

**From:** Jack Lewis  
**Sent:** 30 Dec 2015 01:16:32 +0000  
**To:** Mailbox Council Mail  
**Subject:** FW: W DONALD MILLIGAN PTY LTD v NOOSA SHIRE COUNCIL - P&# Appeal -136  
Top Forestry Road, Ridgewood - MCU12/0184  
**Attachments:** Notice of Appeal WD Milligan.pdf

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**From:** Cliff Wirz [mailto:cliff.wirz@ganttlegal.com.au]  
**Sent:** Thursday, 24 December 2015 12:08 PM  
**To:** Kerri Coyle; Jack Lewis; Wakefield Sykes (wakefield@sykeslegal.com.au)  
**Cc:** 'milliganfarms@bigpond.com'; office@mwasurveys.com.au  
**Subject:** W DONALD MILLIGAN PTY LTD v NOOSA SHIRE COUNCIL - P&# Appeal -136 Top Forestry Road, Ridgewood - MCU12/0184



I **enclose** a copy of the Notice of Appeal which has been sent to the Planning and Environment Court at Maroochydore for filing today.

I note that pursuant to District Court practice direction number 5 of 2015 each of the days from 21 December 2015 to 1 January 2016 inclusive has been designated as a Court holiday and accordingly, the Registry is closed.

The appeal will therefore be filed on Monday 4 January 2016.

Yours faithfully

A handwritten signature in black ink, appearing to read "C. Wirz", written in a cursive style.

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In the Planning and Environment Court  
Held at: Maroochydore

Appeal of 2015

Between: **W Donald Milligan Pty Ltd**  
**ACN 009 851 503**

Appellant

And: **Noosa Shire Council**

Respondent

## NOTICE OF APPEAL

Filed on: 24/12/2015

Filed by: **GANTT LEGAL**  
Service address: Level 22 69 Ann Street BRISBANE QLD 4000  
Phone: 0401 102 694  
Email: email@ganttlegal.com.au

**W Donald Milligan Pty Ltd ACN 009 851 503** of "Mirambeena", Top Forestry Road, Cooroy in the State of Queensland appeals to the Planning and Environment Court at Maroochydore against the decision of the respondent made on 19 November 2015, notified by decision notice dated 25 November 2015 (received by the appellant on 26 November 2015), to refuse a development application (bearing respondent reference MCU12/0184 & ERA12/0087) for a development permit for a Material Change of Use for Animal Husbandry Type II (Intensive Poultry Farm) and a development permit for an Environmentally Relevant Activity (ERA 4 – Poultry Farming) ("development application") for land at 136 Top Forestry Road, Ridgewood in the State of Queensland and more particularly described as Lot 21 on SP226606 ("land the subject of the development application") and seeks the following orders or judgment:

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**NOTICE OF APPEAL**  
Filed on behalf of the Appellant

Form PEC-1

**GANTT LEGAL**  
Level 22 69 Ann Street  
BRISBANE QLD 4000  
email@ganttlegal.com.au

Contact lawyer:  
Cliff Wirz  
0401 102 694  
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1. the appeal be allowed;
2. the development application be approved subject to lawful conditions;
3. such further or other order as this Honourable Court may require.

**The grounds of appeal are:**

1. On 14 November 2012, the development application was properly made to the respondent.
  2. According to the respondent's amended acknowledgment notice dated 3 December 2012 the development application:
    - (a) required referral to a concurrence agency;
    - (b) required referral to an advice agency; and
    - (c) required impact assessment.
  3. The concurrence agency was the Department of Transport and Main Roads with respect to state-controlled road issues.
  4. The advice agency was Powerlink with respect to matters associated with electricity infrastructure.
  5. By correspondence dated 10 December 2012 the respondent gave an information request.
  6. By correspondence dated 13 December 2012, the Department of Transport and Main Roads gave a concurrence agency response advising that it had no requirements with respect to the development application.
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7. By correspondence dated 20 December 2012, Powerlink gave an advice agency response and requested the respondent to treat the response as a properly made submission.
  8. On 8 May 2013, the appellant gave the respondent a full response to the information request.
  9. The development application was publicly notified between 14 May 2013 and 4 June 2013 in accordance with the relevant provisions of the *Sustainable Planning Act 2009*. According to the respondent, 11 properly made submissions were made with respect to the development application.
  10. On 14 November 2013 the respondent resolved to request further information with respect to the development application.
  11. By correspondence dated 31 July 2014 the appellant provided further information to the respondent, including, but not limited to, confirmation that in terms of the composting/manure stockpiles component of the development application the appellant is prepared to accept a condition of approval that no composting and stockpiling of poultry manure generated by the poultry sheds is to be undertaken on-site (which addressed item 3 of the Council resolution made at the Council's ordinary meeting on 14 November 2013).
  12. By correspondence dated 20 October 2015 the appellant received an unsigned infrastructure agreement from the respondent, which contained provisions requiring the appellant (and it's directors) to:
    - a. Undertake road upgrade/widening/sealing works to Top Forestry Road. The roadworks were to be undertaken in accordance with plans of development prepared by Steve Williams (engineer) of Lambert and Rehbein. The roadworks were based on geotechnical testing undertaken by David Morrison (geotechnical engineer at Red Earth Engineering).
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b. Register a Covenant for the purpose of providing an odour buffer to the land the subject of the development application on the title of the following properties that are owned by the appellant and/or the director(s) of the appellant ("the buffer lands"):

- Lot 20 on SP226606 at 124 Top Forestry Road, Ridgewood
- Lot 204 on RP892484 at 146 Top Forestry Road, Ridgewood
- Lot 22 on SP226606 at 172 Top Forestry Road, Ridgewood; and
- Lot 1 on SP100785 at 224 Top Forestry Road, Ridgewood

13. A copy of the infrastructure agreement signed by the appellant and the owners of the buffer lands was forwarded to the respondent by email dated 21 October 2015.

14. At the respondent's planning and organisation committee meeting held on 10 November 2015, the respondent considered a report prepared by the respondent's officers which recommended approval of the development application subject to the imposition of conditions.

15. By correspondence dated 25 November 2015 (received by the appellant on 26 November 2015) the respondent issued a decision notice and advised that on 19 November 2015 it had decided to refuse the development application for the following reasons:

- (a) The proposed poultry farm does not comply with the Overall Outcomes of The Noosa Plan's Mary River Catchment Locality, Agricultural Uses and Transport, Roads and Drainage Codes.
- (b) The proposed poultry farm does not achieve sufficient separation distance from surrounding residences and properties, so as to avoid adverse odour impacts on amenity.

- (c) The odour modelling carried out by the applicant does not provide sufficient assurance that nearby residents will not be adversely impacted by odour.
- (d) The proposal will result in actual and perceived loss of amenity to nearby residents.
- (e) Traffic generated by the development will have significant adverse impacts on the existing road network and on the amenity of residents living along the haul route, as the route traverses Cooroy's residential streets and bird collection will occur during normal sleeping hours.
- (f) The proposed sheds and earthworks necessary for shed construction are likely to adversely impact on the scenic amenity of the area, as the applicant has not demonstrated that they will integrate satisfactorily with the landform and landscape.
- (g) It has not been clearly demonstrated that the proposed poultry farm will not generate unacceptable levels of dust, other particulates and ammonia that may impact on the amenity of nearby residents and/or have adverse environmental outcomes.

16. The appellant seeks an Order that:

- (a) the appeal be allowed; and
- (b) the development application be approved subject to lawful conditions.



**GANTT LEGAL**  
Solicitors for the Appellant  
Dated 24 December 2015

**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 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.**