

Our reference: 2402-39317 SRA
Council reference: DA240006
Applicant reference: S230887

3 April 2024

Chief Executive Officer
North Burnett Regional Council
PO Box 390
GAYNDAH QLD 4625
admin@northburnett.qld.gov.au

Attention: Ms Lyn McLeod

Dear Ms McLeod

SARA Response – 1 Kent Street and 44 Walsh Street, BIGGENDEN (Lot 1 on SP118837)

(Given under Section 56 of the *Planning Act 2016*)

The development application described below was confirmed as being properly referred to the State Assessment and Referral Agency (SARA) on 1 March 2024.

Response

Outcome:	Referral Agency Response under Section 56(1)(b) of the <i>Planning Act 2016</i>
Date of response:	3 April 2024
Conditions:	The approval is subject to the conditions in Attachment 1
Advice:	Advice to the applicant is in Attachment 2
Reasons:	The reasons for the referral agency response are in Attachment 3

Development Details

Description:	Development Permit for Reconfiguring a Lot (RAL) – Boundary Realignment (2 into 2 lots)
SARA role:	Referral agency

SARA triggers:	Schedule 10, Part 9, Division 4, Subdivision 2, Table 1, Item 1– Reconfiguring a lot near a State transport corridor (Planning Regulation 2017)
	Schedule 10, Part 9, Division 4, Subdivision 2, Table 3, Item 1– Reconfiguring a lot near a State-controlled road intersection (Planning Regulation 2017)
SARA reference:	2402-39317 SRA
Assessment Manager:	North Burnett Regional Council
Street address:	1 Kent Street and 44 Walsh Street, BIGGENDEN
Real property description:	Lot 1 on RP166611 and Lot 63 on RP79469
Applicant name:	Colleen Cunliffe C/- JB Serisier Surveyors
Applicant contact details:	PO Box 540 PIALBA QLD 4655 lauren@cullenc.com.au
State-controlled road access permit:	This referral included an application for a road access location, under Section 62A(2) of the <i>Transport Infrastructure Act 1994</i> .

Below are the details of this decision:

- Approved – with conditions
- TMR24-041920
- Date: 28 March 2024

If you are seeking further information on the road access permit, please contact the Department of Transport and Main Roads (TMR) at Wide.Bay.Burnett.IDAS@tmr.qld.gov.au.

<i>Human Rights Act 2019</i> considerations:	A consideration of the 23 fundamental human rights protected under the <i>Human Rights Act 2019</i> has been undertaken as part of this decision. It has been determined that this decision does not limit human rights.
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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 Peter Mulcahy, Principal Planning Officer, on (07) 3307 6152 or via email WBBSARA@dsdilgp.qld.gov.au who will be pleased to assist.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jamaica Hewston', written in a cursive style.

Jamaica Hewston
A/Manager

enc Attachment 1 – Referral agency conditions
Attachment 2 – Advice to the applicant
Attachment 3 – Reasons for referral agency response
Attachment 4 – Representations about a referral agency response
Attachment 5 - Documents referenced in conditions

cc Colleen Cunliffe
C/- JB Serisier Surveyors
lauren@cullenc.com.au

Department of Transport and Main Roads
Wide.Bay.Burnett.IDAS@tmr.qld.gov.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
Development Permit for Reconfiguring a Lot (RAL) – Boundary Realignment (2 into 2 lots)		
Schedule 10, Part 9, Division 4, Subdivision 2, Table 1, Item 1 and Schedule 10, Part 9, Division 4, Subdivision 2, Table 3, Item 1 of the <i>Planning Regulation 2017</i> —The Chief Executive administering the <i>Planning Act 2016</i> nominates the Director-General of the Department of Transport and Main Roads (TMR) 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 conditions:		
1.	<p>The road access location between proposed Lot 63 and the Isis Highway is in accordance with:</p> <ul style="list-style-type: none"> • <i>Plan of Proposed Lots 1 & 63</i>, prepared by JB Serisier Surveyors and Planners, reference S230887-Pro1, dated 23 January 2024 and amended in red by SARA on 3 April 2024. 	At all times.

Attachment 2—Advice to the applicant

General advice	
1.	Terms and phrases used in this document are defined in the <i>Planning Act 2016</i> its regulation or the State Development Assessment Provisions (SDAP) v3.0. If a word remains undefined it has its ordinary meaning.
Encroachment within the State-controlled road corridor	
2.	<p>The Department of Transport and Main Roads (TMR) has advised that the extent of existing encroachment of the motel into the State controlled road corridor will need to be clearly identified by way of survey.</p> <p>Following the survey, to address the encroachment, there are potentially three options. These are:</p> <p>(a) Remove the part of building from the state-controlled road such that all of the building and associated structures/improvements no longer encroaches into the state-controlled road corridor.</p> <p>or</p> <p>(b) Make an application to the Department of Resources for a permanent road closure. The extent of closure will need to ensure all buildings, and encroachments are wholly contained within the land (including car park manoeuvring areas) and that access to the balance area west of the building can also be achieved via Kent Street.</p> <p>or</p> <p>(c) If it is only the veranda/car parking awning part of the building that encroaches the road reserve, then an application to TMR for a Road Corridor Permit under Section 50 of the <i>Transport Infrastructure Act 1994</i> may be considered. This option only applies if it is the awning structure only that encroaches. If the main part of the motel building also encroaches into the road reserve, then only options (a) and (b) will be available to formally resolve the issue.</p> <p>If Option (b) is pursued, the Department of Resources will seek comment from the TMR about whether the permanent road closure is supported. It is encouraged that before you make application to the Department of Resources, you first contact the TMR office via email (Bundaberg.Office@tmr.qld.gov.au) to discuss and reach in-principle agreement about the area required for the permanent road closure.</p> <p>If option (c) can be pursued it is recommended the landowner contact TMR to discuss a potential application and what is involved/required. For option (c), TMR will require survey evidence to demonstrate what parts of the building are encroaching the road reserve. Further information about road corridor permits is available at the TMR website.</p> <p>The process for applying for and finalising any permanent closure of road corridor is totally outside of the planning approval process.</p>

Attachment 3—Reasons for referral agency response

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

The reasons for the SARA decision are:

The proposed development complies with the assessment benchmarks and purpose statement within State Code 1: Development in a state-controlled road environment of the State Development Assessment Provisions (SDAP), as the proposed development is considered to:

- maintain the safety and operating performance of the State-controlled road network

A condition has been applied to ensure compliance with State Code 1.

Material used in the assessment of the application:

- The development application material
- *Planning Act 2016*
- Planning Regulation 2017
- The *State Development Assessment Provisions* (Version 3.0) as published by the SARA
- The Development Assessment Rules (DA Rules)
- SARA DA Mapping system
- *Human Rights Act 2019*.

Attachment 4—Representations about a referral agency response

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 Rules¹ 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.²
- 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.

¹ Pursuant to Section 68 of the *Planning Act 2016*

² 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

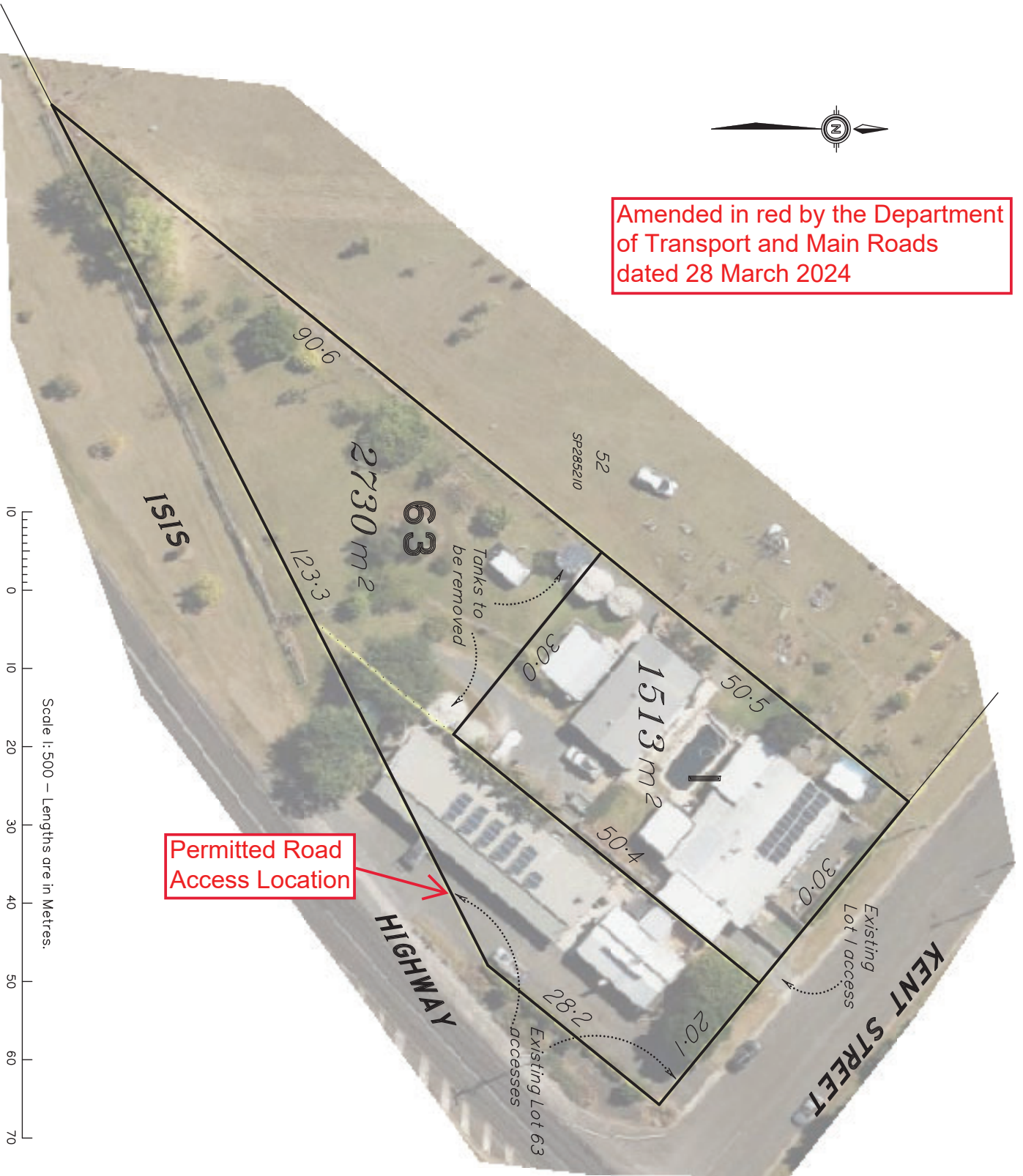
- 30.1. An applicant may make representations to a concurrence agency at any time before the application is decided, about changing a matter in the referral agency response.³

³ 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 reference in condition



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

ACN 050 842 503
JB SERISIER
SURVEYORS & PLANNERS
 PH: 07 4165 4468 Email: jbs.surv@bigpond.net.au
 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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