

Our Reference: MCUI/2011/4311/A
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Decision Notice
EXTENSION TO PERIOD OF APPROVAL
Sustainable Planning Act 2009 Section 389

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

Email: andrew@precinctplan.com.au

28 October 2016

Dear Sir

Request for:	Extend Period (Section 383 of SPA)
Development Application for:	Material Change of Use - Impact - Food Outlet (Café/Restaurant)
Location:	795-797 Ruthven Street, SOUTH TOOWOOMBA QLD 4350
Property Description:	Lot 8 SP202999, Emt B SP209454, Emt C SP209454

I wish to advise that on 26 October 2016, the request to extend period of approval was approved until 28 September 2018.

Rights of Appeal

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

Yours faithfully



Richard Green
Senior Planner, Development Services

Chapter 7, Part 1, Division 8 of the Sustainable Planning Act 2009
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) development for an aquacultural ERA; or
 - (b) 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;
 - (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.

Chapter 7, Part 1, Division 9 of the Sustainable Planning Act 2009
Appeals to court about compliance assessment

468 Appeals against decision on request for compliance assessment

- (1) A person to whom an action notice has been given under section 405(5) about a request for compliance assessment of development, a document or work may appeal to the court against a decision in the notice.
- (2) The appeal must be started within 20 business days after the notice is given to the person.

469 Appeals against condition imposed on compliance permit or certificate

- (1) A person who is given a compliance permit or compliance certificate subject to any conditions may appeal to the court against the decision to impose the condition.
- (2) The appeal must be started within 20 business days after the day the compliance permit or compliance certificate is given to the person.

470 Appeals against particular decisions about compliance assessment

- (1) A person to whom any of the following notices have been given may appeal to the court against the decision in the notice:
 - (a) a notice of a decision on a request to change or withdraw an action notice;
 - (b) a notice under section 413(2)(c) about a decision to refuse a request to change a compliance permit or compliance certificate.
- (2) The appeal must be started within 20 business days after the day the notice is given to the person.

Chapter 7, Part 1, Division 10 of the Sustainable Planning Act 2009 Appeals to court about other matters

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.

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.

478 Appeals about infrastructure charges notice

- (1) The recipient of an infrastructure charges notice may appeal to the court about the decision to give the notice.
- (2) However, the appeal may be made only on 1 or more of the following grounds—
 - (a) the charge in the notice is so unreasonable that no reasonable relevant local government could have imposed it;
 - (b) the decision involved an error relating to—
 - (i) the application of the relevant adopted charge; or
 - (ii) the working out, for section 636, of additional demand; or
 - (iii) an offset or refund;
 - (c) there was no decision about an offset or refund;

Examples of possible errors in applying an adopted charge—

 - *the incorrect application of gross floor area for a non-residential development*
 - *applying an incorrect 'use category' under an SPRP (adopted charges) to the development*

- (d) if the infrastructure charges notice states a refund will be given—the timing for giving the refund.
- (3) To remove any doubt, it is declared that the appeal must not be about—
 - (a) the adopted charge itself; or
 - (b) for a decision about an offset or refund—
 - (i) the establishment cost of infrastructure identified in an LGIP; or
 - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.
- (4) The appeal must be started within 20 business days after the day the recipient is given the relevant infrastructure charges notice.

478A Appeals against refusal of conversion application

- (1) The applicant for a conversion application may appeal to the court against a refusal, or deemed refusal, of the application.
- (2) The appeal must be started within the following period—
 - (a) if the applicant is given written notice of the refusal—20 business days after the day the applicant is given the notice;
 - (b) otherwise—20 business days after the end of the required period under section 660(5) for the application.

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.

Chapter 7, Part 2, Division 4 of the Sustainable Planning Act 2009 Appeals to committees about development applications and approvals

Subdivision 1 Appeals about particular material changes of use

519 Appeal by applicant—particular development application for material change of use of premises

- (1) This section applies to a development application if the application is only for a material change of use of premises that involves the use of a prescribed building.
- (2) However, this section does not apply to the development application if any part of the application required impact assessment and any properly made submissions were received by the assessment manager for the application.
- (3) The applicant for the development application may appeal to a building and development committee against any of the following—
 - (a) the refusal, or the refusal in part, of the application;
 - (b) any condition of the development approval and another matter, other than the identification or inclusion of a code under section 242, stated in the development approval;
 - (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 application.
- (4) An appeal under subsection (3)(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.
- (5) An appeal under subsection (3)(e) may be started at any time after the last day a decision on the matter should have been made.

- 520 Appeal about decision relating to extension for development approval**
- (1) This section applies to a development approval if the approval is only for a material change of use of premises that involves the use of a prescribed building.
 - (2) A person to whom a notice is given under section 389 in relation to the development approval, other than a notice for a decision under section 386(2), may appeal to a building and development committee against a decision in the notice.
 - (3) The appeal must be started within 20 business days after the day the notice of the decision is given to the person.

521 Appeal about decisions relating to permissible changes

- (1) This section applies to a development approval if the approval is only for a material change of use of premises that involves the use of a prescribed building.
- (2) The following persons may appeal to a building and development committee against a decision on a request to make a permissible change to the development approval, other than a deemed refusal of the request—
 - (a) if the responsible entity for making the change is the assessment manager for the development application to which the approval relates—
 - (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 development application—the person who made the request.
- (3) 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.

Subdivision 2 Appeals about conditions of particular development approvals

522 Appeal by applicant—condition of particular development approval

- (1) This section applies to a development application if—
 - (a) the application is only for a material change of use that involves the use of a building classified under the BCA as a class 2 building; and
 - (b) the proposed development is for premises of not more than 3 storeys; and
 - (c) the proposed development is for not more than 60 sole occupancy units.
- (2) However, this section does not apply to the development application if any part of the application required impact assessment and any properly made submissions were received by the assessment manager for the application.
- (3) The applicant for the development application may appeal to a building and development committee against a condition of the development approval.
- (4) The appeal 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.
- (5) In this section—

sole-occupancy unit, in relation to a class 2 building, means a room or other part of the building used as a dwelling by a person to the exclusion of any other person.

storey means a space within a building between 2 floor levels, or a floor level and a ceiling or roof, other than—

 - (a) a space containing only—
 - (i) a lift shaft, stairway or meter room; or
 - (ii) a bathroom, shower room, laundry, water closet or other sanitary compartment; or
 - (iii) accommodation for not more than 3 motor vehicles; or
 - (iv) a combination of any things mentioned in subparagraph (i), (ii) or (iii); or
 - (b) a mezzanine.

Division 5 Appeals to committees about compliance assessment

523 Appeal against decision on request for compliance assessment

- (1) A person who is given an action notice about a request for compliance assessment of development, a document or work may appeal to a building and development committee against the decision in the notice.
- (2) The appeal must be started within 20 business days after the day the notice is given to the person.

524 Appeal against condition imposed on compliance permit or certificate

- (1) A person who is given a compliance permit or compliance certificate subject to any conditions may appeal to a building and development committee against the decision to impose the condition.
- (2) The appeal must be started within 20 business days after the day the compliance permit or compliance certificate is given to the person.

525 Appeals against particular decisions about compliance assessment

- (1) A person who is given any of the following notices may appeal to a building and development committee against the decision in the notice—
 - (a) a notice of a decision on a request to change or withdraw an action notice;
 - (b) a notice under section 413(2)(c) about a decision to refuse to change a compliance permit or compliance certificate.
- (2) The appeal must be started within 20 business days after the day the notice is given to the person.

Division 6 Appeals to committees about building, plumbing and drainage and other matters

Subdivision 1 Preliminary

526 Matters about which a person may appeal under div 6

- An appeal to a building and development committee under this division may only be about—
- (a) a matter under this Act that relates to the Building Act, other than a matter under that Act that may or must be decided by the *Queensland Building and Construction Commission*, or the *Plumbing and Drainage Act 2002*; or
 - (b) a matter that under another Act may be appealed to a building and development committee; or
 - (c) a matter prescribed under a regulation.

Subdivision 2 Appeals about development applications and approvals

527 Appeals by applicants

- (1) An applicant for a development application may appeal to a building and development committee against any of the following—
 - (a) the refusal, or the refusal in part, of the application;
 - (b) any condition of the development approval and another matter, other than the identification or inclusion of a code under section 242, stated in the development approval;
 - (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 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.

528 Appeal by advice agency

- (1) An advice agency may, within the limits of its jurisdiction, appeal to a building and development committee about the giving of a development approval if the development

- application involves code assessment for the aspect of building work to be assessed against the Building Act.
- (2) The appeal must be started—
- (a) within 10 business days after the day the decision notice or negotiated decision notice is given to the advice agency; or
- (b) for a deemed approval for which a decision notice or negotiated decision notice has not been given—within 20 business days after receiving a copy of the deemed approval notice for the application from the applicant.

529 Appeal about decision relating to extension for development approval

- (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 a building and development committee against a 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.

530 Appeal about decision relating to permissible changes

- (1) For a development approval given for a development application, the following persons may appeal to a building and development committee against a decision on a request to make a permissible change to the approval, other than a deemed refusal of the request—
- (a) if the responsible entity for making the change is the assessment manager for the application to which the approval relates—
- (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 to which the approval relates—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.

531 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 a building and development committee 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.

Subdivision 3 Other matters

532 Appeals for building and plumbing and drainage matters

- (1) If—
- (a) a person has been given, or is entitled to be given—
- (i) an information notice under the Building Act about a decision other than a decision under that Act made by the *Queensland Building and Construction Commission*; or
- (ii) an information notice under the *Plumbing and Drainage Act 2002* about a decision under part 4 or 5 of that Act; or
- (b) a person—
- (i) was an applicant for a building development approval; and
- (ii) is dissatisfied with a decision under the Building Act by a building certifier or referral agency about inspection of building work the subject of the approval;
- the person may appeal against the decision to a building and development committee.
- (2) An appeal under subsection (1) must be started within 20 business days after the day the person is given notice of the decision.

- (3) If—
- (a) under the Building Act, a person makes an application other than a building development application to a local government; and
- (b) the period required under that Act for the local government to decide the application (the **decision period**) has passed; and
- (c) the local government has not decided the application;
- the person may appeal to a building and development committee against the lack of the decision and for the committee to decide the application as if it were the local government.
- (4) An appeal under subsection (3) must be started within 20 business days after the end of the decision period.

533 Appeals against enforcement notices

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

Division 7 Appeals about particular charges

535 Appeals about infrastructure charges decisions

- (1) The recipient of an infrastructure charges notice may appeal to a building and development committee about the decision to give the notice.
- (2) However, the appeal may be made only on 1 or more of the following grounds—
- (a) the decision involved an error relating to—
- (i) the application of the relevant adopted charge; or
- (ii) the working out, for section 636, of additional demand; or
- (iii) an offset or refund;
- (b) there was no decision about an offset or refund;
- Examples of possible errors in applying an adopted charge—*
- the incorrect application of gross floor area for a non-residential development
 - applying an incorrect 'use category' under an SPRP (adopted charges) to the development
- (c) if the infrastructure charges notice states a refund will be given—the timing for giving the refund.
- (3) To remove any doubt, it is declared that the appeal must not be about—
- (a) the adopted charge itself; or
- (b) for a decision about an offset or refund—
- (i) the establishment cost of infrastructure in an LGIP; or
- (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.
- (4) The appeal must be started within 20 business days after the day the recipient is given the relevant infrastructure charges notice.

535A Appeals against refusal of conversion application

- (1) The applicant for a conversion application may appeal to a building and development committee against a refusal, or deemed refusal, of the application.
- (2) The appeal must be started within the following period—
- (a) if the applicant is given written notice of the refusal—20 business days after the day the applicant is given the notice;
- (b) otherwise—20 business days after the end of the required period under section 660(5) for the application.