

Our ref TMR23-039234
Your ref 21401
Enquiries Ian Leyton



2 June 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 road¹

Development application reference number DA230024, lodged with North Burnett Regional Council involves constructing or changing a vehicular access between Lot 21B4469, 11B4469, the land the subject of the application, and Isis 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 SJS Fuels Pty Ltd C/- Project Urban
PO Box 6380
Maroochydore QLD 4558

Application Details

Address of Property John Street, Biggenden QLD 4621
Real Property Description 21B4469, 11B4469
Aspect/s of Development Development Permit for Material Change of Use Service Station
Development Permit for Operational Works for 1 x 6m high pylon freestanding; 3 x awning fascia signs on both the car and truck canopies and 1 x hamper sign fixed above the main entrance of the Service Station shop. This sign has a maximum height of 6.75m above ground level., Service Station

Decision (given under section 67 of TIA)

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

No.	Conditions of Approval	Condition Timing
1	The permitted road access location is approximately 28 meters from the north-eastern boundary of Lot 11 B4469, in accordance with Proposed Site Plan prepared by Verve Building Design Co, dated 22.03.2023, job number 21276, drawing DA01, rev. D.	At all times.

¹ Please refer to the further approvals required under the heading 'Further approvals'

No.	Conditions of Approval	Condition Timing
2	<p>(a) Road access works must be provided at the permitted road access location comprising a commercial crossover with a box culvert crossing and guard rail over the roadside drainage.</p> <p>(b) The road access works must be designed so that the largest vehicle using the site can exit the site eastbound without using the adjacent lane.</p> <p>(c) The road access works must be designed in accordance with the Department of Transport and Main Roads' Road Planning and Design Manual 2nd edition, Specification and Standards in must be provided at the permitted access location.</p>	MCU - Prior to commencement of use
3	Direct access is prohibited between the Isis Highway and Lots 11B4469 and 21B4469 at any other location other than the permitted road access location described in Condition 1.	At all times.

Reasons for the decision

The reasons for this decision are as follows:

- a) A development application has been lodged for a material change in use for a service station
- b) The state-controlled road gazettal made for the Isis Highway made under the *Transport Infrastructure Act 1994* extends across the entire frontage of the site where formed road is present. As such access at the location proposed is taken to be access to a state-controlled road.
- c) Access between a state-controlled road and adjacent land is managed by the Department of Transport and Main Roads under the *Transport Infrastructure Act 1994*.
- d) To ensure the safety of Isis Highway is not adversely impacted by access associated with material change of use.
- e) The approved arrangement can operate safely and avoid impacts on John Street which services very few vehicles currently, has a low standard and narrow seal. With reference to Principles 1 and 2 of the departments *Vehicular access to state-controlled roads policy: management of access between adjacent land and state-controlled roads, 2023*, in this instance provision of direct access instead of using John Street is the preferred option for access.
- f) Access at the proposed location should not create an unreasonable impact on safe operation of Isis Highway, if maintained according to the conditions above and used in accordance with the road rules.

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 Ian Leyton, Senior Advisor (Corridor Management) should be contacted by email at WBB.IDAS@tmr.qld.gov.au or on (07) 5482 0367.

Yours sincerely



Adam Fryer
Principal Advisor (Corridor & Land Management)

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

Attachment C - Appeal Provisions

Attachment D - Permitted Road Access Location Plan

Attachment A

Decision Evidence and Findings

Findings on material questions of fact:

- Access between a state-controlled road and adjacent land is managed by the Department of Transport and Main Roads (the department) under the *Transport Infrastructure Act 1994*.
- Section 62 of the *Transport Infrastructure Act 1994* allows the department to decide about road access.
- Service stations generally require a minimum of two accesses to ensure a functional internal layout. Particularly where heavy vehicles are to be serviced.
- In accordance with Principle 2 of the departments *Vehicular access to state-controlled roads policy: management of access between adjacent land and state-controlled roads, July 2019* (VAP) the number of direct access locations should be reduced. The proposal includes a single access to a secondary road that is located as far as possible from the Isis Highway/ Frederick Street intersection and a direct access on the Isis Highway. The option of having both accesses on local streets was considered however North Burnett Regional Council identified that John Street services very few vehicles currently, has a low standard and narrow seal, and identified a preference for impacts on John Street to be avoided. By separating the service station traffic from existing traffic using John Street the existing standard of the John Street intersection can be maintained without modification and the safety of the Isis Highway will not be unreasonably worsened by introduction of the service station access nearby in this instance. On this basis the direct access proposed can be accepted.
- The proposed access is in an area with adequate sight distance and low average annual daily traffic volumes and can be constructed to provide a safe access if constructed in accordance with the above conditions.
- The standard of road access work specified, if used in accordance with the road rules, should not have any unreasonable adverse impact on safety of the Isis Highway.

Evidence or other material on which findings were based:

Title of Evidence / Material	Prepared by	Date	Reference no.	Version/Issue
<i>Transport Infrastructure Act 1994</i>	Queensland Government	Current as at 1 March 2023	---	
Vehicular Access to State-controlled Roads Policy	Department of Transport and Main Roads	2023	---	
Road Planning and Design Manual 2 nd Edition	Department of Transport and Main Roads	Current as at June 2022	---	

Development Assessment Report and Attachments	Project Urban	24 April 2023	21401	
Traffic Impact Assessment	Contour Consulting Engineers	20 April 2023	CIV03020-TRAF01	B

Attachment B

Section 70 of TIA

Transport Infrastructure Act 1994

Chapter 6 Road transport infrastructure

Part 5 Management of State-controlled roads

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.