

File: 21/39W  
Date: 17 January 2022

Gary and Lea McDonald  
C/- SMK QLD Pty Ltd  
PO Box 422  
GOONDIWINDI QLD 4390

Attention: Mr Tom Jobling

Dear Tom

**Decision Notice – approval (with conditions)  
Reconfiguring a Lot  
Lot 17 on MH447 and Lot 22 on MH138, Cunningham Highway, Goondiwindi**

We wish to advise that on 9 December 2021 a decision was made to approve the reconfiguring a lot development application for a two (2) into two (2) lot boundary realignment at lot 17 on MH447 and Lot 22 on MH138, Cunningham Highway, Goondiwindi. In accordance with the *Planning Act 2016*, please find attached Council's Decision Notice for the application.

Please read the conditions carefully as these include actions which must be undertaken **prior to the commencement of the use** as well as requirements for the ongoing operation of the use.

Please note **Condition 18**, which requires a letter to be submitted to Council prior to commencement of the use, outlining and demonstrating compliance with each condition.

If you require any further information, please contact Council's Manager of Planning Services, Mrs Ronnie McMahon, on (07) 4671 7400 or [rmcmahon@grc.qld.gov.au](mailto:rmcmahon@grc.qld.gov.au), who will be pleased to assist.

Yours faithfully



**Ronnie McMahon**  
Manager of Planning Services  
Goondiwindi Regional Council

## Decision Notice approval

### Planning Act 2016 section 63

Council File Reference: 21/39W  
Council Contact: Mrs Ronnie McMahon: PD  
Council Contact Phone: (07) 4671 7400

17 January 2022

**Applicant Details:** SMK QLD Pty Ltd for Gary & Lea McDonald  
PO Box 422  
GOONDIWINDI QLD 4390

Attention: Tom Jobling

The development application described below was properly made to Goondiwindi Regional Council on 21 October 2021.

#### Applicant details

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Applicant name: SMK QLD for Gary & Lea McDonald  
Applicant contact details: Mr Tom Jobling  
PO Box 422, Goondiwindi, QLD 4390  
[tom@smkqld.com.au](mailto:tom@smkqld.com.au)  
(07) 4671 2445

#### Application details

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Application number: 21/39W  
Approval sought: Development Permit - Reconfiguring a Lot  
Details of proposed development: Two (2) into two (2) lot boundary realignment

#### Location details

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Street address: Cunningham Highway, Goondiwindi  
Real property description: Lot 17 on MH447 and Lot 22 on MH138

#### Decision

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Date of decision: 9 December 2021  
Decision details: Approved in full with conditions. These conditions are set out in Attachment 1 and are clearly identified to indicate whether the assessment manager or a concurrence agency imposed them.

#### Details of the approval

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The application is not taken to be approved (a deemed approval) under section 64(5) of the *Planning Act 2016*.

The following approvals are given:

	<b>Planning Regulation 2017 reference</b>	<b>Development Permit</b>	<b>Preliminary Approval</b>
Development assessable under the planning scheme, superseded planning scheme, a temporary local planning instrument, a master plan or a preliminary approval which includes a variation approval - building work assessable under the planning scheme - plumbing or drainage work - material change of use - reconfiguring a lot - operational work	N/A	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Carrying out building work (assessable under the <i>Building Act 1975</i> )	Schedule 9, part 1	<input type="checkbox"/>	<input type="checkbox"/>
Development on airport land if the land use plan for the airport land states the development is assessable development - building work - plumbing or drainage work - material change of use (consistent with the land use plan) - reconfiguring a lot - operational work	Schedule 10, part 1, division 1	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Making a material change of use on airport land that is inconsistent with the land use plan for the airport land	Schedule 10, part 1, division 1	<input type="checkbox"/>	<input type="checkbox"/>
Making a material change of use for a brothel	Schedule 10, part 2, division 2	<input type="checkbox"/>	<input type="checkbox"/>
Carrying out operational work for the clearing of native vegetation	Schedule 10, part 3, division 2	<input type="checkbox"/>	<input type="checkbox"/>
Making a material change of use on contaminated land	Schedule 10, part 4, division 1	<input type="checkbox"/>	<input type="checkbox"/>
Making a material change of use of premises for an environmentally relevant activity	Schedule 10, part 5, division 2	<input type="checkbox"/>	<input type="checkbox"/>
Making a material change of use of premises for aquaculture	Schedule 10, part 6, division 1, subdivision 1	<input type="checkbox"/>	<input type="checkbox"/>
Carrying out operational work that is completely or partly in a declared fish habitat area	Schedule 10, part 6, division 2, subdivision 1	<input type="checkbox"/>	<input type="checkbox"/>
Carrying out operational work that is the removal, destruction or damage of a marine plant	Schedule 10, part 6, division 3, subdivision 1	<input type="checkbox"/>	<input type="checkbox"/>
Carrying out operational work that is constructing or raising waterway barrier works	Schedule 10, part 6, division 4, subdivision 1	<input type="checkbox"/>	<input type="checkbox"/>

	<b>Planning Regulation 2017 reference</b>	<b>Development Permit</b>	<b>Preliminary Approval</b>
Making a material change of use for a hazardous chemical facility	Schedule 10, part 7, division 1	<input type="checkbox"/>	<input type="checkbox"/>
Development on a local heritage place (other than a Queensland heritage place) - building work assessable under the <i>Building Act 1975</i> - building work assessable under the planning scheme - plumbing or drainage work - material change of use - reconfiguring a lot - operational work	Schedule 10, part 8, division 1, subdivision 1	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Development on or adjoining a Queensland heritage place - building work assessable under the <i>Building Act 1975</i> - building work assessable under the planning scheme - plumbing or drainage work - material change of use - reconfiguring a lot - operational work	Schedule 10, part 8, division 2, subdivision 1	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Development interfering with koala habitat in koala habitat areas outside koala priority areas	Schedule 10, part 10, division 3, subdivision 1	<input type="checkbox"/>	<input type="checkbox"/>
Development interfering with koala habitat in koala habitat areas for extractive industries in key resource areas	Schedule 10, part 10, division 4, subdivision 1	<input type="checkbox"/>	<input type="checkbox"/>
Carrying out operational work for reconfiguring a lot, if the reconfiguration is also assessable development	Schedule 10, part 12, division 1	<input type="checkbox"/>	<input type="checkbox"/>
Development in a priority port's master planned area that the port overlay for the master planned area states is assessable development - building work - plumbing or drainage work - material change of use - reconfiguring a lot - operational work	Schedule 10, part 13, division 4, subdivision 1	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Development on strategic port land if the land use plan for the strategic port land states the development is assessable development - building work - plumbing or drainage work - material change of use (consistent with the land use plan) - reconfiguring a lot - operational work	Schedule 10, part 13, division 5, subdivision 1	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

	<b>Planning Regulation 2017 reference</b>	<b>Development Permit</b>	<b>Preliminary Approval</b>
Making a material change of use on strategic port land that is inconsistent with the land use plan	Schedule 10, part 13, division 5, subdivision 1	<input type="checkbox"/>	<input type="checkbox"/>
Reconfiguring a lot under the <i>Land Title Act 1994</i>	Schedule 10, part 14, division 1	<input type="checkbox"/>	<input type="checkbox"/>
Making a material change of use of premises for a tourist activity or sport and recreation activity in the SEQ regional landscape and rural production area or the SEQ rural living area	Schedule 10, part 16, division 2, subdivision 1	<input type="checkbox"/>	<input type="checkbox"/>
Making a material change of use of premises for a residential care facility in the SEQ regional landscape and rural production area or the SEQ rural living area	Schedule 10, part 16, division 3, subdivision 2	<input type="checkbox"/>	<input type="checkbox"/>
Making a material change of use of premises for a community activity, other than a residential care facility, in the SEQ regional landscape and rural production area or the SEQ rural living area	Schedule 10, part 16, division 3, subdivision 2	<input type="checkbox"/>	<input type="checkbox"/>
Making a material change of use of premises for indoor recreation in the SEQ regional landscape and rural production area or the SEQ rural living area	Schedule 10, part 16, division 4, subdivision 1	<input type="checkbox"/>	<input type="checkbox"/>
Making a material change of use of premises for a biotechnology industry in the SEQ regional landscape and rural production area or the SEQ rural living area	Schedule 10, part 16, division 6, subdivision 2	<input type="checkbox"/>	<input type="checkbox"/>
Making a material change of use of premises for a service station in the SEQ regional landscape and rural production area or the SEQ rural living area	Schedule 10, part 16, division 6, subdivision 2	<input type="checkbox"/>	<input type="checkbox"/>
Making a material change of use of premises for an urban activity other than a biotechnology industry or service station in the SEQ regional landscape and rural production area or the SEQ rural living area	Schedule 10, part 16, division 6, subdivision 2	<input type="checkbox"/>	<input type="checkbox"/>
Making a material change of use of premises for two or more of the following: (i) a community activity (ii) indoor recreation (iii) a sport and recreation activity (iv) a tourist activity (v) an urban activity, in the SEQ regional landscape and rural production area or the SEQ rural living area	Schedule 10, part 16, division 7, subdivision 1	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Carrying out operational work that is tidal works or work carried out completely or partly in a coastal management district	Schedule 10, part 17, division 1	<input type="checkbox"/>	<input type="checkbox"/>
Carrying out operational work that involves taking, or interfering with, water	Schedule 10, part 19, division 1, subdivision 1	<input type="checkbox"/>	<input type="checkbox"/>

	<b>Planning Regulation 2017 reference</b>	<b>Development Permit</b>	<b>Preliminary Approval</b>
Development for removing quarry material from a watercourse or lake - building work assessable under the <i>Building Act 1975</i> - building work assessable under the planning scheme - plumbing or drainage work - material change of use - reconfiguring a lot - operational work	Schedule 10, part 19, division 2, subdivision 1	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Carrying out operational work that is the construction of a dam or relates to a dam.	Schedule 10, part 19, division 3, subdivision 1	<input type="checkbox"/>	<input type="checkbox"/>
Carrying out operational work for construction of a new category 2 or 3 levee or for modification of an existing category 2 or 3 levee	Schedule 10, part 19, division 4, subdivision 1	<input type="checkbox"/>	<input type="checkbox"/>
Carrying out operational work that is high impact earthworks in a wetland protection area	Schedule 10, part 20, division 2	<input type="checkbox"/>	<input type="checkbox"/>
Making a material change of use of premises for a wind farm	Schedule 10, part 21, division 1	<input type="checkbox"/>	<input type="checkbox"/>

### **Conditions**

This approval is subject to the conditions in Attachment 1.

### **Further development permits**

Please be advised that the following development permits are required to be obtained before the development can be carried out:

1. Not applicable

### **Properly made submissions**

Not applicable—No part of the application required public notification.

## Referral agencies for the application

The referral agencies for this application are:

For an application involving	Name of referral agency	Advice agency or concurrence agency	Address
<p><i>As per Schedule 10, Part 9, Division 4, Subdivision 2, Table 1, Item 1 (10.9.4.2.1.1) of the PR:</i></p> <p><i>Development application for reconfiguring a lot that is assessable development under section 21, if—</i></p> <p><i>(a) all or part of the premises are within 25m of a State transport corridor; and</i></p> <p><i>(b) 1 or more of the following apply—</i></p> <p><i>(i) the total number of lots is increased;</i></p> <p><i>(ii) the total number of lots adjacent to the State transport corridor is increased;</i></p> <p><i>(iii) there is a new or changed access between the premises and the State transport corridor;</i></p> <p><i>(iv) an easement is created adjacent to a railway as defined under the Transport Infrastructure Act, schedule 6; and</i></p> <p><i>(c) the reconfiguration does not relate to government supported transport infrastructure</i></p>	<p>Department of State Development, Infrastructure, Local Government and Planning</p>	<p>Concurrence Agency</p>	<p>Department of State Development, Infrastructure and Local Government and Planning Post: PO Box 825 Visit: 128 Margaret Street, TOOWOOMBA QLD 4350</p> <p><a href="mailto:ToowoombaSARA@dsgi.qld.gov.au">ToowoombaSARA@dsgi.qld.gov.au</a></p> <p>Ph: (07) 07 4616 7307</p>

## Approved plans and specifications

Copies of the following plans are enclosed.

Drawing/report title	Prepared by	Date	Reference no.	Version/issue
<b>Aspect of development: [reconfiguring a lot]</b>				
Proposal Plan to Accompany ROL Application on Lot 17 MH447 and Lot 22 on MH138	SMK QLD Pty Ltd	21/10/2021	21067-2	

## Currency period for the approval

This development approval will lapse at the end of the period set out in section 85 of *Planning Act 2016* OR

- [for reconfiguring a lot] This approval lapses if a plan for the reconfiguration that, under the *Land Title Act 1994*, is required to be given to a local government for approval is not given within **four (4) years**.

## Rights of appeal

The rights of an applicant to appeal to a tribunal or the Planning and Environment Court against a decision about a development application are set out in chapter 6, part 1 of the *Planning Act 2016*. For certain applications, there may also be a right to make an application for a declaration by a tribunal (see chapter 6, part 2 of the *Planning Act 2016*).

### Appeal by an applicant

An applicant for a development application may appeal to the Planning and Environment Court against the following:

- the refusal of all or part of the development application
- a provision of the development approval
- the decision to give a preliminary approval when a development permit was applied for
- a deemed refusal of the development application.

An applicant may also have a right to appeal to the Development tribunal. For more information, see schedule 1 of the *Planning Act 2016*.

### Appeal by an eligible submitter

An eligible submitter for a development application may appeal to the Planning and Environment Court against the decision to approve the application, to the extent the decision relates to:

- any part of the development application that required impact assessment
- a variation request.

The timeframes for starting an appeal in the Planning and Environment Court are set out in section 229 of the *Planning Act 2016*.



**Attachment 4** is an extract from the *Planning Act 2016* that sets out the applicant's appeal rights and the appeal rights of a submitter.

To stay informed about any appeal proceedings which may relate to this decision visit: <https://planning.dsdmip.qld.gov.au/planning/our-planning-system/dispute-resolution/pe-court-database>.

**Attachment 3** is a Notice about decision - Statement of reasons, in accordance with section 63 (5) of the *Planning Act 2016*.

If you wish to discuss this matter further, please contact Council's Manager of Planning Services, Mrs Ronnie McMahon, on 07 4671 7400.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'RM' followed by a stylized flourish.

**Ronnie McMahon**  
Manager of Planning Services  
Goondiwindi Regional Council

enc     Attachment 1—Assessment manager and concurrence agency conditions  
         Attachment 2—Approved Plans  
         Attachment 3— Notice about decision – Statement of reasons  
         Attachment 4— *Planning Act 2016* Extracts



## **ATTACHMENTS**

### **Attachment 1 – Assessment Manager’s Conditions**

*Part 1 - Assessment Manager's Conditions*

*Part 2 - Department of State Development, Infrastructure, Local Government and Planning - Concurrence Agency Response*

### **Attachment 2 – Approved Plans**

### **Attachment 3 – Notice about decision - Statement of reasons**

### **Attachment 4 – *Planning Act 2016* Extracts**

*Planning Act 2016 appeal provisions*

*Planning Act 2016 lapse dates*



## **Attachment 1 – Assessment Manager's Conditions**



## Assessment Manager's Conditions

<b>Approved Use:</b>	Boundary realignment - Two (2) into two (2) lots
<b>Development:</b>	Development Permit - Reconfiguring a Lot
<b>Applicant:</b>	SMK QLD Pty Ltd for Gary and Lea McDonald
<b>Address:</b>	Cunningham Highway, Goondiwindi
<b>Real Property Description:</b>	Lot 17 on MH447 & Lot 22 on MH138
<b>Council File Reference:</b>	21/39W

GENERAL CONDITIONS							
1.	Approval is granted for the purpose of Reconfiguring a Lot – Boundary Realignment (Two (2) into two (2) lots)						
2.	<p>The development shall be in accordance with supporting information supplied by the applicant with the development application including the following plan:</p> <table border="1"> <thead> <tr> <th>Drawing No</th> <th>Title</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td>21067-2</td> <td>Proposal Plan to Accompany ROL Application on Lot 17 MH447 and Lot 22 on MH138</td> <td>21/10/2021</td> </tr> </tbody> </table> <p>Please note this is not an approved Plan of Survey. The approved plan is included in <b>Attachment 2</b>.</p>	Drawing No	Title	Date	21067-2	Proposal Plan to Accompany ROL Application on Lot 17 MH447 and Lot 22 on MH138	21/10/2021
Drawing No	Title	Date					
21067-2	Proposal Plan to Accompany ROL Application on Lot 17 MH447 and Lot 22 on MH138	21/10/2021					
3.	<p>Complete and maintain the approved development as follows:</p> <ul style="list-style-type: none"> <li>(i) Generally in accordance with development approval documents; and</li> <li>(ii) Strictly in accordance with those parts of the approved development which have been specified in detail by the Council or Referral Agency unless the Council or Referral Agency agrees in writing that those parts will be adequately complied with by amended specifications.</li> </ul> <p>All development must comply with any relevant provisions in the <i>Goondiwindi Region Planning Scheme 2018 (Version 2)</i>, Council's standard designs for applicable work and any relevant Australian Standard that applies to that type of work.</p> <p>The development approval documents are the material contained in the development application, approved plan(s) and supporting documentation including any written and electronic correspondence between applicant, Council or Referral Agencies during all stages of the development application assessment processes.</p>						
4.	All conditions must be complied with or bonded prior to the submission to Council of the Plan of Survey, unless specified in an individual condition.						

<b>ESSENTIAL SERVICES</b>	
5.	A sufficient potable water supply storage and/or water treatment and implementation plan for human consumption shall be supplied on site for the development.
6.	A suitable design for the approved disposal of effluent (Effluent Management Plan) is to be approved by the relevant authority (Department of Environment and Science).
<b>PUBLIC UTILITIES</b>	
7.	Each proposed lot shall be connected to an adequate electricity supply system, if or when required, at no cost to Council.
8.	Each proposed lot shall be connected to an adequate telecommunications supply system, if or when required, at no cost to Council.
<b>VEHICLE ACCESS</b>	
9.	<p>All site accesses, from the edge of the existing bitumen to the property boundary, shall be maintained to Transport and Main Roads standard in accordance with Schedule 6.2.1 – Standard Drawing in Schedule 6.2 – Planning Scheme Policy 1 – Land Development Standards of the <i>Goondiwindi Region Planning Scheme 2018 (Version 2)</i> or to other relevant engineering standards to the satisfaction of and at no cost to Council.</p> <p>Crossovers shall be either constructed or bonded prior to the submission to Council of the Plan of Survey.</p> <p>The applicant shall contact Council’s Department of Engineering to ensure the correct specifications are obtained for all civil works prior to commencement of any works onsite.</p> <p>A qualified Council Officer may inspect construction works at the request of the developer to ensure compliance with this condition.</p>
<b>DEVELOPER’S RESPONSIBILITIES</b>	
10.	Any alteration or damage to roads and public infrastructure that is attributable to the progress of works or vehicles associated with the development must be repaired to Council’s satisfaction or the cost of repairs paid to Council.
11.	The developer shall be responsible for meeting all costs reasonably associated with the approved development, unless there is specific agreement by other parties, including Council, to meeting those costs.
12.	It is the developer’s responsibility to ensure that any contractors and subcontractors have current, relevant and appropriate qualifications and insurances in place to carry out the works.

13.	The developer shall be responsible for mitigating any complaints arising from on-site operations during construction.
14.	Construction works must occur so they do not cause unreasonable interference with the amenity of adjoining premises. During construction the site must be kept in a clean and tidy state at all times.
15.	At all times all requirements of the conditions of the development approval must be maintained.
<b>BEFORE PLANS WILL BE ENDORSED</b>	
16.	<p>The developer shall submit a detailed Plan of Survey, prepared by a licensed surveyor, for the endorsement of Council. In accordance with Schedule 18 of the <i>Planning Regulations 2017</i>.</p> <p>The relevant Council Fee for endorsement of the Plan of Survey (currently \$190; subject to change).</p>
17.	<p>All outstanding rates and charges shall be paid to Council prior to the submission to Council of the Plan of Survey.</p> <p>At its discretion, Council may accept bonds or other securities by way of bank guarantee or cash, to ensure completion of specified development approval conditions to expedite the endorsement of the Plan of Survey.</p> <p>It may be necessary for Council to use such bonds for the completion of outstanding works without a specific timeframe agreed.</p> <p>The decision to accept bonds or other securities to satisfy a condition will be that of Council, not the applicant.</p>
18.	<p>A letter outlining and demonstrating that each condition has been complied with of how they will be complied with shall be submitted to Council prior to the submission to Council of the Plan of Survey. Council officers may require a physical inspection to confirm that all conditions have been satisfied to relevant standards.</p> <p>The approval will lapse if a plan for the reconfiguration is not given to the local government within the following period, in accordance with the provisions contained in section 85(1)(b) of the <i>Planning Act 2016</i>:</p> <p style="padding-left: 40px;">(a) If no period is stated – <b>4 years</b> after the approval starts to have effect.</p> <p>Section 86 of the <i>Planning Act 2016</i> sets out how an extension to the period of approval can be requested.</p>

NOTES AND ADVICE	
	<p><i>When approval takes effect</i></p> <p>This approval takes effect in accordance with section 85 of the <i>Planning Act 2016</i>.</p> <p><i>When approval lapses</i></p> <p>The approval will lapse if a plan for the reconfiguration is not given to the local government within the following period, in accordance with the provisions contained in section 85(1)(b) of the <i>Planning Act 2016</i>:</p> <p style="padding-left: 40px;">(a) If no period is stated – <b>4 years</b> after the approval starts to have effect.</p> <p>Section 86 of the <i>Planning Act 2016</i> sets out how an extension to the period of approval can be requested.</p>
	<p>Infrastructure charges as outlined in the attached Infrastructure Charges Notice shall be paid upon Council's approval of the Plan of Survey. The Infrastructure Charges Notice is included in <b>Attachment 3</b>.</p>
	<p>All development shall be conducted in accordance with the provisions of the <i>Environmental Protection Act 1994</i> and all relevant regulations and standards under that Act. All necessary licences under the Act shall be obtained and shall be maintained at all times.</p>
	<p>This approval in no way removes the duty of care responsibility of the applicant under the <i>Aboriginal Cultural Heritage Act 2003</i>. Pursuant to Section 23(1) of the <i>Aboriginal Cultural Heritage Act 2003</i>, a person who carries out an activity must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage (the "cultural heritage duty of care").</p>
	<p>This approval in no way authorises the clearing of native vegetation protected under the <i>Vegetation Management Act 1999</i>.</p>
	<p>The approved development does not authorise any deviation from the applicable Australian Standards nor from the application of any laws, including laws covering work place health and safety.</p>
	<p>It is the applicant's responsibility to obtain all statutory approvals prior to commencement of any works onsite.</p>

## **Attachment 1 – Assessment Manager’s Conditions**

***Part 2 - Department of State Development, Infrastructure, Local Government and Planning - Concurrence Agency Response***





Our ref TMR21-034728  
Your ref  
Enquiries Jason McGuire



Department of  
**Transport and Main Roads**

6 December 2021

## **Decision Notice – Permitted Road Access Location (s62(1) Transport Infrastructure Act 1994)**

This is not an authorisation to commence work on a state-controlled road<sup>1</sup>

Development application reference number 21/39W, lodged with Goondiwindi Regional Council involves constructing or changing a vehicular access between Lot 17MH447, 22MH138, the land the subject of the application, and the Cunningham Highway (a state-controlled road).

In accordance with section 62A(2) of the *Transport Infrastructure Act 1994* (TIA), this development application is also taken to be an application for a decision under section 62(1) of TIA.

### **Applicant Details**

Name and address Gary & Lea McDonald c/- SMK QLD  
PO Box 422  
Goondiwindi QLD 4390

### **Application Details**

Address of Property Cunningham Highway, Goondiwindi QLD 4390  
Real Property Description 17MH447, 22MH138  
Aspect/s of Development Reconfigure Two (2) Lots into Two (2) Lots Boundary Realignment

### **Decision (given under section 67 of TIA)**

It has been decided to approve the application, subject to the following conditions:

No.	Conditions of Approval	Condition Timing
<b>Road Access Location</b>		

<sup>1</sup> Please refer to the further approvals required under the heading 'Further approvals'

No.	Conditions of Approval	Condition Timing
<b>A. General</b>		
1.	(a) The road access location/s are to be located generally in accordance with the Site Plan prepared by SMK QLD Pty Ltd No. 21067-2 (2 into 2 lots) received by TMR on 29/11/2021. (b) The road access works must be designed and constructed in accordance with the Department of Transport and Main Roads' <i>Rural Property Access</i> (Standard Drawing No.1807) – Type A – Residential.	At all times.
2.	Direct access is prohibited between the state Controlled Road and Lots 17 MH447 and Lot 22 MH 138 at any other location other than the permitted road access location described in Condition 1.	At all times.

### Reasons for the decision

The reasons for this decision are as follows:

- a) to maintain the safety, efficiency, and operation of the state-controlled road.

Please refer to **Attachment A** for the findings on material questions of fact and the evidence or other material on which those findings were based.

### Information about the Decision required to be given under section 67(2) of TIA

1. There is no guarantee of the continuation of road access arrangements, as this depends on future traffic safety and efficiency circumstances.
2. In accordance with section 70 of the TIA, the applicant for the planning application is bound by this decision. A copy of section 70 is attached as **Attachment B**, as required, for information.

### Further information about the decision

1. In accordance with section 67(7) of TIA, this decision notice:
  - a) starts to have effect when the development approval has effect; and
  - b) stops having effect if the development approval lapses or is cancelled; and
  - c) replaces any earlier decision made under section 62(1) in relation to the land.
2. In accordance with section 485 of the TIA and section 31 of the *Transport Planning and Coordination Act 1994* (TPCA), a person whose interests are affected by this decision may apply for a review of this decision only within 28 days after notice of the decision was given under the TIA. A copy of the review provisions under TIA and TPCA are attached in **Attachment C** for information.
3. In accordance with section 485B of the TIA and section 35 of TPCA a person may appeal against a reviewed decision. The person must have applied to have the decision reviewed before an appeal about the decision can be lodged in the Planning and Environment Court. A copy of the Appeal Provisions under TIA and TPCA is attached in **Attachment C** for information.

**Further approvals**

The Department of Transport and Main Roads also provides the following information in relation to this approval:

**Further approvals**

The Department of Transport and Main Roads also provides the following information in relation to this approval:

1. Road Access Works Approval Required – Written approval is required from the department to carry out road works that are road access works (including driveways) on a state-controlled road in accordance with section 33 of the TIA. This approval must be obtained prior to commencing any works on the state-controlled road. The approval process may require the approval of engineering designs of the proposed works, certified by a Registered Professional Engineer of Queensland (RPEQ). Please contact the department to make an application.

If further information about this approval or any other related query is required, Mr Jeff Lavey (Planner) should be contacted by email at [Jeffrey.J.Lavey@tmr.qld.gov.au](mailto:Jeffrey.J.Lavey@tmr.qld.gov.au) or on (07) 4639 0698.

Yours sincerely



Jason McGuire  
**Senior Town Planner**

Attachments: Attachment A – Decision evidence and findings  
Attachment B - Section 70 of TIA  
Attachment C - Appeal Provisions

## **Attachment A**

### **Decision Evidence and Findings**

Findings on material questions of fact:

- Development application material
- State Development Assessment Provisions –Assessment Code 1 (Development in a state-controlled road environment)
- Department of Transport and Main Roads' *Road Planning and Design Manual*
- *Planning Act (2016)*
- *Planning Regulations (2017)*
- *Transport Infrastructure Act (1997)*

## **Attachment B**

### **Section 70 of TIA**

*Transport Infrastructure Act 1994*

Chapter 6 Road transport infrastructure

Part 5 Management of State-controlled roads

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#### **70 Offences about road access locations and road access works, relating to decisions under s 62(1)**

- (1) This section applies to a person who has been given notice under section 67 or 68 of a decision under section 62(1) about access between a State-controlled road and adjacent land.
- (2) A person to whom this section applies must not—
  - (a) obtain access between the land and the State-controlled road other than at a location at which access is permitted under the decision; or
  - (b) obtain access using road access works to which the decision applies, if the works do not comply with the decision and the noncompliance was within the person's control; or
  - (c) obtain any other access between the land and the road contrary to the decision; or
  - (d) use a road access location or road access works contrary to the decision; or
  - (e) contravene a condition stated in the decision; or

- (f) permit another person to do a thing mentioned in paragraphs (a) to (e); or
- (g) fail to remove road access works in accordance with the decision.

Maximum penalty—200 penalty units.

- (3) However, subsection (2)(g) does not apply to a person who is bound by the decision because of section 68.

**Attachment C**  
**Appeal Provisions**

*Transport Infrastructure Act 1994*  
Chapter 16 General provisions

---

**485 Internal review of decisions**

- (1) A person whose interests are affected by a decision described in schedule 3 (the **original decision**) may ask the chief executive to review the decision.
- (2) The person is entitled to receive a statement of reasons for the original decision whether or not the provision under which the decision is made requires that the person be given a statement of reasons for the decision.
- (3) The *Transport Planning and Coordination Act 1994*, part 5, division 2—
  - (a) applies to the review; and
  - (b) provides—
    - (i) for the procedure for applying for the review and the way it is to be carried out; and
    - (ii) that the person may apply to QCAT to have the original decision stayed.

**485B Appeals against decisions**

- (1) This section applies in relation to an original decision if a court (the appeal court) is stated in schedule 3 for the decision.
- (2) If the reviewed decision is not the decision sought by the applicant for the review, the applicant may appeal against the reviewed decision to the appeal court.
- (3) The *Transport Planning and Coordination Act 1994*, part 5, division 3—
  - (a) applies to the appeal; and
  - (b) provides—
    - (i) for the procedure for the appeal and the way it is to be disposed of; and
    - (ii) that the person may apply to the appeal court to have the original decision stayed.
- (4) Subsection (5) applies if—
  - (a) a person appeals to the Planning and Environment Court against a decision under section 62(1) on a planning application that is taken, under section 62A(2), to also be an application for a decision under section 62(1); and

(b) a person appeals to the Planning and Environment Court against a decision under the Planning Act on the planning application.

(5) The court may order—

(a) the appeals to be heard together or 1 immediately after the other; or

(b) 1 appeal to be stayed until the other is decided.

(6) Subsection (5) applies even if all or any of the parties to the appeals are not the same.

(7) In this section—

**original decision** means a decision described in schedule 3.

**reviewed decision** means the chief executive's decision on a review under section 485.

### **31 Applying for review**

- (1) A person may apply for a review of an original decision only within 28 days after notice of the original decision was given to the person under the transport Act.
- (2) However, if—
  - (a) the notice did not state the reasons for the original decision; and
  - (b) the person asked for a statement of the reasons within the 28 days mentioned in subsection (1)the person may apply within 28 days after the person is given the statement of the reasons.
- (3) In addition, the chief executive may extend the period for applying.
- (4) An application must be written and state in detail the grounds on which the person wants the original decision to be reviewed.

### **32 Stay of operation of original decision**

- (1) If a person applies for review of an original decision, the person may immediately apply for a stay of the decision to the relevant entity.
- (2) The relevant entity may stay the original decision to secure the effectiveness of the review and any later appeal to or review by the relevant entity.
- (3) In setting the time for hearing the application, the relevant entity must allow at least 3 business days between the day the application is filed with it and the hearing day.
- (4) The chief executive is a party to the application.
- (5) The person must serve a copy of the application showing the time and place of the hearing and any document filed in the relevant entity with it on the chief executive at least 2 business days before the hearing.
- (6) The stay—
  - (a) may be given on conditions the relevant entity considers appropriate; and
  - (b) operates for the period specified by the relevant entity; and
  - (c) may be revoked or amended by the relevant entity.
- (7) The period of a stay under this section must not extend past the time when the chief executive reviews the original decision and any later period the relevant entity allows the applicant to enable the applicant to appeal against the decision or apply for a review of the decision as provided under the QCAT Act.



(8) The making of an application does not affect the original decision, or the carrying out of the original decision, unless it is stayed.

(9) In this section—

**relevant entity** means—

(a) if the reviewed decision may be reviewed by QCAT—QCAT; or

(b) if the reviewed decision may be appealed to the appeal court—the appeal court.

### **35 Time for making appeals**

(1) A person may appeal against a reviewed decision only within—

(a) if a decision notice is given to the person—28 days after the notice was given to the person; or

(b) if the chief executive is taken to have confirmed the decision under section 34(5)—56 days after the application was made.

(2) However, if—

(a) the decision notice did not state the reasons for the decision; and

(b) the person asked for a statement of the reasons within the 28 days mentioned in subsection (1)(a);

the person may apply within 28 days after the person is given a statement of the reasons.

(3) Also, the appeal court may extend the period for appealing.



SARA reference: 2107-23506 SRA  
 Council reference: 21/39W

9 December 2021

Chief Executive Officer  
 Goondiwindi Regional Council  
 LMB 7  
 INGLEWOOD QLD 4387  
 mail@grc.qld.gov.au

Attention: Ms Ronnie McMahon

Dear Ronnie

## SARA response—Cunningham Highway, Goondiwindi

(Referral agency response given under section 56 of the *Planning Act 2016*)

The development application described below was confirmed as properly referred by the State Assessment and Referral Agency (SARA) on 8 November 2021.

### Response

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Outcome:	Referral agency response – with conditions.
Date of response:	9 December 2021
Conditions:	The conditions in <b>Attachment 1</b> must be attached to any development approval.
Advice:	Advice to the applicant is in <b>Attachment 2</b> .
Reasons:	The reasons for the referral agency response are in <b>Attachment 3</b> .

### Development details

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Description:	Development permit	Reconfiguring of a Lot – Boundary Realignment (Two (2) lots into Two (2) lots)
SARA role:	Referral Agency.	
SARA trigger:	Schedule 10, Part 9, Division 4, Subdivision 2, Table 1, Item 1 (Planning Regulation 2017)	
	Reconfiguring a lot near a state transport corridor.	
SARA reference:	2107-23506 SRA	
Assessment Manager:	Goondiwindi Regional Council	

Street address: Cunningham Highway, Goondiwindi  
Real property description: Lot 17 on MH447; Lot 22 on MH138  
Applicant name: Gary and Lea McDonald  
Applicant contact details: C/- SMK QLD  
PO Box 422  
GOONDIWINDI QLD 4390  
tom@smkqld.com.au

State-controlled road access permit: This referral included an application for a road access location, under section 62A(2) of *Transport Infrastructure Act 1994*. Below are the details of the decision:

- Approved
- Reference: TMR21-034728
- Date: 6 December 2021

If you are seeking further information on the road access permit, please contact the Department of Transport and Main Roads at [Downs.South.West.IDAS@tmr.qld.gov.au](mailto:Downs.South.West.IDAS@tmr.qld.gov.au)

## Representations

An applicant may make representations to a concurrence agency, at any time before the application is decided, about changing a matter in the referral agency response (s.30 Development Assessment Rules). Copies of the relevant provisions are in **Attachment 4**.

A copy of this response has been sent to the applicant for their information.

For further information please contact Danica Clark, Senior Planner, on (07) 4616 7305 or via email [ToowoombaSARA@dsdilgp.qld.gov.au](mailto:ToowoombaSARA@dsdilgp.qld.gov.au) who will be pleased to assist.

Yours sincerely



Darren Cooper  
Manager - DDSW (Planning)

cc SMK QLD for Gary and Lea McDonald, tom@smkqld.com.au

enc Attachment 1 - Referral agency conditions  
Attachment 2 - Advice to the applicant  
Attachment 3 - Reasons for referral agency response  
Attachment 4 - Representations about a referral agency response  
Attachment 5 - Approved plans and specifications

## Attachment 1—Referral agency conditions

(Under section 56(1)(b)(i) of the *Planning Act 2016* the following conditions must be attached to any development approval relating to this application) (Copies of the plans and specifications referenced below are found at Attachment 5)

No.	Conditions	Condition timing
<b>Reconfiguring a lot</b>		
Schedule 10, Part 9, Division 4, Subdivision 2, Table 1, Item 1—The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of the Department of Transport and Main Roads to be the enforcement authority for the development to which this development approval relates for the administration and enforcement of any matter relating to the following condition:		
1.	<p>(a) The road access location/s are to be located generally in accordance with the Proposal Plan to Accompany ROL – Subdivision Application on Lot 17 MH447 &amp; 22 MH138 Cunningham Highway, prepared by SMK QLD Pty Ltd, dated 21/10/21, Referenced 21067-2, as amended in red.</p> <p>(b) The road access works must be designed and constructed in accordance with the Department of Transport and Main Roads' <i>Rural Property Access</i> (Standard Drawing No.1807) – Type A – Residential.</p>	At all times

## Attachment 2—Advice to the applicant

General advice	
1.	Terms and phrases used in this document are defined in the <i>Planning Act 2016</i> its regulation or the State Development Assessment Provisions (SDAP) v2.6. If a word remains undefined it has its ordinary meaning.
2.	<b>Road works approval:</b> Under section 33 of the <i>Transport Infrastructure Act 1994</i> , written approval is required from the Department of Transport and Main Roads to carry out road works on a state-controlled road. Please contact the Department of Transport and Main Roads to make an application for road works approval. This approval must be obtained prior to commencing any works within the state-controlled road reserve. The approval process may require the approval of engineering designs of the proposed works, certified by a Registered Professional Engineer of Queensland (RPEQ). The road works approval process takes time – please contact the Department of Transport and Main Roads as soon as possible to ensure that gaining approval does not delay construction.

## Attachment 3—Reasons for referral agency response

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(Given under section 56(7) of the *Planning Act 2016*)

### The reasons for SARA's decision are:

The development complies with *State code 1: Development in a state-controlled road environment* of the SDAP. Specifically, the development (with relevant conditions):

- does not create a safety hazard for users of a state-controlled road
- does not compromise the structural integrity of state-controlled roads, road transport infrastructure or road works
- does not result in a worsening of the physical condition or operating performance of state-controlled roads and the surrounding road network
- does not compromise the state's ability to construct, or significantly increase the cost to construct state-controlled roads and future state-controlled roads
- does not compromise the state's ability to maintain and operate state-controlled roads, or significantly increase the cost to maintain and operate state-controlled roads.

### Material used in the assessment of the application:

- The development application material and submitted plans
- *Planning Act 2016*
- Planning Regulation 2017
- The *State Development Assessment Provisions* (version 2.6)
- The Development Assessment Rules
- SARA DA Mapping system
- *Human Rights Act 2019*

## **Attachment 4—Representations about a referral agency response**

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## Development Assessment Rules—Representations about a referral agency response

The following provisions are those set out in sections 28 and 30 of the Development Assessment Rules<sup>1</sup> regarding **representations about a referral agency response**

### Part 6: Changes to the application and referral agency responses

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#### 28 Concurrence agency changes its response or gives a late response

- 28.1. Despite part 2, a concurrence agency may, after its referral agency assessment period and any further period agreed ends, change its referral agency response or give a late referral agency response before the application is decided, subject to section 28.2 and 28.3.
- 28.2. A concurrence agency may change its referral agency response at any time before the application is decided if—
- (a) the change is in response to a change which the assessment manager is satisfied is a change under section 26.1; or
  - (b) the Minister has given the concurrence agency a direction under section 99 of the Act; or
  - (c) the applicant has given written agreement to the change to the referral agency response.<sup>2</sup>
- 28.3. A concurrence agency may give a late referral agency response before the application is decided, if the applicant has given written agreement to the late referral agency response.
- 28.4. If a concurrence agency proposes to change its referral agency response under section 28.2(a), the concurrence agency must—
- (a) give notice of its intention to change its referral agency response to the assessment manager and a copy to the applicant within 5 days of receiving notice of the change under section 25.1; and
  - (b) the concurrence agency has 10 days from the day of giving notice under paragraph (a), or a further period agreed between the applicant and the concurrence agency, to give an amended referral agency response to the assessment manager and a copy to the applicant.

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<sup>1</sup> Pursuant to Section 68 of the *Planning Act 2016*

<sup>2</sup> In the instance an applicant has made representations to the concurrence agency under section 30, and the concurrence agency agrees to make the change included in the representations, section 28.2(c) is taken to have been satisfied.



## **Part 7: Miscellaneous**

### **30 Representations about a referral agency response**

30.1. An applicant may make representations to a concurrence agency at any time before the application is decided, about changing a matter in the referral agency response.<sup>3</sup>

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<sup>3</sup> An applicant may elect, under section 32, to stop the assessment manager's decision period in which to take this action. If a concurrence agency wishes to amend their response in relation to representations made under this section, they must do so in accordance with section 28.

## **Attachment 5—Approved plans and specifications**

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Road

Reserve

**Note:**

This plan was prepared for Gary McDonald as a proposed subdivision to accompany a subdivision application to the Goondiwindi Regional Council and should not be used for any other purpose. The dimensions, areas and total number of lots shown hereon are subject to field survey and also to the requirements of Council and any other relevant legislation. In particular, no reliance should be placed on this plan for any financial dealings involving the land. This note is an integral part of this plan.

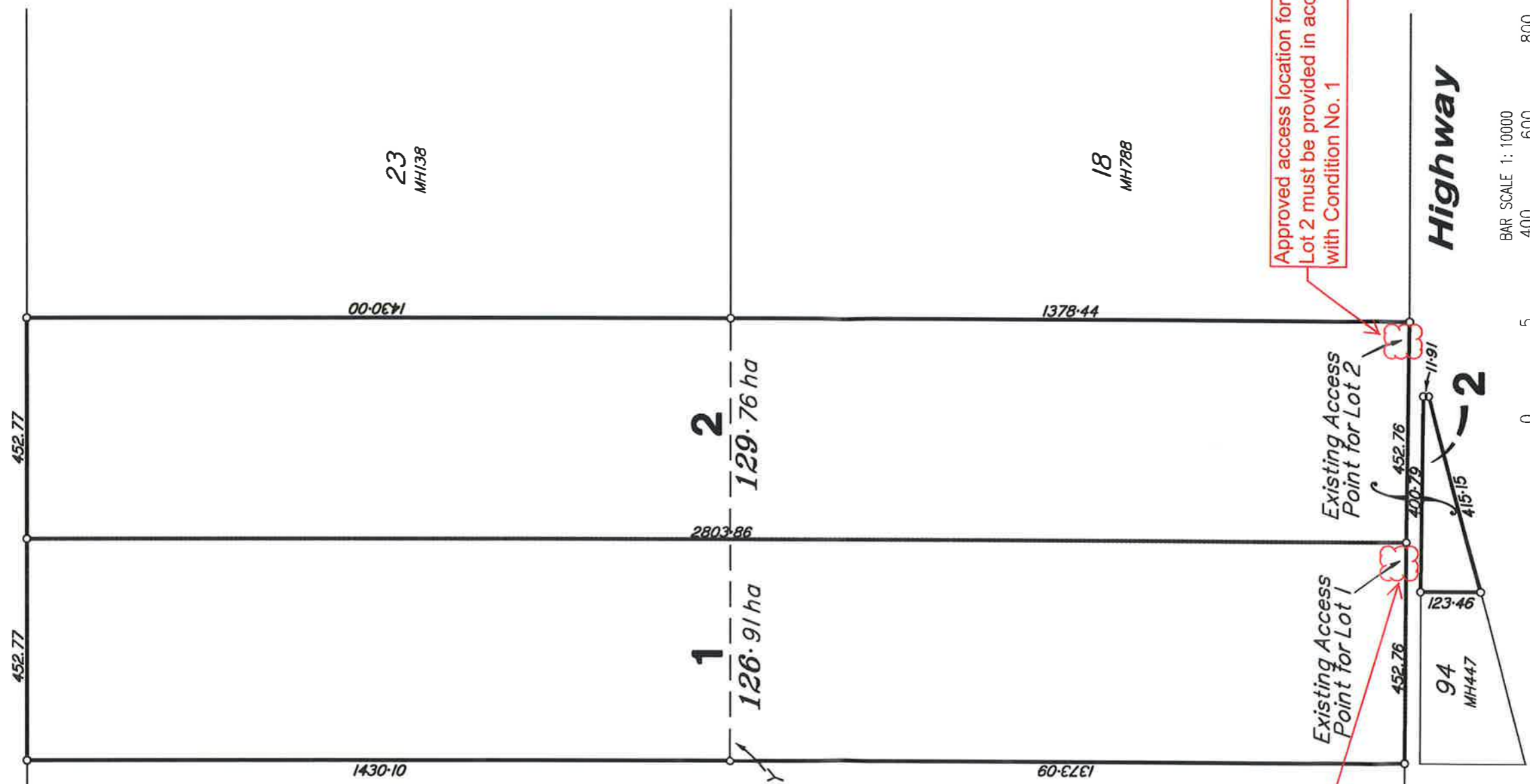
Direct access is prohibited to the State-controlled road and proposed Lots 1 and 2 at any other location other than the permitted road access location.

Amended in red by SARA on  
9 December 2021

PLANS AND DOCUMENTS referred to in the REFERRAL AGENCY RESPONSE  
SARA ref: 2107-23506 SRA  
Date: 9 December 2021

Approved access location for Proposed Lot 1 must be provided in accordance with Condition No. 1

Approved access location for Proposed Lot 2 must be provided in accordance with Condition No. 1



GARY & LEA MCDONALD

**SMK OLD** PTY. LTD.

Goondiwindi | Brisbane | Gold Coast | Toowoomba | Gatton  
Ph (07)4871 2445 Email admin@smkold.com.au

**A3**

Drawn TJJ 21/10/21 Checked

PROPOSAL PLAN TO ACCOMPANY  
ROL - SUBDIVISION APPLICATION  
ON LOT 17 MH447 & 22 MH138  
CUNNINGHAM HIGHWAY

21067

SCALE: 1:10000

21067-2



## Attachment 2 – Approved Plans

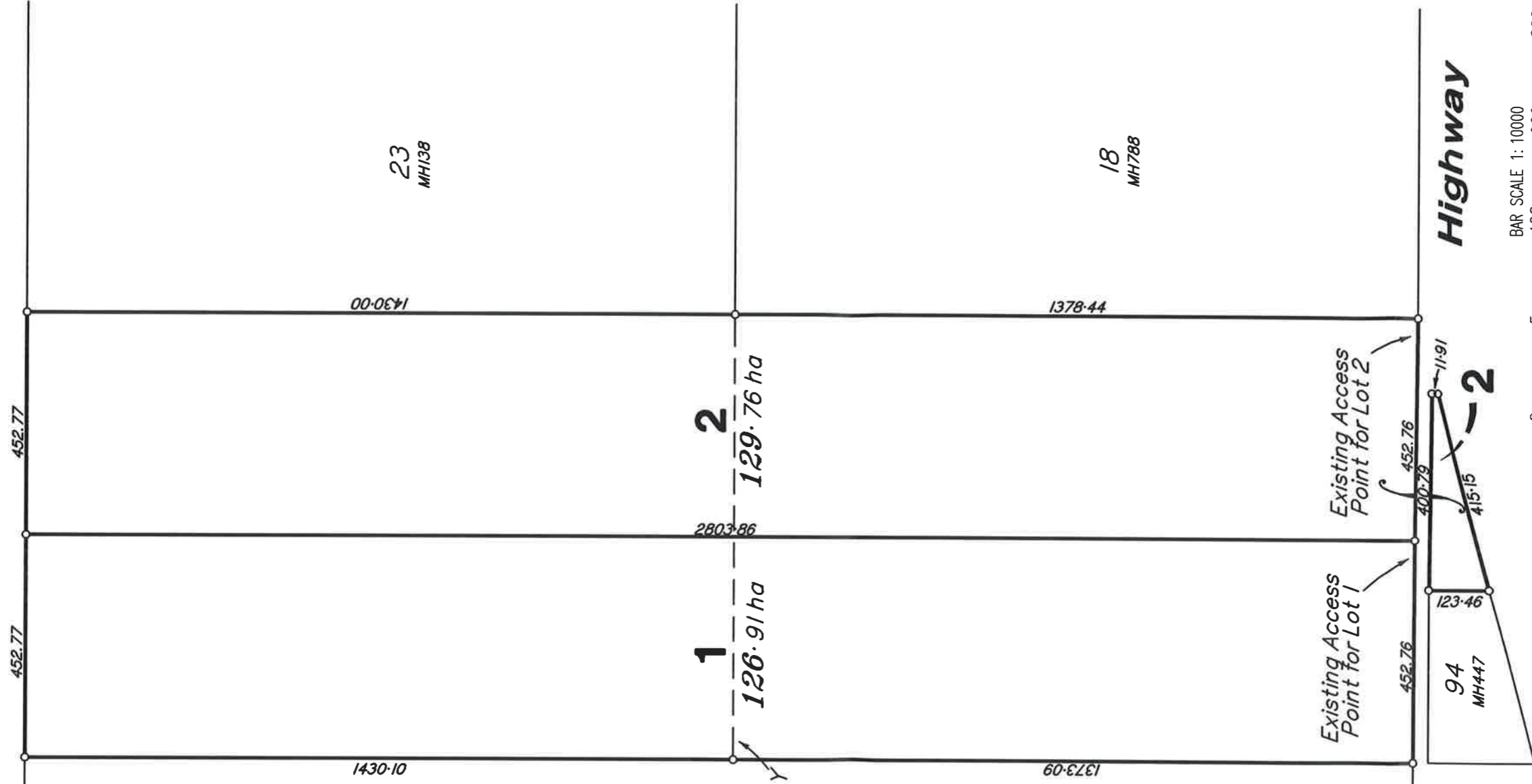


Road

Reserve

**Note:**

This plan was prepared for Gary McDonald as a proposed subdivision to accompany a subdivision application to the Goondiwindi Regional Council and should not be used for any other purpose. The dimensions, areas and total number of lots shown hereon are subject to field survey and also to the requirements of Council and any other relevant legislation. In particular, no reliance should be placed on this plan for any financial dealings involving the land. This note is an integral part of this plan.



GOONDIWINDI REGIONAL COUNCIL  
 Approved Plan referred to in Council's Decision Notice  
 Council Reference: 21/39W  
 Dated: 12/01/2022  
 Signed: *RM McMahon*  
 Print Name: Ronnie McMahon  
 (Under Delegation) ASSESSMENT MANAGER

GARY & LEA MCDONALD

**SMK OLD** PTY. LTD.

Goondiwindi | Brisbane | Gold Coast | Toowoomba | Gatton  
Ph (07)4671 2445 Email admin@smkold.com.au

**A3**

PROPOSAL PLAN TO ACCOMPANY  
 ROL - SUBMISSION APPLICATION  
 ON LOT 17 MH447 & 22 MH138  
 CUNNINGHAM HIGHWAY

21067

SCALE: 1:10000

21067-2

Drawn TJJ 21/10/21 Checked



**Attachment 3 – Notice about decision - Statement of reasons**



## Notice about decision - Statement of reasons

The following information is provided in accordance with section 63 (5) of the *Planning Act 2016* and must be published on the assessment managers website.

The development application for *Two (2) into two (2) lot subdivision*

21/39W

Cunningham Highway, Goondiwindi

Lot 17 on MH447 and Lot 22 on MH138

On 9 December, the above development application was:

- approved in full or
- approved in part for \_\_\_\_\_ [detail the extent of the approval] or
- approved in full with conditions or
- approved in part for \_\_\_\_\_ [detail the extent of the approval],  
with conditions or
- refused.

### 1. Reasons for the decision

The reasons for this decision are:

- *Having regard to the relevant criteria in the Reconfiguring a Lot code, the Biodiversity Areas Overlay Code, Bushfire Hazard Overlay Code, Infrastructure Overlay Code and Natural Resources Overlay Code of the Goondiwindi Region Planning Scheme 2018 (Version 2), the proposed development satisfied all relevant criteria, and was approved subject to appropriate, relevant and reasonable conditions.*

### 2. Assessment benchmarks

The following are the benchmarks applying for this development:

Benchmarks applying for the development	Benchmark reference
Reconfiguring a Lot Code	<i>Goondiwindi Region Planning Scheme 2018 (Version 2): AO1.1, AO1.2, AO1.3, AO2, AO3.2, AO4.2, AO5, AO6, AO8, AO9, AO10, PO12</i>
Biodiversity Areas Overlay Code	<i>Goondiwindi Region Planning Scheme 2018 (Version 2): PO1, AO2, PO3</i>
Bushfire Hazard Overlay Code	<i>Goondiwindi Region Planning Scheme 2018 (Version 2): PO1, PO2, AO3, AO4, AO5, PO6, PO7, AO8</i>
Infrastructure Overlay Code	<i>Goondiwindi Region Planning Scheme 2018 (Version 2): PO1, AO2, AO5.1, AO5.2</i>
Natural Resources Overlay Code	<i>Goondiwindi Region Planning Scheme 2018 (Version 2): PO5, PO6, PO7, PO8</i>

**3. Compliance with benchmarks**

Not applicable, as the development complied with applicable benchmarks.

**4. Relevant matters for impact assessable development**

Not applicable, as the development complied with applicable benchmarks.

**5. Matters raised in submissions for impact assessable development**

Not applicable, as the development complied with applicable benchmarks.

**6. Matters prescribed by Regulation**

Not applicable to this development.





**Attachment 5 – *Planning Act 2016* Extracts**



**EXTRACT FROM PLANNING ACT 2016  
RELATING TO APPEAL RIGHTS**

**Chapter 6 Dispute Resolution, Part 1 Appeal Rights**

**229 Appeals to tribunal or P&E Court**

(1) Schedule 1 states—

(a) matters that may be appealed to—

(i) either a tribunal or the P&E Court; or

(ii) only a tribunal; or

(iii) only the P&E Court; and

(b) the person—

(i) who may appeal a matter (the **appellant**); and

(ii) who is a respondent in an appeal of the matter; and

(iii) who is a co-respondent in an appeal of the matter; and

(iv) who may elect to be a co-respondent in an appeal of the matter.

(2) An appellant may start an appeal within the appeal period.

(3) The **appeal period** is—

(a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency; or

(b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or

(c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or

(d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or

(e) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the

deemed approval notice to the assessment manager; or

(f) for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

Note—

See the P&E Court Act for the court's power to extend the appeal period.

(4) Each respondent and co-respondent for an appeal may be heard in the appeal.

(5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.

(6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—

(a) the adopted charge itself; or

(b) for a decision about an offset or refund—

(i) the establishment cost of trunk infrastructure identified in a LGIP; or

(ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

**230 Notice of appeal**

(1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—

(a) is in the approved form; and

(b) succinctly states the grounds of the appeal.

(2) The notice of appeal must be accompanied by the required fee.

(3) The appellant or, for an appeal to a tribunal, the registrar must, within the service period, give a copy of the notice of appeal to—

(a) the respondent for the appeal; and

(b) each co-respondent for the appeal; and

(c) for an appeal about a development application under schedule 1, table 1, item 1—each

principal submitter for the development application; and

(d) for an appeal about a change application under schedule 1, table 1, item 2—each principal submitter for the change application; and

(e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); and

(f) for an appeal to the P&E Court—the chief executive; and

(g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.

(4) The **service period** is—

(a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or

(b) otherwise—10 business days after the appeal is started.

(5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).

(6) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

### **231 Other appeals**

(1) Subject to this chapter, schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.

(2) The Judicial Review Act 1991, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.

(3) A person who, but for subsection (1) could have made an application under the Judicial Review Act 1991 in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.

(4) In this section—

**decision** includes—

(a) conduct engaged in for the purpose of making a decision; and

(b) other conduct that relates to the making of a decision; and

(c) the making of a decision or the failure to make a decision; and

(d) a purported decision; and

(e) a deemed refusal.

**non-appealable**, for a decision or matter, means the decision or matter—

(a) is final and conclusive; and

(b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the Judicial Review Act 1991 or otherwise, whether by the Supreme Court, another court, a tribunal or another entity; and

(c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

### **232 Rules of the P&E Court**

(1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.

(2) However, the P&E Court may hear and decide an appeal even if the person has not complied with rules of the P&E Court.

## **Part 2 Development tribunal**

### **Division 1 General**

#### **233 Appointment of referees**

(1) The Minister, or chief executive, (the appointer) may appoint a person to be a referee, by an appointment notice, if the appointer considers the person—

(a) has the qualifications or experience prescribed by regulation; and

(b) has demonstrated an ability—

(i) to negotiate and mediate outcomes between parties to a proceeding; and

(ii) to apply the principles of natural justice; and

(iii) to analyse complex technical issues; and

(iv) to communicate effectively, including, for example, to write informed succinct and well-organised decisions, reports, submissions or other documents.

(2) The appointer may—

(a) appoint a referee for the term, of not more than 3 years, stated in the appointment notice; and

(b) reappoint a referee, by notice, for further terms of not more than 3 years.

(3) If an appointer appoints a public service officer as a referee, the officer holds the appointment concurrently with any other appointment that the officer holds in the public service.

(4) A referee must not sit on a tribunal unless the referee has given a declaration, in the approved form and signed by the referee, to the chief executive.

(5) The appointer may cancel a referee's appointment at any time by giving a notice, signed by the appointer, to the referee.

(6) A referee may resign the referee's appointment at any time by giving a notice, signed by the referee, to the appointer.

(7) In this section—

**appointment notice** means—

(a) if the Minister gives the notice—a gazette notice; or

(b) if the chief executive gives the notice—a notice given to the person appointed as a referee.

#### **234 Referee with conflict of interest**

(1) This section applies if the chief executive informs a referee that the chief executive proposes to appoint the referee as a tribunal member, and either or both of the following apply—

(a) the tribunal is to hear a matter about premises—

(i) the referee owns; or

(ii) for which the referee was, is, or is to be, an architect, builder, drainer, engineer, planner, plumber, plumbing inspector, certifier, site evaluator or soil assessor; or

(iii) for which the referee has been, is, or will be, engaged by any party in the referee's capacity as an accountant, lawyer or other professional; or

(iv) situated or to be situated in the area of a local government of which the referee is an officer, employee or councillor;

(b) the referee has a direct or indirect personal interest in a matter to be considered by the tribunal, and the interest could conflict with the proper performance of the referee's functions for the tribunal's consideration of the matter.

(2) However, this section does not apply to a referee only because the referee previously acted in relation to the preparation of a relevant local planning instrument.

(3) The referee must notify the chief executive that this section applies to the referee, and on doing so, the chief executive must not appoint the referee to the tribunal.

(4) If a tribunal member is, or becomes, aware the member should not have been appointed to the tribunal, the member must not act, or continue to act, as a member of the tribunal.

#### **235 Establishing development tribunal**

(1) The chief executive may at any time establish a tribunal, consisting of up to 5 referees, for tribunal proceedings.

(2) The chief executive may appoint a referee for tribunal proceedings if the chief executive considers the referee has the qualifications or experience for the proceedings.

(3) The chief executive must appoint a referee as the chairperson for each tribunal.

(4) A regulation may specify the qualifications or experience required for particular proceedings.

(5) After a tribunal is established, the tribunal's membership must not be changed.

### **236 Remuneration**

*A tribunal member must be paid the remuneration the Governor in Council decides.*

### **237 Tribunal proceedings**

- (1) A tribunal must ensure all persons before the tribunal are afforded natural justice.*
- (2) A tribunal must make its decisions in a timely way.*
- (3) A tribunal may—*
  - (a) conduct its business as the tribunal considers appropriate, subject to a regulation made for this section; and*
  - (b) sit at the times and places the tribunal decides; and*
  - (c) hear an appeal and application for a declaration together; and*
  - (d) hear 2 or more appeals or applications for a declaration together.*
- (4) A regulation may provide for—*
  - (a) the way in which a tribunal is to operate, including the qualifications of the chairperson of the tribunal for particular proceedings; or*
  - (b) the required fee for tribunal proceedings.*

### **238 Registrar and other officers**

- (1) The chief executive may, by gazette notice, appoint—*
  - (a) a registrar; and*
  - (b) other officers (including persons who are public service officers) as the chief executive considers appropriate to help a tribunal perform its functions.*
- (2) A person may hold the appointment or assist concurrently with any other public service appointment that the person holds.*

## **Division 2 Applications for declarations**

### **239 Starting proceedings for declarations**

- (1) A person may start proceedings for a declaration by a tribunal by filing an application, in the approved form, with the registrar.*
- (2) The application must be accompanied by the required fee.*

### **240 Application for declaration about making of development application**

- (1) The following persons may start proceedings for a declaration about whether a development application is properly made—*
  - (a) the applicant;*
  - (b) the assessment manager.*
- (2) However, a person may not seek a declaration under this section about whether a development application is accompanied by the written consent of the owner of the premises to the application.*
- (3) The proceedings must be started by—*
  - (a) the applicant within 20 business days after receiving notice from the assessment manager, under the development assessment rules, that the development application is not properly made; or*
  - (b) the assessment manager within 10 business days after receiving the development application.*
- (4) The registrar must, within 10 business days after the proceedings start, give notice of the proceedings to the respondent as a party to the proceedings.*
- (5) In this section—*

**respondent means—**

- (a) if the applicant started the proceedings—the assessment manager; or*
- (b) if the assessment manager started the proceedings—the applicant.*

### **241 Application for declaration about change to development approval**

- (1) This section applies to a change application for a development approval if—*
  - (a) the approval is for a material change of use of premises that involves the use of a classified building; and*
  - (b) the responsible entity for the change application is not the P&E Court.*
- (2) The applicant, or responsible entity, for the change application may start proceedings for a*

declaration about whether the proposed change to the approval is a minor change.

(3) The registrar must, within 10 business days after the proceedings start, give notice of the proceedings to the respondent as a party to the proceedings.

(4) In this section—

**respondent means—**

(a) if the applicant started the proceedings—the responsible entity; or

(b) if the responsible entity started the proceedings—the applicant.

### **Division 3 Tribunal proceedings for appeals and declarations**

#### **242 Action when proceedings start**

If a document starting tribunal proceedings is filed with the registrar within the period required under this Act, and is accompanied by the required fee, the chief executive must—

(a) establish a tribunal for the proceedings; and

(b) appoint 1 of the referees for the tribunal as the tribunal's chairperson, in the way required under a regulation; and

(c) give notice of the establishment of the tribunal to each party to the proceedings.

#### **243 Chief executive excusing noncompliance**

(1) This section applies if—

(a) the registrar receives a document purporting to start tribunal proceedings, accompanied by the required fee; and

(b) the document does not comply with any requirement under this Act for validly starting the proceedings.

(2) The chief executive must consider the document and decide whether or not it is reasonable in the circumstances to excuse the noncompliance (because it would not cause substantial injustice in the proceedings, for example).

(3) If the chief executive decides not to excuse the noncompliance, the chief executive must give a notice stating that the document is of no effect,

because of the noncompliance, to the person who filed the document.

(4) The chief executive must give the notice within 10 business days after the document is given to the chief executive.

(5) If the chief executive does excuse the noncompliance, the chief executive may act under section 242 as if the noncompliance had not happened.

#### **244 Ending tribunal proceedings or establishing new tribunal**

(1) The chief executive may decide not to establish a tribunal when a document starting tribunal proceedings is filed, if the chief executive considers it is not reasonably practicable to establish a tribunal.

Examples of when it is not reasonably practicable to establish a tribunal—

- there are no qualified referees or insufficient qualified referees because of a conflict of interest

- the referees who are available will not be able to decide the proceedings in a timely way

(2) If the chief executive considers a tribunal established for tribunal proceedings—

(a) does not have the expertise to hear or decide the proceedings; or

(b) is not able to make a decision for proceedings (because of a tribunal member's conflict of interest, for example); the chief executive may decide to suspend the proceedings and establish another tribunal, complying with section 242(c), to hear or re-hear the proceedings.

(3) However, the chief executive may instead decide to end the proceedings if the chief executive considers it is not reasonably practicable to establish another tribunal to hear or re-hear the proceedings.

(4) If the chief executive makes a decision under subsection (1) or (3), the chief executive must give a decision notice about the decision to the parties to the proceedings.

(5) Any period for starting proceedings in the P&E Court, for the matter that is the subject of the tribunal proceedings, starts again when the chief

executive gives the decision notice to the party who started the proceedings.

- (6) The decision notice must state the effect of subsection (5).

#### **245 Refunding fees**

The chief executive may, but need not, refund all or part of the fee paid to start proceedings if the chief executive decides under section 244—

- (a) not to establish a tribunal; or  
(b) to end the proceedings.

#### **246 Further material for tribunal proceedings**

- (1) The registrar may, at any time, ask a person to give the registrar any information that the registrar reasonably requires for the proceedings.

Examples of information that the registrar may require—

- material about the proceedings (plans, for example)
  - information to help the chief executive decide whether to excuse noncompliance under section 243
  - for a deemed refusal—a statement of the reasons why the entity responsible for deciding the application had not decided the application during the period for deciding the application.
- (2) The person must give the information to the registrar within 10 business days after the registrar asks for the information.

#### **247 Representation of Minister if State interest involved**

If, before tribunal proceedings are decided, the Minister decides the proceedings involve a State interest, the Minister may be represented in the proceedings.

#### **248 Representation of parties at hearing**

A party to tribunal proceedings may appear—

- (a) in person; or  
(b) by an agent who is not a lawyer.

#### **249 Conduct of tribunal proceedings**

- (1) Subject to section 237, the chairperson of a tribunal must decide how tribunal proceedings are to be conducted.

- (2) The tribunal may decide the proceedings on submissions if the parties agree.

- (3) If the proceedings are to be decided on submissions, the tribunal must give all parties a notice asking for the submissions to be made to the tribunal within a stated reasonable period.

- (4) Otherwise, the tribunal must give notice of the time and place of the hearing to all parties.

- (5) The tribunal may decide the proceedings without a party's submission (written or oral) if—

- (a) for proceedings to be decided on submissions—the party's submission is not received within the time stated in the notice given under subsection (3); or

- (b) for proceedings to be decided by hearing—the person, or the person's agent, does not appear at the hearing.

- (6) When hearing proceedings, the tribunal—

- (a) need not proceed in a formal way; and

- (b) is not bound by the rules of evidence; and

- (c) may inform itself in the way it considers appropriate; and

- (d) may seek the views of any person; and

- (e) must ensure all persons appearing before the tribunal have a reasonable opportunity to be heard; and

- (f) may prohibit or regulate questioning in the hearing.

- (7) If, because of the time available for the proceedings, a person does not have an opportunity to be heard, or fully heard, the person may make a submission to the tribunal.

#### **250 Tribunal directions or orders**

A tribunal may, at any time during tribunal proceedings, make any direction or order that the tribunal considers appropriate.

Examples of directions—

- a direction to an applicant about how to make their development application comply with this Act
- a direction to an assessment manager to assess a development application, even though the referral agency's response to the assessment manager was to refuse the application

#### **251 Matters tribunal may consider**

- (1) This section applies to tribunal proceedings about—
  - (a) a development application or change application; or
  - (b) an application or request (however called) under the Building Act or the Plumbing and Drainage Act.
- (2) The tribunal must decide the proceedings based on the laws in effect when—
  - (a) the application or request was properly made; or
  - (b) if the application or request was not required to be properly made—the application or request was made.
- (3) However, the tribunal may give the weight that the tribunal considers appropriate, in the circumstances, to any new laws.

#### **252 Deciding no jurisdiction for tribunal proceedings**

- (1) A tribunal may decide that the tribunal has no jurisdiction for tribunal proceedings, at any time before the proceedings are decided—
  - (a) on the tribunal's initiative; or
  - (b) on the application of a party.
- (2) If the tribunal decides that the tribunal has no jurisdiction, the tribunal must give a decision notice about the decision to all parties to the proceedings.
- (3) Any period for starting proceedings in the P&E Court, for the matter that is the subject of the tribunal proceedings, starts again when the tribunal gives the decision notice to the party who started the proceedings.

- (4) The decision notice must state the effect of subsection (3).
- (5) If the tribunal decides to end the proceedings, the fee paid to start the proceedings is not refundable.

#### **253 Conduct of appeals**

- (1) This section applies to an appeal to a tribunal.
- (2) Generally, the appellant must establish the appeal should be upheld.
- (3) However, for an appeal by the recipient of an enforcement notice, the enforcement authority that gave the notice must establish the appeal should be dismissed.
- (4) The tribunal must hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against.
- (5) However, the tribunal may, but need not, consider—
  - (a) other evidence presented by a party to the appeal with leave of the tribunal; or
  - (b) any information provided under section 246.

#### **254 Deciding appeals to tribunal**

- (1) This section applies to an appeal to a tribunal against a decision.
- (2) The tribunal must decide the appeal by—
  - (a) confirming the decision; or
  - (b) changing the decision; or
  - (c) replacing the decision with another decision; or
  - (d) setting the decision aside, and ordering the person who made the decision to remake the decision by a stated time; or
  - (e) for a deemed refusal of an application—
    - (i) ordering the entity responsible for deciding the application to decide the application by a stated time and, if the entity does not comply with the order, deciding the application; or
    - (ii) deciding the application.



(3) However, the tribunal must not make a change, other than a minor change, to a development application.

(4) The tribunal's decision takes the place of the decision appealed against.

(5) The tribunal's decision starts to have effect—  
(a) if a party does not appeal the decision—at the end of the appeal period for the decision; or  
(b) if a party appeals against the decision to the P&E Court—subject to the decision of the court, when the appeal ends.

#### **255 Notice of tribunal's decision**

A tribunal must give a decision notice about the tribunal's decision for tribunal proceedings, other than for any directions or interim orders given by the tribunal, to all parties to proceedings.

#### **256 No costs orders**

A tribunal must not make any order as to costs.

#### **257 Recipient's notice of compliance with direction or order**

If a tribunal directs or orders a party to do something, the party must notify the registrar when the thing is done.

#### **258 Tribunal may extend period to take action**

(1) This section applies if, under this chapter, an action for tribunal proceedings must be taken within a stated period or before a stated time, even if the period has ended or the time has passed.

(2) The tribunal may allow a longer period or a different time to take the action if the tribunal considers there are sufficient grounds for the extension.

#### **259 Publication of tribunal decisions**

The registrar must publish tribunal decisions under the arrangements, and in the way, that the chief executive decides.

## **Schedule 1 Appeals**

### *section 229*

#### **Appeal rights and parties to appeals**

(1) Table 1 states the matters that may be appealed to—

- (a) the P&E court; or
- (b) a tribunal.

(2) However, table 1 applies to a tribunal only if the matter involves—

(a) the refusal, or deemed refusal of a development application, for—

- (i) a material change of use for a classified building; or
- (ii) operational work associated with building work, a retaining wall, or a tennis court; or

(b) a provision of a development approval for—

- (i) a material change of use for a classified building; or
- (ii) operational work associated with building work, a retaining wall, or a tennis court; or

(c) if a development permit was applied for—the decision to give a preliminary approval for—

- (i) a material change of use for a classified building; or
- (ii) operational work associated with building work, a retaining wall, or a tennis court; or

(d) a development condition if—

- (i) the development approval is only for a material change of use that involves the use of a building classified under the Building Code as a class 2 building; and

(ii) the building is, or is proposed to be, not more than 3 storeys; and

(iii) the proposed development is for not more than 60 sole-occupancy units; or

(e) a decision for, or a deemed refusal of, an extension application for a development approval that is only for a material change of use of a classified building; or

(f) a decision for, or a deemed refusal of, a change

application for a development approval that is only for a material change of use of a classified building; or

(g) a matter under this Act, to the extent the matter 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

(h) a decision to give an enforcement notice—

(i) in relation to a matter under paragraphs (a) to (g); or

(ii) under the Plumbing and Drainage Act; or

(i) an infrastructure charges notice; or

(j) the refusal, or deemed refusal, of a conversion application; or

(l) a matter prescribed by regulation.

(3) Also, table 1 does not apply to a tribunal if the matter involves—

(a) for a matter in subsection (2)(a) to (d)—

(i) a development approval for which the development application required impact assessment; and

(ii) a development approval in relation to which the assessment manager received a properly made submission for the development application; or

(b) a provision of a development approval about the identification or inclusion, under a variation approval, of a matter for the development.

(4) Table 2 states the matters that may be appealed only to the P&E Court.

(5) Table 3 states the matters that may be appealed only to the tribunal.

(6) In each table—

(a) column 1 states the appellant in the appeal; and

(b) column 2 states the respondent in the appeal; and

(c) column 3 states the co-respondent (if any) in the appeal; and

(d) column 4 states the co-respondents by election (if any) in the appeal.

(7) If the chief executive receives a notice of appeal under section 230(3)(f), the chief executive may elect to be a co-respondent in the appeal.

(8) In this section—

**storey** see the Building Code, part A1.1.

**Table 1**

**Appeals to the P&E Court and, for certain matters, to a tribunal**

**1. Development applications**

For a development application other than a development application called in by the

Minister, an appeal may be made against—

(a) the refusal of all or part of the development application; or

(b) the deemed refusal of the development application; or

(c) a provision of the development approval; or

(d) if a development permit was applied for—the decision to give a preliminary approval.

**EXTRACT FROM THE *PLANNING ACT 2016*  
RELATING TO LAPSE DATES**

***Division 4 Lapsing of and extending  
development approvals***

***85 Lapsing of approval at end of current period***

*(1) A part of a development approval lapses at the end of the following period (the **currency period**)—*

*(a) for any part of the development approval relating to a material change of use—if the first change of use does not happen within—*

*(i) the period stated for that part of the approval; or*

*(ii) if no period is stated—6 years after the approval starts to have effect;*

*(b) for any part of the development approval relating to reconfiguring a lot—if a plan for the reconfiguration that, under the Land Title Act, is required to be given to a local government for approval is not given to the local government within—*

*(i) the period stated for that part of the approval; or*

*(ii) if no period is stated—4 years after the approval starts to have effect;*

*(c) for any other part of the development approval if the development does not substantially start within—*

*(i) the period stated for that part of the approval; or*

*(ii) if no period is stated—2 years after the approval starts to take effect.*

*(2) If part of a development approval lapses, any monetary security given for that part of the approval must be released.*