

Our ref TMR18-024712
Your ref
Enquiries Donna Coy



Department of
Transport and Main Roads

11 October 2018

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 89/18, lodged with North Burnett Regional Council involves constructing or changing a vehicular access between Lots 3SP241998 and 4SP241998 the land the subject of the application, and Gayndah-Monto Road (locally known as Dalgangal Road) (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 Burnett Country Certifiers Pty Ltd
12/58 Newton Street
Monto QLD 4630

Application Details

Address of Property 43A Dalgangal Road, Gayndah QLD 4625
Real Property Description 3SP241998 and 4SP241998
Aspect/s of Development Material Change of Use for Extensions to Mortuary and Caretaker's Accommodation

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	<p>The permitted road access for both Lots 3 and 4 SP241998 is via easement No. 713703482 burdening Lot 3 SP241998 with the road access location at the north west of the easement where Lot 3 SP241998 adjoins the neighbouring Lot 67 RP836016 and the Burnett Highway (Gayndah-Monto), locally known as Dalgangal Road, (the state-controlled road), in accordance with:</p> <p>a) Site Plan prepared by John Poulsen Building Design dated 15 August 2018 reference PD 2157 Page 3 of 8.</p>	At all times.

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

No.	Conditions of Approval	Condition Timing
	<p><i>Note: Existing road access works are suitable to cater for proposed uses. Ongoing maintenance of the road access works in a safe operational condition between the edge of the road carriageway and the property boundary is the responsibility of the landowner/occupier.</i></p>	
2	<p>Direct access is prohibited between the Burnett Highway (Gayndah-Monto) and Lots 3 and 4 SP241998 at any other location other than the permitted road access location described in Condition 1.</p>	At all times.

Reasons for the decision

The reasons for this decision are as follows:

- a) the management of access between a state-controlled road, Burnett Highway (Gayndah-Monto) and adjacent land is managed by the Department of Transport and Main Roads under the *Transport Infrastructure Act 1994*.
- b) to ensure access only occurs from the approved access location.
- c) to ensure the road access location to the state-controlled road from the site does not compromise the safety and efficiency of the state controlled road.
- d) to ensure the development does not adversely impact the safety, function and operational efficiency of the state-controlled road network.

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.

If further information about this approval or any other related query is required, Ms Donna Coy, Program Support Officer should be contacted by email at WBB.IDAS@tmr.qld.gov.au or on (07) 4154 0205.

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:

1. The objective of the *Transport Infrastructure Act 1994* requires the establishment of a road regime that is safe and efficient.
2. Section 62 of the *Transport Infrastructure Act 1994* allows the Department of Transport and Main Roads to make decisions about permitted road access locations between particular/adjacent land and a state-controlled road.
3. The proposed development is for a Material Change of use extensions to a mortuary and construction of caretaker's accommodation which can be effectively implemented using the approved access strategy. This will intensify use of the existing access.
4. The existing standard of access currently in place is suitable for use by the anticipated traffic that will be generated by the development. As such no road access works are required at this time to upgrade the approved access point to the Burnett Highway (Gayndah-Monto).
5. Section 62(1)(g) of the *Transport Infrastructure Act 1994* allows the Department of Transport and Main Roads to make a decision about road access works being a stated type, standard or extent or be constructed in a stated way.

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	23 May 2018	89/18	
Request for Technical agency assessment	SARA	26 September	1805-5561 SRA	
Town Planning Report	Burnett Country Certifiers	17 April 2018		1
SDAP response – State Code 1 (v2.2)	Burnett Country Certifiers	April 2018	SDAP response – State Code 1 (v2.2)	
DA Form 1	Burnett Country Certifiers	April 2018	DA Form 1	
Plans of proposed Office and Caretakers Residence	John Poulsen Building Design	15 August 2018	PD 2157 Pages 1-8	

Attachment B

Section 70 of TIA

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.