

File: 22/07  
Date: 29 November 2023

SMK QLD Pty Ltd for Andrew Carter  
PO Box 422  
GOONDIWINDI QLD 4390

Attention: Tom Jobling

**Decision Notice –approval (with conditions)  
Material Change of Use  
Lot 3 on RP12440, 1100 Barwon Highway, Goondiwindi**

We wish to advise that on 22 November 2023 a decision was made to approve the material change of use development application for “*Industry activities*” – “*Low Impact Industry*” (Expansion of Grain Storage Facility and Seed Grading) at Lot 3 on RP12440, 1100 Barwon 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.

All conditions are required to be either complied with or bonded prior to the commencement of the use. Please note **Condition 38**, which requires a letter to be submitted to Council prior to commencement of the use, outlining and demonstrating compliance with each condition.

The applicant is required to **notify Council in writing of the date of the commencement** of the use, within fourteen (14) business days of commencement.

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: 22/07  
Council Contact: Mrs Ronnie McMahon  
Council Contact Phone: (07) 4671 7400

29 November 2023

**Applicant Details:** SMK QLD Pty Ltd for Andrew Carter  
PO Box 422  
**GOONDIWINDI QLD 4390**

Attention: Tom Jobling

The development application described below was properly made to Goondiwindi Regional Council on 24 March 2023.

#### Applicant details

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Applicant name: SMK QLD Pty Ltd for Andrew Carter  
Applicant contact details: Attn: Tom Jobling  
PO Box 422, Goondiwindi QLD 4390  
(07) 4671 2445  
[tom@smkqld.com.au](mailto:tom@smkqld.com.au)

#### Application details

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Application number: 22/07  
Approval sought: Development Permit – Material Change of Use  
Details of proposed development: “Industry activities” – “Low Impact Industry” (Expansion of Grain Storage Facility and Seed Grading)

#### Location details

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Street address: 1100 Barwon Highway, Goondiwindi  
Real property description: Lot 3 on RP12440

#### Decision

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Date of decision: 22 November 2023  
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

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:

	Planning Regulation 2017 reference	Development Permit	Preliminary Approval
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	N/A		
- building work assessable under the planning scheme		<input type="checkbox"/>	<input type="checkbox"/>
- plumbing or drainage work		<input type="checkbox"/>	<input type="checkbox"/>
- material change of use		<input checked="" type="checkbox"/>	<input type="checkbox"/>
- reconfiguring a lot		<input type="checkbox"/>	<input type="checkbox"/>
- operational work		<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:

- a) Development Permit – Building Work

## 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	Address
As per Schedule 10, Part 9, Division 4, Subdivision 2, Table 4, Item 1 (10.9.4.2.4.1) of the PR: <i>Development application for a material change of use, other than an excluded material change of use, that is assessable development under a local categorising instrument, if all or part of the premises—</i>	Department of State Development, Infrastructure, Local Government and Planning –	Department of State Development, Infrastructure, Local Government and Planning, Post: PO Box 825, Visit: 128 Margaret Street, TOOWOOMBA QLD 4350
(a) are within 25m of a State transport corridor; or (b) are a future State transport corridor; or	Concurrence Agency	<a href="mailto:ToowoombaSARA@dcdilg.p.qld.gov.au">ToowoombaSARA@dcdilg.p.qld.gov.au</a>

For an application involving	Name of referral agency	Address
(c) are— (i) adjacent to a road that intersects with a State-controlled road; and (ii) within 100m of the intersection		Ph: (07) 4616 7307

### Approved plans and specifications

Copies of the following plans are enclosed.

Drawing Number	Title	Date
21118-1	Proposal Plan to Accompany Material Change of Use Application on Lot 3 RP12440, 1100 Barwon Highway Goondiwindi QLD 4390	3/02/22
A483 & A491	Site Plan	24/8/2021

### 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*

### 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*.

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

**Attachment 5** 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 4** 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



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

Cc Department of State Development, Infrastructure,  
Local Government and Planning,  
PO Box 825,  
TOOWOOMBA QLD 4350

enc Attachment 1—Assessment manager and concurrence agency conditions

- State Assessment and Referral Agency Concurrence Agency Response dated 13 October 2023

Attachment 2—Approved Plans  
Attachment 3—Infrastructure Charges Notice  
Attachment 4—Notice about decision – Statement of reasons  
Attachment 5—*Planning Act 2016* Extracts



## **ATTACHMENTS**

**Attachment 1 – Assessment Manager and Concurrence Agency Conditions**

**Attachment 2 – Approved Plans**

**Attachment 3 – Infrastructure Charges Notice**

**Attachment 4 – Notice about decision - Statement of reasons**

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

*Planning Act 2016 appeal provisions*

*Planning Act 2016 lapse dates*



**Attachment 1 – Assessment Manager and Concurrence Agency Conditions**



## Assessment Manager's Conditions

<b>Description:</b>	<i>"Industry activities" – "Low Impact Industry" (Expansion of Grain Storage Facility and Seed Grading)</i>
<b>Development:</b>	Material change of use – Development Permit
<b>Applicant:</b>	SMK QLD Pty Ltd for Andrew Carter
<b>Address:</b>	1100 Barwon Highway, Goondiwindi
<b>Lot/Plan:</b>	Lot 3 on RP12440
<b>Council File Reference:</b>	22/07

<b>GENERAL CONDITIONS</b>										
<b>1.</b>	<p>Approval is granted for the purpose of a Material Change of Use for:</p> <ul style="list-style-type: none"> <li><i>"Industry activities" – "Low Impact Industry" (Expansion of Grain Storage Facility and Seed Grading)</i></li> </ul> <p>as defined in the <i>Goondiwindi Region Planning Scheme 2018 (Version 2)</i>.</p>									
<b>2.</b>	All conditions must be complied with or bonded prior to the commencement of the use, unless specified in an individual condition.									
<b>3.</b>	<p>Except where changed by conditions of this approval, the development shall be in accordance with supporting information supplied by the applicant with the development application including the following plans:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Drawing Number</th> <th style="text-align: center;">Title</th> <th style="text-align: center;">Date</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">21118-1</td> <td style="text-align: center;">Proposal Plan to Accompany Material Change of Use Application on Lot 3 RP12440, 1100 Barwon Highway Goondiwindi QLD 4390</td> <td style="text-align: center;">3/02/22</td> </tr> <tr> <td style="text-align: center;">A483 &amp; A491</td> <td style="text-align: center;">Site Plan</td> <td style="text-align: center;">24/8/2021</td> </tr> </tbody> </table> <p>Please note these plans are not approved Building Plans.</p>	Drawing Number	Title	Date	21118-1	Proposal Plan to Accompany Material Change of Use Application on Lot 3 RP12440, 1100 Barwon Highway Goondiwindi QLD 4390	3/02/22	A483 & A491	Site Plan	24/8/2021
Drawing Number	Title	Date								
21118-1	Proposal Plan to Accompany Material Change of Use Application on Lot 3 RP12440, 1100 Barwon Highway Goondiwindi QLD 4390	3/02/22								
A483 & A491	Site Plan	24/8/2021								
<b>4.</b>	Prior to the commencement of construction of Stage 3, provide Council with Floor Plans and Elevations of any structures (including silos or bunkers) for approval.									



<p><b>5.</b></p>	<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 Council unless Council agrees in writing that those parts will be adequately complied with by amended specifications.</li> </ul> <p>All development shall 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 plans and supporting documentation including any written and electronic correspondence between applicant, Council or any relevant Agencies during all stages of the development application assessment processes.</p>
<p><b>6.</b></p>	<p>The developer shall contact Council's Engineering Department to ensure the correct specifications are obtained for all civil works prior to commencement of any works onsite.</p>
<p><b>7.</b></p>	<p>It is the developer's responsibility to obtain all other statutory approvals required prior to commencement of any works on site and the commencement of the use.</p>
<p><b>OPERATION OF THE USE</b></p>	
<p><b>8.</b></p>	<p>The approval is over three (3) stages as follows:</p> <ul style="list-style-type: none"> <li>• Stage 1 – development approved under related approval 18/23W.</li> <li>• Stage 2 – 7 x 245t silos and 8 x 275t silos</li> <li>• Stage 3 – 25,000t future storage area, shed extension (685m<sup>2</sup>).</li> </ul> <p>Conditions within this approval apply to all stages unless otherwise specified.</p>
<p><b>PUBLIC UTILITIES</b></p>	
<p><b>9.</b></p>	<p>The development shall be connected to a suitable electricity and telecommunications supply system, at no cost to Council.</p>

	<b>LANDSCAPING</b>
<b>10.</b>	<p>Within six (6) months of this approval taking effect, a solid screen fence with a minimum height of 2.4m is to be constructed the full length of the western boundary of the subject site.</p> <p>All existing landscaping areas shall be maintained in accordance with Schedule 6.3 – Planning Scheme Policy 3 – Landscaping Standards of the Goondiwindi Region Planning Scheme 2018 (Version 2). A bond of <b>\$60,000</b> shall be paid to ensure the construction of the fence is completed. The bond will be fully refundable upon notification and inspection of completion.</p>
	<b>ESSENTIAL SERVICES</b>
<b>11.</b>	<p>It shall be demonstrated to Council that the development has an adequate volume and supply of potable water and an adequate volume and supply of water for fire-fighting purposes, to relevant engineering and environmental standards, to the satisfaction of and at no cost to Council.</p>
<b>12.</b>	<p>The development shall be connected to an approved designed onsite effluent disposal sewerage system, if and when required, in accordance with the Queensland Plumbing and Wastewater Code, to the satisfaction of and at no cost to Council.</p> <p>All sewer infrastructure (including effluent disposal areas) shall be fully located within site boundaries, to the satisfaction of and at no cost to Council.</p>
	<b>ROADS AND VEHICLES</b>
<b>13.</b>	<p>Vehicle access via the Barwon Highway shall be constructed and maintained in accordance with the Concurrence Agency Response, dated 13 October 2023, to standards determined by the Department of Transport and Main Roads.</p>
<b>14.</b>	<p>Internal roads and areas where heavy vehicles regularly park and manoeuvre shall be constructed to an all-weather standard in accordance with Schedule 6.2 – Planning Scheme Policy 1 – Land Development Standards of the <i>Goondiwindi Region Planning Scheme 2018 (Version 2)</i>, to the satisfaction of and at no cost to Council.</p> <p>Parking and manoeuvring areas shall be either constructed or bonded prior to the commencement of the use.</p> <p>The developer shall contact Council's Engineering Department to ensure the correct specifications are obtained for all civil works prior to commencement of any works onsite. A qualified Council Officer may inspect construction works at the request of the developer to ensure compliance with this condition.</p>

<p><b>15.</b></p>	<p>Thirty-three (33) delineated car parking spaces shall be maintained on-site in accordance with the existing approval (18/23W).</p> <p>Car parking areas shall be either constructed or bonded prior to the issue of a building approval.</p> <p>The developer shall contact Council's Engineering Department 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>
	<p><b>STORMWATER</b></p>
<p><b>16.</b></p>	<p>Prior to the commencement of the use and at all times while the use continues, the site shall be adequately drained and all stormwater shall be disposed of to a legal point of discharge in accordance with Schedule 6.2 – Planning Scheme Policy 1 – Land Development Standards of the <i>Goondiwindi Region Planning Scheme 2018 (Version 2)</i>, to the satisfaction of and at no cost to Council.</p> <p>Any increase in volume, concentration or velocity of stormwater from the site shall be channelled to lawful points of discharge or to other storage or dispersal arrangements which all must be agreed to in writing by Council.</p> <p>There shall be no change in direction or increase in the volume, concentration or velocity in any overland flow from the site to any adjoining properties unless agreed in writing by Council and the owners of any adjoining properties affected by these changes.</p> <p>The stormwater system shall be designed to include appropriate pollution control devices or methods to ensure no contamination or silting of waterways.</p>
<p><b>17.</b></p>	<p>Stormwater shall not be allowed to pond on the site during the development process and after development has been completed unless the type and size of ponding has been agreed in writing by Council.</p> <p>No ponding, concentration or redirection of stormwater shall occur on adjoining properties unless specifically agreed to in writing by Council and the owners of any adjoining properties affected by these changes.</p>
	<p><b>EARTHWORKS AND EROSION CONTROL</b></p>
<p><b>18.</b></p>	<p>Any filling or excavation shall be undertaken in accordance with 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>Excavation or filling within 1.5 metres of any site boundary is battered or retained by a wall that does not exceed 1 metre in height.</p>

19.	<p>All works associated with the development must be carried out in a manner that minimises erosion and controls sediment. Best practice erosion and sediment control measures shall be in place at the location of all works prior to work commencing and remain until work is completed in accordance with Schedule 6.2 – Planning Scheme Policy 1 – land Development Standards of the <i>Goondiwindi Region Planning Scheme 2018 (Version 2)</i> to the satisfaction of and at no cost to Council.</p> <p>Control procedures are to be established to ensure sediment from the site is not deposited off site. The developer shall ensure no increase in any silt loads or contaminants in overland flow from the site during the development process and after development has been completed.</p>
<b>AVOIDING NUISANCE</b>	
20.	<p>At all times while the use continues, the development shall be conducted in accordance with the provisions of the <i>Environmental Protection Act 1994</i> (the Act) 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 while the use continues.</p>
21.	<p>At all times while the use continues it shall be operated in such a manner as to ensure that no nuisance shall arise to adjoining premises as a result of dust, noise, lighting, odour, vibration, rubbish, contaminants, stormwater discharge or siltation or any other potentially detrimental impact.</p>
22.	<p>Prior to commencement of the use, the applicant must prepare and submit a Dust Management Plan for Council endorsement. The plan must be prepared by a suitably qualified person to manage dust emanating from the premises to prevent harm and/or nuisance to road networks or surrounding properties. The plan shall include:</p> <ul style="list-style-type: none"> <li>(i) continual dust monitoring methodology;</li> <li>(ii) dust suppression methods and application rates;</li> <li>(iii) a register for all complaints received and the action taken in response to the complaint.</li> <li>(iv) Details of who will be responsible for dust management on site.</li> </ul>
23.	<p>At all times while the use continues, provision must be made on site for the collection of general refuse in covered waste containers with a capacity sufficient for the use.</p> <p>Waste receptacles shall be placed in a screened area. The site must maintain a general tidy appearance.</p>

24.	<p>At all times while the use continues, lighting of the site, including any security lighting, shall be such that the lighting intensity does not exceed 8.0 lux at a distance of 1.5 metres from the site at any property boundary.</p> <p>All lighting shall be directed or shielded so as to ensure that no glare directly affects nearby properties, motorists or the operational safety of the surrounding road network.</p>
25.	<p>All external lighting is to be compliant with AS/NZS 4282-2019 <i>“Control of obtrusive effects of outdoor lighting”</i>.</p>
26.	<p>The operator shall be responsible for mitigating any complaints arising from on-site operations.</p>
27.	<p>Construction works must occur so they do not cause unreasonable interference with the amenity of adjoining premises.</p> <p>The site must be kept in a clean and tidy state at all times during construction.</p>
<p><b>DEVELOPER’S RESPONSIBILITIES</b></p>	
28.	<p>It is the developer’s responsibility to ensure that the development is resilient to flood events by ensuring design and built form appropriately responds to the potential risks of flooding.</p>
29.	<p>It is the developer’s responsibility to ensure that the development directly, indirectly and cumulatively avoids any increase in water flow velocity or flood level, and does not increase the potential for flood damage either on-site or on other properties.</p> <p>Prior to construction of any grain bunkers on site, the applicant must demonstrate the design does not constitute a Category 2 Levee and does not impact the flood characteristics of the site.</p>
30.	<p>It is the developer’s responsibility to ensure that potential bushfire hazards are appropriately mitigated to reflect the hazard level of the site in regard to vegetation type and proximity, slope and aspect, bushfire history, on-site environmental values, ease of maintenance and any specific implications on the development shall be submitted to Council prior to the commencement of the use.</p>
31.	<p>The developer shall ensure that vehicular access is designed to mitigate against bushfire hazard by ensuring adequate access for fire fighting and other emergency vehicles, and adequate access for the evacuation of residents and emergency personnel in an emergency situation.</p>
32.	<p>Any alteration or damage to roads and/or public infrastructure that is attributable to the progress of works or vehicles associated with the development of the site shall be repaired to Council’s satisfaction or the cost of repairs paid to Council.</p>

33.	All contractors and subcontractors shall hold current, relevant and appropriate qualifications and insurances in place to carry out the works.
34.	All costs reasonably associated with the approved development, unless there is specific agreement by other parties to meet these costs, shall be met by the developer.
35.	At all times while the use continues, all requirements of the conditions of the development approval must be maintained.
<b>COMMENCEMENT OF USE</b>	
36.	<p>At its discretion, Council may accept bonds or other securities to ensure completion of specified development approval conditions or Council may accept cash payments for Council to undertake the necessary work to ensure completion of specified development approval conditions.</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>
37.	<p>Council must be notified in writing of the date of the commencement of the use within 14 days of commencement.</p> <p>This approval will lapse if the use has not commenced within <b>six (6) years</b> of the date the development approval takes effect, in accordance with the provisions contained in section 85(i)(a) of the <i>Planning Act 2016</i>.</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>
38.	A letter outlining and demonstrating that conditions have been, or will be, complied with shall be submitted to Council and approved by a relevant Officer of Council prior to commencement of the use at each relevant stage. Council Officers may require a physical inspection to confirm that all conditions have been satisfied to relevant standards.

	<b>PLEASE READ CAREFULLY - NOTES AND ADVICE</b>
	<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>This approval will lapse if the use has not commenced within <b>six (6) years</b> of the date the development approval takes 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 Infrastructure Charges Notice included in <b>Attachment 3</b> shall be paid prior to the commencement of the use.</p>
	<p>It is the applicant's responsibility to obtain all statutory approvals prior to commencement of any works onsite.</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 workplace health and safety.</p>



SARA reference: 2305-34575 SRA  
 Council reference: 22/07  
 Applicant reference: 18/23W

13 October 2023

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

Attention: Ronnie McMahon

Dear Mrs McMahon

## SARA referral agency response—1100 Barwon Highway, Goodar

(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 6 June 2023.

### Response

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Outcome:	Referral agency response – with conditions
Date of response:	13 October 2023
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	Material Change of Use – Industry Activities – Low Impact Industry (Expansion of Grain Storage Facility and Seed Grading)
SARA role:	Referral agency	
SARA trigger:	Schedule 10, part 9, division 4, subdivision 2, table 4, item 1 (Planning Regulation 2017)	



Development near a state transport corridor

SARA reference: 2305-34575 SRA

Assessment manager: Goondiwindi Regional Council

Street address: 1100 Barwon Highway, Goodar

Real property description: Lot 3 on RP12440

Applicant name: SMK QLD Pty Ltd for Carter Seeds

Applicant contact details: 9 Pratten Street  
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: TMR23-039459
- Date: 6 October 2023

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

*Human Rights Act 2019* considerations: A consideration of the 23 fundamental human rights protected under the *Human Right Act 2019* has been undertaken as part of this decision. It has been determined that this decision does not limit human rights.

## 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 (section 30 of the 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 Geoff Broadbent, Principal Planning Officer, on (07) 4616 7302 or via email ToowoombaSARA@dasilgp.qld.gov.au who will be pleased to assist.

Yours sincerely



Kieran Hanna  
Manager (Planning)

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 provisions

Attachment 5 - Documents referenced in conditions

cc SMK QLD Pty Ltd for Carter Seeds, tom@smkqld.com.au

## 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 documents referenced below are found at Attachment 5).

No.	Conditions	Condition timing
<b>Development permit for material change of use for Industry Activities – Low Impact Industry (Expansion of Grain Storage Facility and Seed Grading)</b>		
Schedule 10, part 9, division 4, subdivision 2, table 4, item 1 (Planning Regulation 2017) – Material change of use near a state transport corridor—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(s):		
1.	<p>(a) The road access location is to be located generally in accordance with the Proposal Plan, prepared by SMK QLD Pty Ltd, dated 3 March 2022, reference 211118-1, as amended in red by SARA on 13 October 2023.</p> <p>(b) Road access works comprising the sealing of the access for a minimum distance of 10 metres from the pavement edge.</p> <p>(c) The road access works must be designed and constructed in accordance with the Department of Transport and Main Roads' Rural Property Access Standard Drawing No.1807 and the department's <i>Road Planning &amp; Design Manual</i>.</p>	<p>(a) At all times.</p> <p>(b) and (c): Prior to the commencement of Stage 2 of the use.</p>
2.	<p>Road works comprising a Basic Right-turn (BAR) treatment must be provided at the access location located generally in accordance with the Proposal Plan, prepared by SMK QLD Pty Ltd, dated 3 March 2022, reference 211118-1, as amended in red by SARA on 13 October 2023.</p> <p>The road works must be designed and constructed in accordance with the Department of Transport and Main Roads <i>Road Planning &amp; Design Manual</i>, to suit the largest design vehicle legally able to access the site.</p>	Prior to the commencement of Stage 3 of the use.

## Attachment 2—Advice to the applicant

<b>General advice</b>	
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) (version 3.0). If a word remains undefined it has its ordinary meaning.
2.	The Department of Transport and Main Roads advises that no part of the use is to encroach within the state-controlled road corridor at any time. Penalties apply for conducting unapproved activities within state-controlled transport corridors.
3.	<p>Under sections 62 and 33 of the <i>Transport Infrastructure Act 1994</i>, written approval is required from the Department of Transport and Main Roads (DTMR) to carry out road works that are road access works (including driveways) on a state-controlled road. Please contact DTMR on (07) 4639 0828 to make an application for road works approval. This approval must be obtained prior to commencing any works on 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 access works approval process takes time – please contact DTMR as soon as possible to ensure that gaining approval does not delay construction.</p> <p>Please be aware that reference to the approved plans implies conceptual approval only. Further modifications and inclusions are likely to be required in order for submitted detailed designs to comply with DTMR standards at the roadworks application (s33 TIA) stage. In particular, detailed designs may require, but should not be limited to, necessary lane widening for provision of cycle lanes, lengthening of turn lanes, installation of lighting, signage</p>

## Attachment 3—Reasons for referral agency response

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

### The reasons for the SARA's recommendation are:

With conditions, the development complies with State code 1: Development in a state-road environment of SDAP. Specifically, the development:

- does not increase the likelihood or frequency of accidents, fatalities, or serious injury for users of a state-controlled road
- does not adversely impact the structural integrity or physical condition of state-controlled roads, road transport infrastructure, public passenger transport infrastructure or active transport infrastructure
- does not adversely impact the function efficiency of state-controlled roads or future state-controlled roads
- does not adversely impact the state's ability to plan, construct, maintain, upgrade or operate state-controlled roads, future state-controlled roads or road transport infrastructure
- does not significantly increase the cost to plan, construct, upgrade or maintain state-controlled roads, future state-controlled roads or road transport infrastructure

With conditions, the development complies with State code 2 Development in a railway environment of SDAP. Specifically, the development:

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

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

- the development application material and submitted plans
- *Planning Act 2016*
- Planning Regulation 2017
- the SDAP (version 3.0), as published by SARA
- the Development Assessment Rules
- SARA DA Mapping system
- the *Human Rights Act 2019*

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

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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

---

#### 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.

---

<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>

---

<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—Documents referenced in conditions**

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**PLANS AND DOCUMENTS referred to in the REFERRAL AGENCY RESPONSE**



SARA ref: 2305-34575 SRA

Date: 13 October 2023

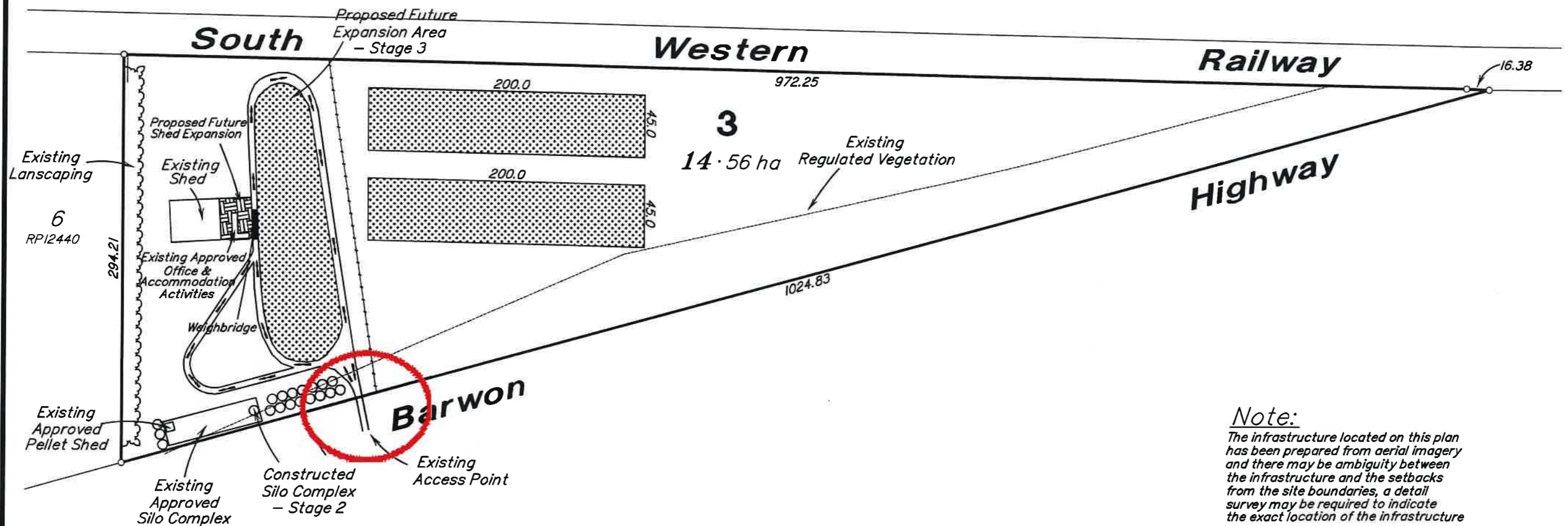
This plan is approved for the purpose of confirming the access location referenced in Conditions 1 & 2 of SARA's referral agency response dated 13 October 2023

Amended in red by SARA on 13 October 2023



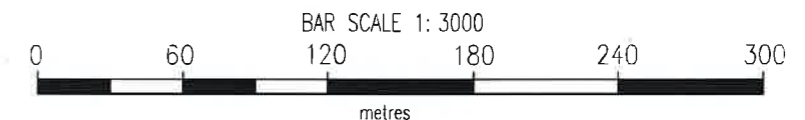
2  
SP229058

Proposed Future Expansion Area - Stage 3



**Note:**  
The infrastructure located on this plan has been prepared from aerial imagery and there may be ambiguity between the infrastructure and the setbacks from the site boundaries, a detail survey may be required to indicate the exact location of the infrastructure

**Note:**  
This plan was prepared for Andrew Carter to accompany a MCU application to the Goondiwindi Regional Council and should not be used for any other purpose. This note is an integral part of this plan



CARTER SEEDS PTY LTD

**SMK QLD** PTY. LTD.

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

PROPOSAL PLAN TO ACCOMPANY MATERIAL CHANGE OF USE APPLICATION ON LOT 3 RP12440, 1100 BARWON HIGHWAY GOONDIWINDI QLD 4390

21118

SCALE: 1:3000

**A3**

21118-1

Drawn TJJ 3/03/22 Checked

Our ref TMR23-039459  
Your ref 18/23W  
Enquiries Jeff Lavey



6 October 2023

Department of  
**Transport and Main Roads**

## **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 22/07, lodged with Goondiwindi Regional Council involves constructing or changing a vehicular access between Lot 3RP12440, the land the subject of the application, and the Barwon 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 Andrew Carter SMK QLD Pty Ltd  
PO Box 422  
Goondiwindi QLD 4390

### **Application Details**

Address of Property 1100 Barwon Highway, Goondiwindi QLD 4390  
Real Property Description 3RP12440  
Aspect/s of Development Material Change of Use for Industry Activities - Low Impact  
Industry - Expansion of Grain Storage Facility and Seed  
Grading

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

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

- |    |   |
|----|---|
| 1. | The road access location is to be located generally in accordance with the Proposal Plan, prepared by SMK QLD, dated 3 March 2022 reference 211118-1. |
|----|---|

### **Reasons for the decision**

The reasons for this decision are as follows:

- a) To ensure that the access locations maintain the safety, efficiency, and operational capacity of the state-controlled road network.

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

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:

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 0828.

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

Evidence or other material on which findings were based:

- Development application material submitted in support of Goondiwindi Regional Council development application 22/07
- 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, 2nd Edition*
- *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.



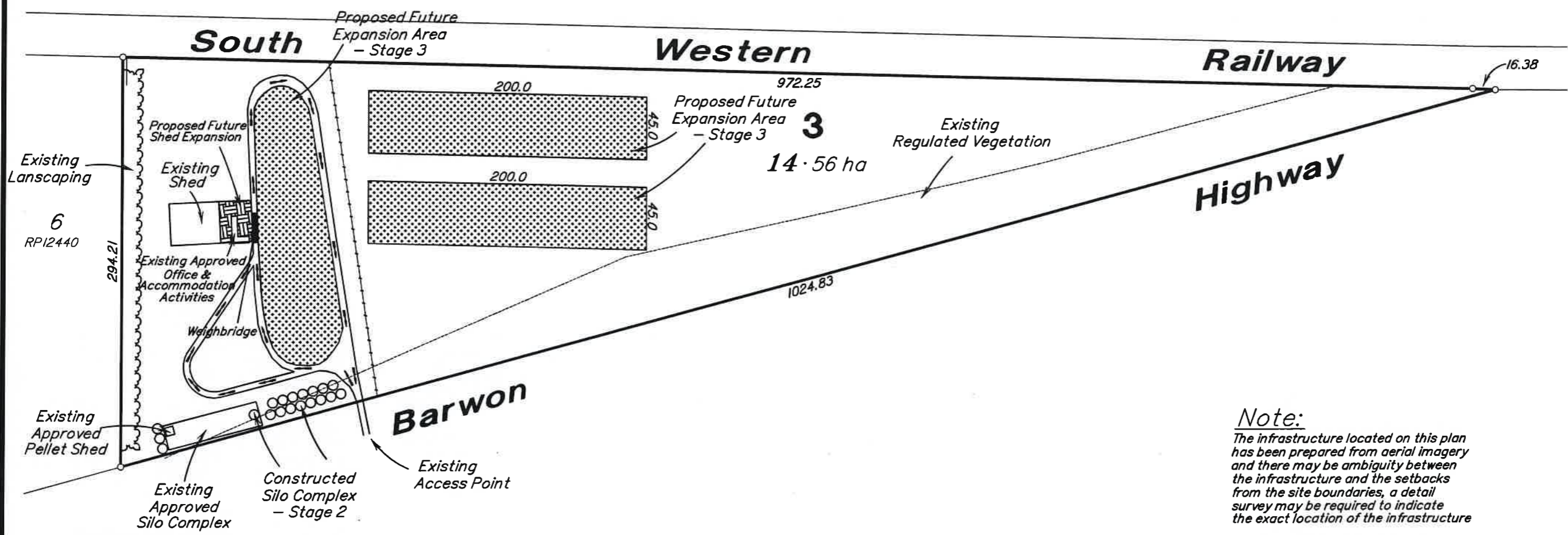
**Attachment 2 – Approved Plans**



GOONDIWINDI REGIONAL COUNCIL  
 Approved Plan referred to in Council's Decision Notice  
 Council Reference: 22/07  
 Dated: 29/11/2023  
 Signed: *R.M.M.C.*  
 Print Name: Ronnie McMahon  
 (Under Delegation) ASSESSMENT MANAGER



2  
 SP229058



**Note:**  
 The infrastructure located on this plan has been prepared from aerial imagery and there may be ambiguity between the infrastructure and the setbacks from the site boundaries, a detail survey may be required to indicate the exact location of the infrastructure

**Note:**  
 This plan was prepared for Andrew Carter to accompany a MCU application to the Goondiwindi Regional Council and should not be used for any other purpose. This note is an integral part of this plan



CARTER SEEDS PTY LTD  
**SMK QLD** PTY. LTD.  
 Goondiwindi | Brisbane | Gold Coast | Toowoomba | Gatton  
 Ph (07)4671 2445 Email admin@smkqld.com.au

PROPOSAL PLAN TO ACCOMPANY MATERIAL CHANGE OF USE APPLICATION ON LOT 3 RP12440, 1100 BARWON HIGHWAY GOONDIWINDI QLD 4390

21118  
 SCALE: 1:3000  
**A3**  
 21118-1

Drawn: TJJ 3/03/22 Checked: [ ]



**GOONDIWINDI REGIONAL COUNCIL**  
 Approved Plan referred to in Council's Decision Notice  
 Council Reference: 22/07  
 Dated: 29/11/2023  
 Signed: *R.M.M.C.*  
 Print Name: **Ronnie McMahon**  
 (Under Delegation) ASSESSMENT MANAGER

Google

<b>Client:</b> Andrew Carter	<b>Description:</b> 1100 Barwon Highway Calladon	<b>File Name:</b> A483 & A491	<b>Do to project:</b>	
<b>SATAKE AUSTRALIA</b>	<b>Denny's Silos</b>	<b>NAME:</b> James H	<b>DATE:</b> 24/8/2021	<b>Sheet size:</b> A3
15-17, Leiner St, Merrim NSW Tel: (02) 4725500 ABN: 91 001011814	32, Hage Rd, Altona QLD Tel: (07) 4666 3266	<b>DIAMETER:</b> James H	<b>CHECK:</b>	<b>Revisions:</b> 0
All welds to AS/NZS 1541 to be from 6mm UAC		<b>APPROVED:</b>	<b>Check on no.:</b>	<b>Drawing number:</b>
Weight: N/A This drawing and the copy right thereof remains the property of Satake. It shall not be transmitted, copied or disclosed to third parties unless prior written consent is issued by the G.M.		<b>: A483 &amp; A491</b>		
<b>0</b>	<b>N/A</b>	<b>Scale: NTS</b>		
<b>Rev.</b>	<b>Grid ref.</b>	<b>Sheet: 2 of 2</b>		
		<b>Revision note</b>		



## **Attachment 3 – Infrastructure Charges Notice**





Goondiwindi Customer Service  
Centre  
4 McLean Street  
Goondiwindi  
Inglewood Customer Service  
Centre  
18 Elizabeth Street  
Inglewood

Locked Mail Bag 7  
Inglewood QLD 4387

Telephone: 07 4671 7400  
Fax: 07 4671 7433

Email: [mail@grc.qld.gov.au](mailto:mail@grc.qld.gov.au)

## Infrastructure Charges Notice

<b>Address</b>	1100 Barwon Highway, Goondiwindi
<b>Owner</b>	A & M Carter Pty Ltd
<b>Applicant</b>	SMK QLD Pty Ltd for Andrew Carter
<b>Application No.</b>	22/07
<b>Lot and Survey Plan</b>	Lot 3 on RP12440
<b>Date</b>	29 November 2023
<b>Approval</b>	Development Permit – Material Change of Use

Development Application Details
<i>"Industry activities" – "Low Impact Industry" (Expansion of Grain Storage Facility and Seed Grading)</i>

Proposed Use	Charge Area	Type of Charge	Charge Amount (\$)	Demand	Total Charge (\$)
Low Impact Industry	A	Water, sewer, transport and parks	\$2.45 per m <sup>2</sup> of GFA	685 (additional)	\$1,678.25
		Stormwater	\$0 per m <sup>2</sup> of impervious area	685 (additional)	\$0

<b>Due Date</b>	Prior to commencement of Stage 3.	<b>Total Charge (\$)</b>	<b>\$1,678.25</b>
<b>Charge to be paid to</b>	Goondiwindi Regional Council		
<b>Lapse Date</b>	29 November 2029		

Authorised by:

Print Name: **Mrs Ronnie McMahon**  
Manger of Planning Services

*In accordance the Planning Act 2016*

**Office Use – Receipt Number**

1250-1150-0000





**Attachment 4 – 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 "Industry activities" – "Low Impact Industry" (Expansion of Grain Storage Facility and Seed Grading)

22/07

1100 Barwon Highway, Goondiwindi

### **Lot 3 on RP12440**

On 22 November 2023, the above development application was:

- approved in full or  
 approved in part for \_\_\_\_\_ or  
 approved in full with conditions or  
 approved in part for \_\_\_\_\_ , with conditions or  
 refused.

### **1. Reasons for the decision**

The reasons for this decision are:

- Having regard to the relevant criteria in the Goondiwindi Region Planning Scheme 2018, 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
Rural Zone Code	PO1-PO5
Transport & Infrastructure Code	PO1-PO15
Natural Resources Overlay Code	PO5-PO8
Bushfire Hazard Overlay Code	PO1-PO8
Flood Hazard Overlay Code	PO1-PO4

### 3. Compliance with benchmarks

Benchmark reference	Reasons for the approval despite non-compliance with benchmark
<b>Rural Zone Code</b>	
<p><b>AO2.1</b> Buildings and structures, other than garden structures, are setback a minimum of: (a) 20 metres from all road frontages; and (b) 15 metres from all side and rear boundaries.</p> <p><b>AO2.2</b> Extensions to existing buildings and structures already located within the boundary setback: (a) the existing building line is maintained</p> <p><b>AO2.3</b> Replacement of an existing building and structure, where the existing building and structure was located within the boundary setback: a) the new building boundary setback is no closer to any property boundary than the existing building being replaced.</p>	<p><b>Alternative Solution</b> The silos are not located adjacent to the Barwon Highway frontage. The road reserve is 88m from the edge of bitumen to the property boundary. Therefore, the proposal is not considered to impact the character of the zone.</p> <p>Conditions will be applied for the planting and maintenance of a 10m wide landscape buffer along the western property boundary to protect the amenity of the nearby sensitive land use.</p>
<p><b>PO4</b> Development does not detract from the amenity of the local area through unacceptable impacts relating to: (a) noise; (b) hours of operation; (c) traffic; (d) advertising devices (e) lighting; (f) visual amenity; (g) privacy; (h) odour; or (i) emissions.</p> <p>Editor's note: Any development involving a sensitive land use must take into account and mitigate any nuisance impacts from existing development in the locality.</p>	<p><b>Condition to Comply</b> It is stated in the application that the proposal will not detract from the amenity of the Rural Zone. However, Council has received complaints from nearby residents in relation to noise and dust emissions.</p> <p>The proposal includes an extension of operating hours to be 24 hours a day, and will result in a 6x increase in traffic accessing the site. The proposal is therefore considered likely to detract from the amenity of the local area.</p> <p>Conditions will be applied for the planting and maintenance of a 10m wide vegetated buffer for the full length of the western boundary of the site to provide visual screening as well as manage dust and light emissions. The applicant will also be conditioned to prepare a dust management plan for the site.</p> <p>It is considered that, through appropriate conditions, potential impacts can be suitably managed.</p>
<b>Transport &amp; Infrastructure Code</b>	
<p><b>AO2</b> Parking is provided on the site in accordance with the requirements identified in Table 9.4.4.2 - Car parking generation rates and service vehicle requirements.</p> <p>Note—where for a <i>supermarket</i> or <i>shopping centre</i> including a <i>supermarket</i> in the Central business district precinct or Pratten Street precinct of the Centre Zone or the Callandoon Street</p>	<p><b>Alternative Solution</b> The original approval required 33 car parking spaces be provided on site. The proposed development is not considered to increase car parking demand above the previously conditioned spaces.</p>

Benchmark reference	Reasons for the approval despite non-compliance with benchmark
<p>precinct or Marshall Street precinct of the General residential zone, a Traffic and Car Parking Impact Assessment and Street Improvement Plan is undertaken in support of any development application seeking car parking concessions.</p> <p>OR</p> <p>Where development is for a material change of use involving no building work or <i>minor building work</i>, the existing number of car parking spaces on the premises is maintained.</p>	
<p><b>AO15.1</b> Landscaping complies with the standards specified in SC6.4 Planning Scheme Policy 1 – Landscaping Standards.</p> <p><b>AO15.2</b> Street frontage landscaping has a minimum width of 2 metres for the full length of the site frontage (excluding driveways).</p> <p><b>AO15.3</b> Landscape screening to external use areas has a minimum width of 3 metres for the full length of all boundaries adjoining external use areas on the site.</p> <p><b>AO15.4</b> For industrial activities adjoining premises not included in an industry zone and used for non-industrial activities, a solid screen fence with a minimum height of 1.8 metres is provided on the common boundary.</p>	<p><b>Alternative Solution</b> The proposal is for the expansion of an industrial use in the Rural Zone. In lieu of landscaping, a 2.4m high fence has been conditioned to be provided along the western boundary of the site to provide screening to adjacent properties.</p> <p>Given the width of the road reserve at the property frontage, no additional landscaping is considered to be required along the Barwon Highway.</p>
<b>Bushfire Hazard Overlay Code</b>	
<p><b>AO1.1</b> A site specific assessment of the subject site by a suitably qualified bushfire hazard specialist confirms that the site is not subject to bushfire hazard.</p> <p>OR</p> <p>The proposed development complies with an approved Bushfire Hazard Management Plan prepared by a suitably qualified person.</p> <p>OR</p> <p>The development complies with an existing approved Bushfire Hazard Management Plan associated with a lawful and current approval over the subject site.</p>	<p><b>Alternative Solution</b> The site contains areas of medium bushfire hazard. No bushfire hazard assessment has been undertaken. Given the use of the site, it is considered reasonable for conditions to be applied for site management practices to be implemented to manage bushfire risk.</p>

4. Relevant matters for impact assessable development
5. Matters raised in submissions for impact assessable development
6. Matters prescribed by Regulation



**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.*