The notice must state the grounds of the appeal.

484 Notice of appeal to other parties—other matters

- (1) An appellant under division 10 must, within 10 business days after the day the appeal is started, give written notice of the appeal to—
 - (a) if the appeal is under section 471—the local government and coordinating agency for the application for approval of the master plan; or
 - (b) if the appeal is under section 472 or 475—the local government; or
 - (c) if the appeal is under section 478—the entity that gave the notice the subject of the appeal; or
 - (d) 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

- (e) if the appellant is a person dissatisfied with a decision about compensation—the local government that decided the claim; or
- (f) if the appellant is a person dissatisfied with a decision about acquiring designated land—the designator; or
- (g) if the appellant is a party to a proceeding decided by a building and development committee—the other party to the proceeding.

(2) The notice must state the grounds of the appeal.

485 Respondent and co-respondents for appeals under div 8

- (1) Subsections (2) to (8) apply for appeals under sections 461 to 464.
- (2) The assessment manager is the respondent for the appeal.
- (3) If the appeal is started by a submitter, the applicant is a co-respondent for the appeal.
- (4) Any submitter may elect to become a co-respondent for the appeal.
- (5) If the appeal is about a concurrence agency's response, the concurrence agency is a co-respondent for the appeal.[s 486]
- (6) If the appeal is only about a concurrence agency's response, the assessment manager may apply to the court to withdraw from the appeal.
- (7) The respondent and any co-respondents for an appeal are entitled to be heard in the appeal as a party to the appeal.
- (8) A person to whom a notice of appeal is required to be given under section 482 and who is not the respondent or a co-respondent for the appeal may elect to be a co-respondent.
- (9) For an appeal under section 465—
 - (a) the assessment manager is the respondent; and
 - (b) if the appeal is started by a concurrence agency that gave the assessment manager a notice under section 385—the person asking for the extension the subject of the appeal is a co-respondent; and
 - (c) any other person given notice of the appeal may elect to become a co-respondent.
- (10) For an appeal under section 466—
 - (a) the responsible entity for making the change to which the appeal relates is the respondent; and
 - (b) if the responsible entity is the assessment manager—
 - (i) if the appeal is started by a person who gave a notice under section 373 or a pre-request response notice—the person who made the request for the change is a co-respondent; and
 - (ii) any other person given notice of the appeal may elect to become a co-respondent.
- (11) For an appeal under section 467, the respondent is the entity given notice of the appeal.

486 Respondent and co-respondents for appeals under div 9

- (1) For an appeal under section 468 or 469—
 - (a) the compliance assessor is the respondent; and [s 487]
 - (b) if the compliance assessor is a nominated entity of a local government and the appeal relates to a matter required by a local government—the local government is a co-respondent.
- (2) However, if the appeal is only about a matter required by the local government, the compliance assessor may apply to the court to withdraw from the appeal.
- (3) For an appeal under section 470—
 - (a) the entity that gave the notice to which the appeal relates is the respondent; and
 - (b) if the entity mentioned in paragraph (a) is a nominated entity of a local government and the local government did not agree to the request mentioned in section 470(1)—the local government is a co-respondent.
- (4) However, if the appeal is only about the local government's refusal of the request, the entity that gave the notice to which the appeal relates may apply to the court to withdraw from the appeal.

487 Respondent and co-respondents for appeals under div 10

- (1) This section applies if an entity is required under section 484 to be given a notice of an appeal.
- (2) The entity given notice is the respondent for the appeal.
- (3) However, if under a provision of the section more than 1 entity is required to be given notice, only the first entity mentioned in the provision is the respondent.
- (4) The second entity mentioned in the provision may elect to be a co-respondent.

488 How an entity may elect to be a co-respondent

An entity that is entitled to elect to be a co-respondent to an appeal may do so, within 10 business days after notice of the [s 489] appeal is given to the entity, by following the rules of court for the election.

489 Minister entitled to be party to an appeal involving a State interest

If the Minister is satisfied an appeal involves a State interest, the Minister may, at any time before the appeal is decided, elect to be a party to the appeal by filing in the court a notice of election in the approved form.

490 Lodging appeal stops particular actions

- (1) If an appeal, other than an appeal under section 465, 466 or 467, is started under division 8, the development must not be started until the appeal is decided or withdrawn.
- (2) If an appeal is about a condition imposed on a compliance permit, the development must not be started until the appeal is decided or withdrawn.
- (3) Despite subsections (1) and (2), if the court is satisfied the outcome of the appeal would not be affected if the development or part of the development is started before the appeal is decided, the court may allow the development or part of the development to start before the appeal is decided.

Division 12 Alternative dispute resolution

491 ADR process applies to proceedings started under this part

- (1) The *District Court of Queensland Act 1967*, part 7 and the *Uniform Civil Procedure Rules 1999*, chapter 9, part 4, other than section 321, (together, the **ADR provisions**), apply to proceedings started under this part.[s 492]
- (2) To the extent there is any inconsistency between the cost provisions of the ADR provisions and the cost provisions of this Act, the cost provisions of the ADR provisions prevail.
- (3) If a dispute in a proceeding under this part is referred to a dispute resolution process under the ADR provisions—
 - (a) the proceeding is not stayed unless the court orders otherwise; and
 - (b) the court must not decide the proceeding until the dispute resolution process under the ADR provisions has been finalised.
- (4) In applying the ADR provisions to a proceeding under this part—
 - (a) a reference to the court or the District Court is taken to be a reference to the Planning and Environment Court; and
 - (b) a reference to a District Court judge is taken to be a reference to a judge constituting the Planning and Environment Court; and
 - (c) definitions and other interpretative provisions of the *District Court of Queensland Act 1967* and the *Uniform Civil Procedure Rules 1999* relevant to the ADR provisions apply.

Appendix C: Commencement of Relevant Period
Toowoomba Regional Council

Etna Investments Pty Ltd and Nina Investments Pty
C/- Precinct Urban Planning
PO Box 3038
TOOWOOMBA VILLAGE FAIR QLD 4350



28 September 2012

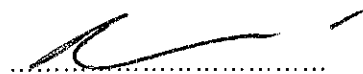
Dear Sir/Madam,

Development Approval for: Material Change of Use - Impact - Food Outlet Cafe Restaurant
Location: 795-797 Ruthven Street, SOUTH TOOWOOMBA QLD 4350
Property Description: Lot 8 SP202999, Emt B SP209454, Emt C SP209454

Reference is made to the decision notice issued on 22 June 2012 for the above application. I wish to advise that the submitters appeal period has ended and the development approval now has effect.

If you have any further enquiries in relation to this matter, please contact Council's Planner, Michael St Clair on the above telephone number.

Yours faithfully



.....
Rodney O'Brien
Senior Planner, Development Assessment

Appendix D: State Referral Notification
State Assessment and Referral Agency (SARA)