

In the Planning and Environment Court
Held at: Brisbane

No. 506 of 2018

Between: **BARRO GROUP PTY LIMITED**
(ACN 005 105 724)

Appellant

And: **REDLAND CITY COUNCIL**

Respondent

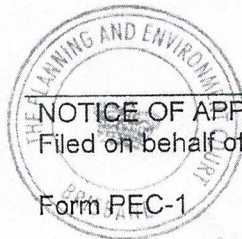
NOTICE OF APPEAL

Filed on: 24/04/2018

Filed by: Herbert Smith Freehills
Service address: Level 31, 480 Queen Street
Brisbane QLD 4000
Phone: 07 3258 6666
Fax: 07 3258 6444
Email: matthew.soden-taylor@hsf.com

BARRO GROUP PTY LIMITED (ACN 005 105 724) of 191 Drummond Street, Carlton in the State of Victoria appeals to the Planning and Environment Court at Brisbane against the decision (**Council's Decision**) of the Respondent to refuse an application to extend the currency period (**Extension Application**) of a development permit for a material change of use for Extractive Industry and Environmentally Relevant Activities 8 (Chemical Storage), 16 (Extractive and Screening Activities) and 21 (Motor Vehicle Workshop Operation) (Reference no. MC15/5465) (**Development Approval**) for land situated at 1513 and 1515-1521 Mount Cotton Road and 163-177 and 195 Gramzow Road, Mount Cotton Queensland and more particularly described as Lot 162 on S31962, Lot 238 on SP218968, Lot 370 on S311071, Lot 1 on RP108970, Lot 17 on RP108970, Lot 1 on SP272090, Lot 2 on SP272091, Lot 3 on SP272092 and the land comprising that part of Greenhide (California) Creek located between Lot 162 on S31962 and Lot 238 on SP218968, which is the property of the State (**Land**) and seeks the following orders or judgment:

1. The appeal be allowed.
2. The Council's Decision be set aside and replaced with a decision that the Extension Application be approved.
3. The Respondent pay the Appellant's costs of the appeal.
4. Such further or other orders the Court deems appropriate.



NOTICE OF APPEAL
Filed on behalf of the Appellant

Form REC-1

Herbert Smith Freehills
Level 31, 480 Queen Street
Brisbane QLD 4000
Phone: 07 3258 6666
Fax: 07 3258 6444
Email: matthew.soden-taylor@hsf.com

The grounds of appeal are:

1. The Land:
 - (a) is situated at 1513 and 1515-1521 Mount Cotton Road and 163-177 and 195 Gramzow Road, Mount Cotton Queensland;
 - (b) is described as Lot 162 on S31962, Lot 238 on SP218968, Lot 370 on S311071, Lot 1 on RP108970, Lot 17 on RP108970, Lot 1 on SP272090, Lot 2 on SP272091, Lot 3 on SP272092 and the land comprising that part of Greenhide (California) Creek located between Lot 162 on S31962 and Lot 238 on SP218968, which is the property of the State;
 - (c) is zoned predominately Rural Non-Urban and also partly Environmental Protection and partly Conservation in the Redland Planning Scheme Version 7.1;
 - (d) is identified in Key Resource Area 71 under State Planning Policy July 2017.

2. On or around November 2010, the Appellant made an application (**Development Application**) to the Respondent for a development permit for a material change of use for Extractive Industry and Environmentally Relevant Activities 8 (Chemical Storage), 16 (Extractive and Screening Activities) and 21 (Motor Vehicle Workshop Operation) for the Land.

3. By way of Decision Notice dated 12 June 2013, the Respondent notified the Appellant that it decided on 5 June 2013 to refuse the Development Application on the following grounds:
 1. *The proposed extension is actually a new quarry, extracting new material from a different location on the site, with a significantly greater scale than the existing quarry.*
 2. *The proposed development is not consistent with the reasonable expectations of the local community, because the proposal is for a completely separate quarry which is of a significant scale and will operate in close proximity to adjoining rural residential properties.*
 3. *The applicant has failed to demonstrate that the new quarry can be constructed and operated in such a manner as to protect the amenity of the surrounding sensitive receptors.*
 4. *The applicant has failed to adequately define and apply suitable noise criteria to assess protection of amenity for the surrounding sensitive receptors.*
 5. *The proposal will not maintain or enhance the rural residential amenity of the surrounding area through the minimisation of environmental nuisance occurring through the operation and construction of the quarry.*
 6. *The proposal adversely impacts on and limits the future enhancement of the surrounding economic tourism opportunities.*
 7. *A large number of submissions have been received objecting to the*

proposal, which raise valid planning grounds.

8. *The proposed development is in conflict with the following provisions of the Redlands Planning Scheme:*
 - (a) *Part 3.1.4, Desired Environmental Outcome No. 3 – Community Health and Wellbeing;*
 - (b) *Part 3.1.7, Desired Environmental Outcome No. 6 – Economic Development;*
 - (c) *Overall Outcomes 2(a)(i) and 2(c) for the Rural Non-Urban Zone;*
 - (d) *Overall Outcome 2(a)(iv) for the Extractive Industry Code; and*
 - (e) *Specific Outcomes S2.1 to S2.4 of the Extractive Industry Code.*
9. *There are not sufficient grounds to warrant approval of the proposed development having regard to the nature and extent of the conflict with the Redlands Planning Scheme.*
10. *That the development proposal be immediately referred to the relevant State Minister to assess the proposal, in particular the decisions of the State agencies, under the Sustainable Planning Act 2009.*
4. *On 26 September 2013, the then Minister for State Development, Infrastructure and Planning decided to exercise his Ministerial powers under the Sustainable Planning Act 2009 (SPA) and call in the Development Application.*
5. *On 20 December 2013, the then Minister for State Development, Infrastructure and Planning decided to approve the Development Application (**Development Approval**).*
6. *On 8 December 2017, the Appellant made an application to the Respondent to extend the currency period of the Development Approval (**Extension Application**).*
7. *The Council officer's recommendation contained in the General Meeting Agenda dated 21 March 2018 was that the Respondent resolve to approve the Extension Application.*
8. *By Decision Notice dated 27 March 2018, the Respondent refused the Extension Application on the following grounds:*
 1. *The proposed extension is actually a new quarry, extracting new material from a different location on the site, with a significantly greater scale than the existing quarry.*
 2. *The proposed development is not consistent with the reasonable expectations of the local community, because the proposal is for a completely separate quarry which is of a significant scale and will operate in close proximity to adjoining rural residential properties.*
 3. *The applicant has failed to demonstrate that the new quarry can be constructed and operated in such a manner as to protect the amenity of*

the surrounding sensitive receptors.

4. *The applicant has failed to adequately define and apply suitable noise criteria to assess protection of amenity for the surrounding sensitive receptors.*
 5. *The proposal will not maintain or enhance the rural residential amenity of the surrounding area through the minimisation of environmental nuisance occurring through the operation and construction of the quarry.*
 6. *The proposal adversely impacts on and limits the future enhancement of the surrounding economic tourism opportunities.*
 7. *A large number of submissions have been received objecting to the proposal, which raise valid planning grounds.*
 8. *The proposed development is in conflict with the following provisions of the Redlands Planning Scheme:*
 - (a) *Part 3.1.4, Desired Environmental Outcome No. 3 – Community Health and Wellbeing;*
 - (b) *Part 3.1.7, Desired Environmental Outcome No. 6 – Economic Development;*
 - (c) *Overall Outcomes 2(a)(i) and 2(c) for the Rural Non-Urban Zone;*
 - (d) *Overall Outcome 2(a)(iv) for the Extractive Industry Code; and*
 - (e) *Specific Outcomes S2.1 to S2.4 of the Extractive Industry Code.*
 9. *There are not sufficient grounds to warrant approval of the proposed development having regard to the nature and extent of the conflict with the Redlands Planning Scheme.*
 10. *That the development proposal be immediately referred to the relevant State Minister to assess the proposal, in particular the decision of the State agencies, under the Planning Act 2016.*
 11. *The development will have a significant impact on Mount Cotton Road that may affect pedestrian and vehicular safety on this road. This impact is not suitably mitigated by conditions on the original approval.*
 12. *That the population of Mount Cotton, its surrounds and Redland City itself has grown significantly since the original application was subject to public notification in 2012. A number of new dwellings and change of ownership in Mount Cotton and surrounds has occurred during this time. Therefore there is fair degree of non-awareness of the development approval within the surrounding community.*
9. Grounds 1 to 11 of the Respondent's Decision Notice are not valid grounds for refusing the Extension Application as:
- (a) in relation to grounds 1 to 10, they are identical to the grounds for the Respondent's decision to refuse the application for the Development

Approval contained in its Decision Notice dated 12 June 2013 except that ground 10 has been updated to refer to the current legislation by amending the words 'decisions of the State agencies, under the Sustainable Planning Act 2009' so they now state 'decision of the State agencies, under the Planning Act 2016';

- (b) in relation to ground 11:
 - (i) the Department of Transport and Main Roads (DTMR) was identified (along with the Department of Environment and Resource Management) as a concurrence agency to the Development Application because of the proximity of the proposed development to a State Controlled Road, namely Mount Cotton Road; and
 - (ii) the DTMR did not require or recommend the application be refused;
 - (c) despite the Respondent's decision to refuse the Development Application, it was ultimately approved by the then Minister for State Development, Infrastructure and Planning;
 - (d) in the premises, grounds 1 to 11 impermissibly seek to overturn or revisit the decision of the Minister for State Development, Infrastructure and Planning to approve the Development Application; and
 - (e) further in the alternative, grounds 1 to 11 are not relevant considerations for assessing the Extension Application as they relate to whether the Development Approval should have been granted in the first place, rather than whether the Extension Application should be approved.
10. Further in the alternative, grounds 1 to 11 of the Council's Decision Notice should be given little or no weight as the Minister for State Development, Infrastructure and Planning ultimately decided to approve the Development Application despite these same grounds being:
- (a) in the case of grounds 1 to 10, raised by the Respondent as the basis for its decision to refuse the Development Application; and
 - (b) considered by the Minister in making his decision.
11. Further, or in the alternative, the Extension Application should be approved for the following reasons:
- (a) The Respondent's first ground for refusal is not a valid ground for refusing the proposed extension.
 - (b) The Respondent's second ground for refusal relating to the allegation that the proposed development is a completely separate quarry is not a valid ground for refusing the proposed development.
 - (c) The proposed development is consistent with the reasonable expectations of the local community for the following reasons:
 - (i) the Land is partly subject, and is otherwise adjacent, to the

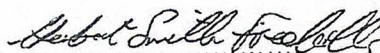
Appellant's existing quarry operations;

- (ii) the development is located in Key Resource Area 71 under the State Planning Policy July 2017;
 - (iii) the development is located in a Key Regional Resource Area in the Extractive Resources Overlay in the Redlands Planning Scheme;
 - (iv) the Appellant has commenced works to carry out the development the subject of the Development Approval.
- (d) The applicant has not failed to demonstrate that the new quarry can be constructed and operated in such a manner as to protect the amenity of the surrounding sensitive receptors.
 - (e) The applicant has not failed to adequately define and apply suitable noise criteria to assess protection of amenity for the surrounding sensitive receptors.
 - (f) The proposal will appropriately maintain the rural residential amenity of the surrounding area through the minimisation of environmental nuisance.
 - (g) The proposal does not adversely impact upon and limit the future enhancement of any surrounding economic tourism opportunities.
 - (h) The number of submissions objecting to the proposal is not a valid ground for refusal.
 - (i) The proposed development does not conflict with the following provisions of the Redlands Planning Scheme:
 - (i) Part 3.1.4, Desired Environmental Outcome No. 3 – Community Health and Wellbeing;
 - (ii) Part 3.1.7, Desired Environmental Outcome No. 6 – Economic Development;
 - (iii) Overall Outcomes 2(a)(i) and 2(c) for the Rural Non-Urban Zone;
 - (iv) Overall Outcome 2(a)(iv) for the Extractive Industry Code; and
 - (v) Specific Outcomes S2.1 to S2.4 of the Extractive Industry Code.
 - (j) In the alternative to 11(i) above, in the event it is determined that the proposed development does conflict with the above provisions, it does not conflict with the Redlands Planning Scheme as a whole.
 - (k) In the alternative to 11(j) above, in the event it is determined that the conflict with the above provisions results in the development conflicting with the Redlands Planning Scheme as a whole, having regard to the nature and extent of the conflict, there are sufficient grounds to warrant approval of the proposed development despite the conflict..
 - (l) The Respondent's tenth ground for refusal is not a valid ground for refusal.

- (m) The development will not have a significant impact on Mount Cotton Road that may affect pedestrian and vehicular safety on this road. In the alternative, this impact is suitably mitigated by the conditions imposed on the Development Approval.
- (n) The population of Mount Cotton, its surrounds and Redland City itself has not grown significantly since the Development Application was subject to public notification in 2012.
- (o) There is a high degree of awareness of the Development Approval within the surrounding community.
- (p) The Development Approval, including its conditions, is consistent with the current laws and policies applicable to the development.
- (q) The community expect the Land to be developed for the development the subject of the Development Approval.
- (r) If a new development application were to be made for the development the subject of the Development Approval, any issues raised by a submitter would very likely have already been considered as part of the assessment of the Development Application.
- (s) The Development Approval was only granted on December 2013 and the Extension Application is the first request to extend the currency period of the Development Approval.
- (t) A seven (7) year currency period is appropriate for a development of the scale and complexity of the development the subject of the Development Approval.
- (u) Because of the provisions of the Redlands Planning Scheme, the development the subject of the Development Approval does not require a development permit for operational work, meaning the currency period of the Development Approval could not be rolled forward pursuant to section 341 of the repealed *Sustainable Planning Act 2009* (Qld), as would generally be the case for such a development in other local government areas.
- (v) If the Development Approval had been granted under the *Planning Act 2016* (Qld), it would have a currency period of six (6) years pursuant to section 85 of the *Planning Act 2016* (Qld).
- (w) There are numerous conditions of the Development Approval, requiring detailed work and assessment to be carried out, that are required to be complied with prior to commencing the use the subject of the Development Approval.
- (x) The Appellant has made significant progress towards commencing the use the subject of the Development Approval, including complying with numerous conditions of the Development Approval that are required to be complied with prior to commencing the use the subject of the Development Approval.
- (y) The Respondent has caused delay to the Appellant commencing the use

the subject of the Development Approval.

- (z) There has been no change in circumstances that would affect the assessment manager's determination of the Development Approval if such were to be made again at the time of the Extension Application.
- (aa) There would be a significant waste of time, resources and money if the Appellant were required to make a new development application for the development the subject of the Development Approval, in circumstances where it is very likely that the development application would be approved.



Herbert Smith Freehills
Solicitors for the Appellant

If you are named as a respondent in this notice of appeal and wish to be heard in this appeal you must:

- (a) within 10 business days after being served with a copy of this Notice of Appeal, file an Entry of Appearance in the Registry where this notice of appeal was filed or where the court file is kept; and
- (b) serve a copy of the Entry of Appearance on each other party.

The Entry of Appearance should be in Form PEC – 5 for the Planning and Environment Court.

If you are entitled to elect to be a party to this appeal and you wish to be heard in this appeal you must:

- (a) within 10 business days of receipt of this Notice of Appeal, file a Notice of Election in the Registry where this Notice of Appeal was filed or where the court file is kept; and
- (b) serve a copy of the Notice of Election on each other party.

The Notice of Election should be in Form PEC – 6 for the Planning and Environment Court.