

Our ref TMR24-041920
Your ref S230887
Enquiries Adam Fryer



Department of
Transport and Main Roads

28 March 2024

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 DA240006, lodged with North Burnett Regional Council involves constructing or changing a vehicular access between Lot 63RP79469, 1RP166611, the land the subject of the application, and the 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 Colleen Cunliffe C/- JB Serisier Surveyors
PO Box 540
Pialba QLD 4655

Application Details

Address of Property 44 Walsh Street, Biggenden QLD 4621
Real Property Description 63RP79469, 1RP166611
Aspect/s of Development Development Permit for Reconfiguration of a Lot for Boundary Realignment (2 into 2 lots)

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 between Lot 63 and the Isis Highway is in accordance with: <ul style="list-style-type: none">Plan of Proposed Lots 1 & prepared by JB Serisier Surveyors and Planners, reference S230887-Pro1, dated 23/01/2024, as modified in red by the Department of Transport and Main Roads dated 28 March 2024.	At all times.
2	Use of the Permitted Road Access Location is approved for vehicles associated with the following purposes: <ul style="list-style-type: none">Motel.	At all times

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

No.	Conditions of Approval	Condition Timing
	<ul style="list-style-type: none"> • Food and Drink Outlet approved under North Burnett Regional Council development permit number DA200101. 	
2	Direct access is prohibited between the Isis Highway and Lot 63 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) Access between a state-controlled road the Isis Highway and adjacent land is managed by the Department of Transport and Main Roads under the *Transport Infrastructure Act 1994*.
- b) The applicant applied for a development permit for reconfiguration of a lot realigning the boundaries so that vacant land at the rear of the existing dwelling on Lot 1 RP166611 is transferred to the lot containing the existing motel and food and drink outlet.
- c) This decision about access recognises the change in boundary and the existing uses on the realigned parcel that will front the Isis Highway.
- d) The existing access at the location proposed should not create an unreasonable impact on safe operation of the 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.

General Advice

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

1. This decision about access approves access at an existing location for uses that are existing on proposed Lot 63 at the time of approval. Direct access to the vacant portion of proposed Lot 63 from the Isis Highway is not permitted. Any proposal for direct access between that portion of Lot 63 and the Isis Highway will require a new application to the Department of Transport and Main Roads under section 62 of the *Transport Infrastructure Act 1994*. Please be advised that no new access will be supported however rationalising or relocating access so that both the Motel and rear vacant area use a single access junction may be considered.

If further information about this approval or any other related query is required, Adam Fryer, Principal Advisor (Corridor & Land Management) should be contacted by email at wbb.idas@tmr.qld.gov.au or on (07) 4154 0238.

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 the Isis Highway and adjacent land is managed by the Department of Transport and Main Roads under the *Transport Infrastructure Act 1994*.
- Section 62 of the *Transport Infrastructure Act 1994* allows the Department of Transport and Main Roads to make a decision about road access.
- This approval will realign property boundaries with new Lot 63 being reliant on an existing access location
- The applicant has been clear in the application material that use of the existing access is what is proposed. No access to the vacant portion of Lot 63 is sought..
- This decision about access is provided to recognise the changed boundaries of proposed Lot 63 that remove potential for access to the vacant portion of proposed Lot 63 from Kent Street, as well as to provide certainty about the purposes that the access is permitted to be used for.
- The access is functioning satisfactorily with no impacts currently identified on the safety and efficiency of the road network and as such road access works are not required to be undertaken for this development.

Evidence or other material on which findings were based:

Title of Evidence / Material	Prepared by	Date	Reference no.	Version/Issue
Confirmation Notice	North Burnett Regional Council	28 February 2024	DA240006	--
Referral Confirmation Notice	State Assessment and Referral Agency	1 March 2024	2402-39317 SRA	
Town Planning Report	JB Serisier Surveyors and Planners	February 2024	S230887	--
Plan of Proposed Lots 1 & 63	JB Serisier Surveyors and Planners	23/01/2024	S230887-Pro1	--

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—

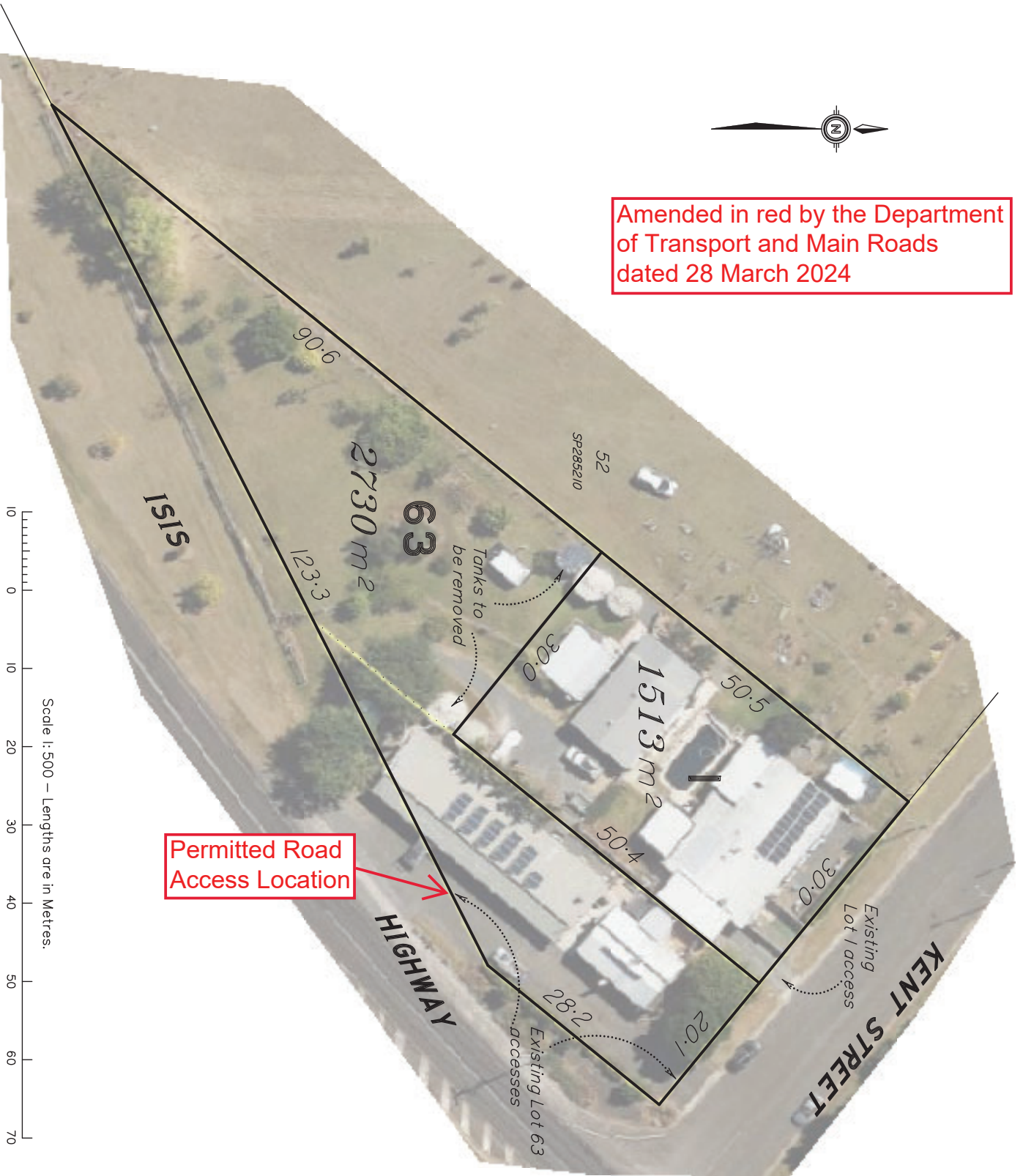
- (a) the decision notice did not state the reasons for the decision; and
- (b) the person asked for a statement of the reasons within the 28 days mentioned in subsection (1)(a);

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.



Amended in red by the Department of Transport and Main Roads dated 28 March 2024



Scale 1:500 – Lengths are in Metres.

0 50mm 100mm 150mm

DISCLAIMER

1. This plan was prepared for the purpose and exclusive use of J & C Cunliffe to accompany an application to the North Burnett Regional Council for approval to reconfigure the land described in the plan and is not to be used for any other purpose or by any other person person or corporation. CULLEN & COUPER PTY LTD accept no responsibility for any loss or damage suffered howsoever arising to any person or corporation who may use or rely on this plan in contravention of the terms of this clause or clauses 2 or 3 hereof.

2. The dimensions, area, size and location of utilities, improvements, flood information (if shown) and number of lots shown on this plan are approx. only and may vary.

3. This plan may not be photocopied unless this note is included.

CUNLIFFE

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SURVEYORS & PLANNERS
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 58 Lyons Street, Mundubbera QLD 4626

**Plan of Proposed
 Lots 1 & 63**

FORMAT *Proposal*
 LOCALITY *Biggenden*
 LOCAL GOVERNMENT *North Burnett RC*

Cancelling Lot 1 on RP166611 & Lot 63 on RP79469

S230887-Pro1

MERIDIAN RP166611	DATE 23/01/2024	SCALE 1:500 @ A3	SURVEYORS REF S230887
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