

Council File Reference: 011920
Council Contact: Brett Walsh
Council Contact Phone: 07 4651 5600

27 September 2019

Barcaldine Regional Council
c/- Hoffman Surveyors
PO Box 364
Longreach QLD 4730

emailed to: fraser.webb@hoffmannsurveyors.com.au

Attention: Mr Fraser Webb

Development Application

Development Permit - Reconfiguring a Lot One (1) Lot in Two (2) Lots

Lot 37 on SP249547, Landsborough Highway, Barcaldine

We refer to the assessment of the abovementioned development application.

Pursuant to section 83 of the *Planning Act 2016*, please find enclosed the **Decision Notice**.

If you have any queries please contact Brett Walsh at the Barcaldine Executive Office.

Yours faithfully

Steven Boxall
Chief Executive Officer

DECISION NOTICE APPROVAL

PLANNING ACT 2016, SECTION 63

I refer to your application and advise that on 27 September 2019, Barcaldine Regional Council decided to approve the application in full, subject to conditions. Details of the decision are as follows:

1. APPLICATION DETAILS

Application Number: DA-011920
Properly Made Date: 18 July 2019
Decision Date: 27 September 2019
Planning Scheme: Barcaldine Shire Planning Scheme 2006 (v.2)

2. APPLICANT DETAILS

Name: Barcaldine Regional Council
Postal Address: C/- Hoffman Surveyors
PO Box 364
Longreach QLD 4730
Email Address: fraser.webb@hoffmannsurveyors.com.au

3. PROPERTY DETAILS

Street Address: Landsborough Highway, BARCOLDINE QLD 4725
Real Property Description: Lot 37 on SP249547
Local Government Area: Barcaldine Regional Council

4. DECISION DETAILS

The following type of approval has been issued:

- Development Permit for Reconfiguring a Lot (one (1) lot into two (2) lots)

5. CURRENCY PERIOD

This development approval will lapse at the end of the period set out in section 85(1)(a) of the *Planning Act 2016*.

6. ASSESSMENT MANAGER CONDITIONS

1.0 PARAMETERS OF APPROVAL

- 1.1 The Developer is responsible for ensuring compliance with this development approval and the conditions of the approval by an employee, agent, contractor or invitee of the Developer at all times unless otherwise stated.
- 1.2 Where these conditions refer to "Council" in relation to requiring Council to approve or be satisfied as to any matter, or conferring on the Council a function, power or discretion, that role of the Council may be fulfilled in whole or in part by a delegate appointed for that purpose by Council.
- 1.3 The cost of all works associated with the development and construction of the development including services, facilities and/or public utility alterations required are met at no cost to the Council or relevant utility provider, unless otherwise stated in a development condition.
- 1.4 The developer is required to have repaired any damage to existing infrastructure that may have occurred during any works carried out associated with the development. To the extent the damage is deemed to create a hazard to the community, it must be repaired immediately.
- 1.5 Unless otherwise stated, all works must be designed, constructed and maintained in accordance with the relevant Council policies, guidelines and standards.

1.0 ENDORSEMENT OF SURVEY PLAN

- 2.1 Undertake all below actions prior to Council endorsing or releasing the Survey Plan for this development:
 - (a) All conditions attached to this development approval have been fulfilled, unless otherwise stated;
 - (b) All outstanding rates and charges relating to the site have been paid;
 - (c) Where a condition requiring infrastructure upgrades or works has not been carried out to Council's satisfaction, Council may accept a bond for the incomplete works. The bond must be 150% of the value of the works to be completed; and
 - (d) A statement demonstrating compliance with all conditions, as relevant, has been submitted to Council.

2.0 APPROVED PLANS

- 2.1 The approved development must be completed and maintained generally in accordance with the approved plan of development *Proposed Lots 371 and 372*, drawing number B18055-PROP-001, revision B, dated 09/05/2019 and prepared by Hoffmann Surveyors.
- 3.2 Where there is any conflict between the conditions of this approval and the details shown on the approved plans and documents, the conditions of approval must prevail.

3.0 ACCESS AND ROAD WORKS

- 4.1 Design and construct Mulga Road including the intersection with Ironwood Drive to the frontage of proposed Lot 371 as shown on the approved plan, in accordance with Austroads Guide to Road Design - Part 3 –Geometric Design and Austroads Guide to Road Design – Part 4 – Intersections and Crossings:

General. Pavement is required to comply to the Department of Transport and Main Roads WQ35 specification, the depth of gravel must be a minimum of 100 millimetres.

- 4.2 Construct and maintain the vehicular access to each approved lot in accordance with the *Institute of Public Works Engineering Australia Standard Drawing No. RS-056 (vehicle crossing for rural driveway)*
- 4.4 All road and access works are to be completed prior to the endorsement of the Survey Plan.

5.0 SITE WORKS

- 5.1 Site works must be constructed such that they do not, at any time, in any way restrict, impair or change the natural flow of runoff water, or cause a nuisance or worsening to adjoining properties or infrastructure.
- 5.2 Implement and maintain an Erosion and Sediment Control Plan (ESCP) on-site, in accordance with the *Best Practice Erosion and Sediment Control (BPESC)* document, for the duration of the works, and until such time all exposed soil areas are permanently stabilised. The ESCP must be available on-site for inspection by Council Officers during the works.

6.0 STORMWATER MANAGEMENT

- 6.1 All stormwater, with the exception of rainwater captured onsite in rainwater tanks, must drain to a demonstrated lawful point of discharge and must not adversely affect surrounding land or infrastructure in comparison to the pre-development conditions, including but not limited to blocking, altering or diverting existing stormwater runoff patterns or having the potential to cause damage or nuisance to other land or infrastructure.

7.0 SERVICES

- 7.1 Electricity services must be provided to each lot in accordance with the standards and requirements of the relevant service provider.
- 7.2 Connect the proposed lots to Council's reticulated water network. Each of the proposed lots must be provided with its own separate water connection point, located wholly within its respective boundary.
- 7.3 Provide and maintain on-site sewage treatment and disposal on each of the proposed lots in accordance with the *Queensland Plumbing and Wastewater Code, AS/NZ 1547:2012 On-site domestic wastewater management, AS/NZS 3500.1.2003 Plumbing and drainage – Water services, AS/NZS 3500.2.2003 Plumbing and drainage – Sanitary plumbing and drainage* and the *BCA: National Construction Code Series 2014, Volumes Three – Plumbing Code of Australia*.
- 7.4 Electricity and water services must be connected prior to the endorsement of the survey plan. On-site sewerage works must be completed prior to commencement of use.

8.0 RPEQ CERTIFICATION

- 8.1 An Engineer's Certificate of Construction must be signed and submitted to Council by a RPEQ verifying that all works have been carried out in accordance with the relevant standards and drawings, conditions and specifications contained herein.

7. ADVISORY NOTES

1. The Developer and his employee, agent, contractor or invitee is responsible for ensuring compliance with the conditions of this development approval.
2. Where these Conditions refer to "Council" in relation to requiring Council to approve or to be satisfied as to any matter, or conferring on the Council a function, power or discretion, that role may be fulfilled in whole or in part by a delegate appointed for that purpose by the Council.
3. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements. Any provisions contained in this approval relating to the enforcement of any of the conditions shall be in addition to all other rights, powers and privileges that the Council may possess or obtain, and nothing contained in these conditions shall be construed so as to prejudice, affect or otherwise derogate or limit these rights, powers and privileges of the Council.
4. General environmental duty under the Environmental Protection Act 994 prohibits unlawful environmental nuisance caused by noise, aerosols, particles, dust, ash, fumes, light, odour or smoke beyond the boundaries of the development site during all stages of the development including earthworks, construction and operation.
5. This development approval does not authorise any activity that may harm Aboriginal cultural heritage. It is advised that under section 23 of the Aboriginal Cultural Heritage Act 2003, 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").
6. The proposed development is affected by regulated vegetation. Under the *Planning Regulation 2017, Vegetation Management Act 1999* and other relevant legislation, vegetation clearing requirements may apply and should be investigated prior to the commencement of any construction works in regulated vegetation areas.
7. An operational works permit is not required as a result of this application, such as for Sediment and Erosion Control.

8. STATEMENT OF REASONS

8.1 Description of Development –

The development application for a Development Permit for Reconfiguring a Lot (one (1) lot into two (2) lots) approved as per Decision Notice DA 011920.

8.2 Assessment Benchmarks –

The following are the benchmarks that are applicable to this development:

Benchmark applying for the development	Benchmark reference
<ul style="list-style-type: none"> • Reconfiguring a Lot Code 	<i>Barcaldine Shire Planning Scheme 2006 (v2)</i>

<ul style="list-style-type: none"> • State interest for Planning for Infrastructure (Transport Infrastructure) • State interest for Natural Hazards Risk and Resilience (Bushfire prone area) 	<i>State Planning Policy July 2017</i>
<ul style="list-style-type: none"> • Part E – regional policies and land use strategies 	<i>Central West Regional Plan 2009</i>
<ul style="list-style-type: none"> • State Code 1: Development in a State-controlled Road Environment • State Code 16: Native vegetation clearing 	<i>State Development Assessment Provisions (v2.3)</i>

8.3 Relevant Matters –

The Relevant Matters for the application are:

- The existing lot is well below the minimum lot size requirements for the Rural zone and not viable for any rural pursuit or production. The site is not mapped good quality agricultural land (GQAL) and will avoid fragmenting GQAL.

8.4 Matters Raised in Submission

The development application did not require public notification.

8.5 Reason for Decision

The development application is approved and the reasons for the decision are based on findings on material questions of fact:

- The development complies with, or can be conditioned to comply with, the balance of applicable assessment benchmarks under the Planning Scheme;
- The site is serviced by all necessary utilities for the future use of land, and access and road works are provided in accordance with Council standards.
- The site is not affected by any Land Characteristics Maps (except for the State-controlled Road feature, the application was referred to the State government for assessment of the impacts to the State-controlled road network) and will not result in off-site impacts that may affect these mapped local planning interests, such as Good Quality Agricultural Land.
- The proposal does not conflict with the needs of the local community and its reasonable development expectations for land within the Rural zone.
- The development does not compromise the relevant elements of the Central West Regional Plan and State Planning Policy.

9. PROPERLY MADE SUBMISSIONS

The development application did not require public notification.

10. REFERRAL AGENCIES

The Department of State Development, Manufacturing, Infrastructure and Planning was a referral agency for the application:

PLANNING REGULATIONS 2017	FOR AN APPLICATION INVOLVING	NAME OF AGENCY	STATUS	ADDRESS
Reconfiguring a lot near a State transport corridor				

Schedule 10, Part 9, Division 4, Subdivision 2, Table 1	Development application for reconfiguring a lot that is assessable development under section 21, if— (a) all or part of the premises are within 25m of a State transport corridor; and (b) 1 or more of the following apply— (i) the total number of lots is increased	The Chief Executive Department of State Development, Manufacturing, Infrastructure and Planning	Concurrent Agency	Department of State Development, Manufacturing, Infrastructure and Planning Mackay Isaac Whitsunday Region Office PO Box 257 MACKAY QLD 4740 Ph: (07) 4898 6888 Email: MIWSARA@dilgp.qld.gov.au MyDAS2 online referrals: https://prod2.dev-assess.qld.gov.au/suite/
Reconfiguring a lot that is assessable under s21				
Schedule 10, Part 3, Division 4, Table 2	Development application for reconfiguring a lot that is assessable development under section 21, if – (a) a lot that the application relates to is 5ha or larger; and (b) The size of any lot created is 25ha or less; and (c) (ii) on any lot created, accepted operational work, other than operational work that is only the clearing of regulated regrowth vegetation, may be carried out	The Chief Executive Department of State Development, Manufacturing, Infrastructure and Planning	Concurrent Agency	Department of State Development, Manufacturing, Infrastructure and Planning Mackay Isaac Whitsunday Region Office PO Box 257 MACKAY QLD 4740 Ph: (07) 4898 6888 Email: MIWSARA@dilgp.qld.gov.au MyDAS2 online referrals: https://prod2.dev-assess.qld.gov.au/suite/

11. FURTHER DEVELOPMENT PERMITS REQUIRED

ALPHA OFFICE
Phone: 07 4985 1166
Fax: 07 4985 1162

ARAMAC OFFICE
Phone: 07 4652 9999
Fax: 07 4652 9990

BARCALDINE OFFICE
Phone: 07 4651 5600
Fax: 07 4651 1778

The following further development permits will be required:

- Building Work; and
- Plumbing and Drainage Work.

12. RIGHTS OF APPEAL

The rights of applicants to appeal to a tribunal or the Planning and Environment Court against decisions about a development application are set out in chapter 6, part 1 of the *Planning Act 2016* (included in the attachment to this decision notice). For particular 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*).

13. DELEGATED PERSON

Name: *Brett Walsh* Signature: *B Walsh* Date: *27/9/19*

Encl: **Attachment 1** – Stamped Approved Plan
Attachment 2 – Concurrence Agency Response
Attachment 3 – Extract of Appeal Provisions (Chapter 6, Part 1 and Schedule 1 of the *Planning Act 2016*)

Attachment 1

Stamped Approved Plan

ALPHA OFFICE
Phone: 07 4985 1166
Fax: 07 4985 1162

ARAMAC OFFICE
Phone: 07 4652 9999
Fax: 07 4652 9990

BARCALDINE OFFICE
Phone: 07 4651 5600
Fax: 07 4651 1778

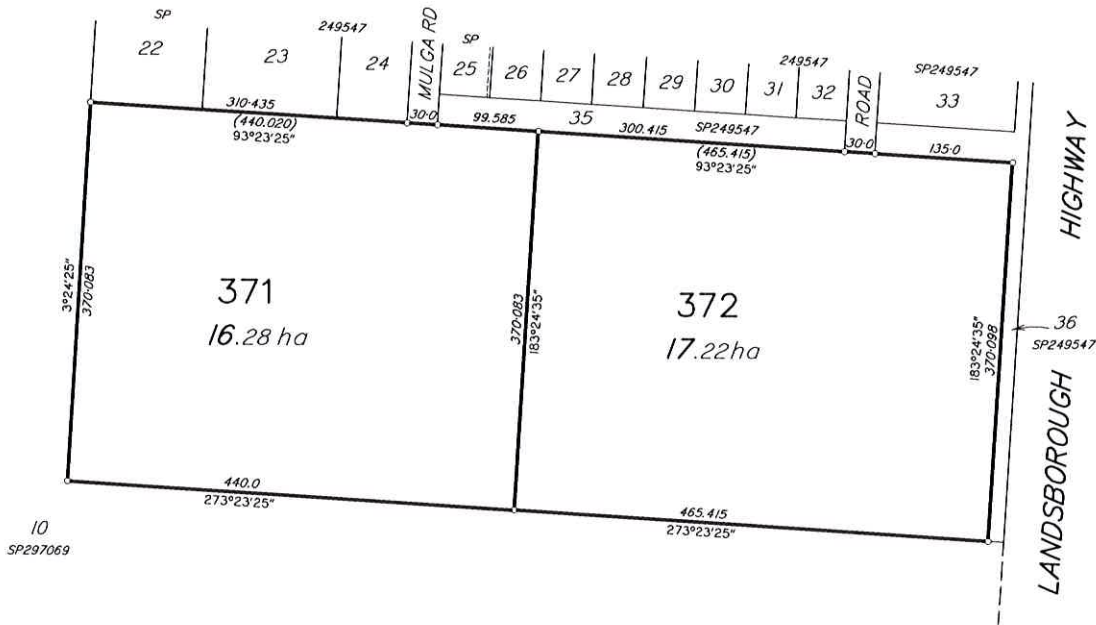
Rev.	Reason for Issue or Amendment	Date	Drawn	Checked	Surveyed
B	Revision as per updated dimensions from GBA	9/5/19	NT	FW	
A	Original	14/01/15	NT	FW	

BARCALDINE REGIONAL COUNCIL
DIGITALLY STAMPED
APPROVED PLAN

Development Application: Development Permit for Reconfiguring a Lot (1 Lot into 2 Lots)
Lot: Lot 37 on SP249547

Referred to in Council's Decision Notice

Approval Date: 30 September 2019
Application Number: DA011920

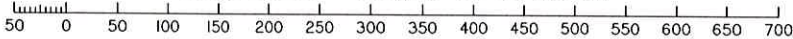


This plan was prepared as a proposed subdivision and should not be used for any other purpose. The dimensions, areas and total number of lots shown hereon are subject to field survey and also to the requirements of Council and any other authority which may have requirements under any relevant legislation. In particular, no reliance should be placed on the information on this plan for any financial dealing involving the land.
This note is an integral part of the plan.

Plan of Proposed Lots 371 & 372
Cancelling Lot 37 on SP249547



Scale 1:5000 - Lengths are in Metres.



<p>HOFFMANN SURVEYORS 07 4922 3834 hoffmannsurveyors.com.au Rockhampton Longreach Blackall Charleville</p>	Project: BRC Barcardine Clay Target Club Subdivision Project	Local Government: Barcardine R.C.	Locality: Barcardine		
	Title: Proposed Lots 371 and 372	Co-ord System:	Level Datum:	Origin:	
	Client: Barcardine R.C.	Scale: 1:5000 a: A3	Sheet: 1 of 1 1	Drawing No: B18055-PROP-001	Revision: B

Attachment 2

Concurrence Agency Response

ALPHA OFFICE
Phone: 07 4985 1166
Fax: 07 4985 1162

ARAMAC OFFICE
Phone: 07 4652 9999
Fax: 07 4652 9990

BARCALDINE OFFICE
Phone: 07 4651 5600
Fax: 07 4651 1778



Department of
**State Development,
 Manufacturing,
 Infrastructure and Planning**

SARA reference: 1907-12386 SRA
 Council reference: 011920
 Applicant reference: B18055

2 September 2019

Chief Executive Officer
 Barcaldine Regional Council
 c/- Hoffman Surveyors
 71 Ash Street
 BARCOLDINE QLD 4725
 council@barc.qld.gov.au

Attention: Mr Brett Walsh

Dear Mr Walsh

SARA response—Landsborough Highway, Barcaldine

(Referral agency response given under section 56 of the *Planning Act 2016*)

The development application described below was confirmed as properly referred by the Department of State Development, Manufacturing, Infrastructure and Planning on 5 August 2019.

Response

Outcome:	Referral agency response – with conditions
Date of response:	2 September 2019
Conditions:	The conditions in Attachment 1 must be attached to any development approval.
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	Reconfiguring a lot - One (1) Lot in Two (2) Lots
SARA role:	Referral Agency	
SARA trigger:	Schedule 10, Part 3, Division 4, Subdivision 2, Table 1 (Planning Regulation 2017)	

Clearing Native Vegetation

Schedule 10, Part 9, Division 4, Subdivision 2, Table 1 (Planning Regulation 2017)

State transport corridors and future state transport corridors

SARA reference: 1907-12386 SRA

Assessment Manager: Barcaldine Regional Council

Street address: Landsborough Highway, Barcaldine

Real property description: Lot 37 on SP249547

Applicant name: Barcaldine Regional Council

Applicant contact details: c/- Hoffman Surveyors
PO Box 364
Longreach QLD 4730
Fraser.webb@hoffmannsurveyors.com.au

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 (s.30 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 Madison Harper-McErlean, Planning Officer, on (07) 4898 6812 or via email MIWSARA@dsmip.qld.gov.au who will be pleased to assist.

Yours sincerely



Patrick Ruettjes
Manager (Planning)
Mackay Isaac Whitsunday Regional Office

cc Barcaldine Regional Council, fraser.webb@hoffmannsurveyors.com.au

enc Attachment 1 - Referral agency conditions
Attachment 2 - Advice to the applicant
Attachment 3 - Reasons for referral agency response
Attachment 4 - Representations provisions
Attachment 5 - Approved plans and specifications

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 plans and specifications referenced below are found at Attachment 5)

No.	Conditions	Condition timing
Reconfiguring a Lot		
10.3.4.2.1 – Clearing Native Vegetation - The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of the Department of Natural Resources, Mines and Energy 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.	The development must be carried out generally in accordance with 'Proposed Lots 371 and 372, prepared by Hoffmann Surveyors, dated 9/5/19, plan reference B18055-PROP-001, version Rev B'.	At all times.
10.9.4.2.1.1– Reconfiguring a lot near a State-controlled road - 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):		
2.	The development must be carried out generally in accordance with 'Proposed Lots 371 and 372, prepared by Hoffmann Surveyors, dated 9/5/19, plan reference B18055-PROP-001, version Rev B'.	At all times.
3.	Any works on the land must not: <ul style="list-style-type: none"> a) Create any new discharge points for stormwater runoff onto the State-controlled road (Landsborough Highway) b) Interfere with and/or cause damage to the existing stormwater drainage on the State-controlled road (Landsborough Highway) c) Cause surcharge of any existing culvert or drain on a State-controlled road (Landsborough Highway) d) Reduce the quality of stormwater discharge onto the State-controlled road (Landsborough Highway) 	At all times.
4.	Direct access is not permitted between Landsborough Highway and the subject site at any location other than the permitted road access location(s).	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) [v2.5]. If a word remains undefined it has its ordinary meaning.

Attachment 3—Reasons for referral agency response

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

The reasons for the department's decision are:

- The proposed development is for a Reconfiguring a Lot – One (1) lot into two (2) lots.
- The subject site's eastern boundary is situated within 25m of the Landsborough Highway, Barcaldine, which is classified as a State-controlled road. No new access is proposed from the subject site to the Landsborough Highway.
- The subject site is mapped as containing Category B and Category X of least concern.
- The proposed development complies with the relevant provisions of State Development Assessment Provisions (SDAP), State code 16: Native vegetation clearing and FastTrack5 qualifying criteria Checklist 2, for State transport corridor (reconfiguring a lot).
- The department supports the proposed development, subject to conditions.

Material used in the assessment of the application:

- The development application material and submitted plans
- *Planning Act 2016*
- Planning Regulation 2017
- The *State Development Assessment Provisions* (version [2.5]), as published by the department
- The Development Assessment Rules
- SARA DA Mapping system

Attachment 4—Change representation 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 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—Approved plans and specifications

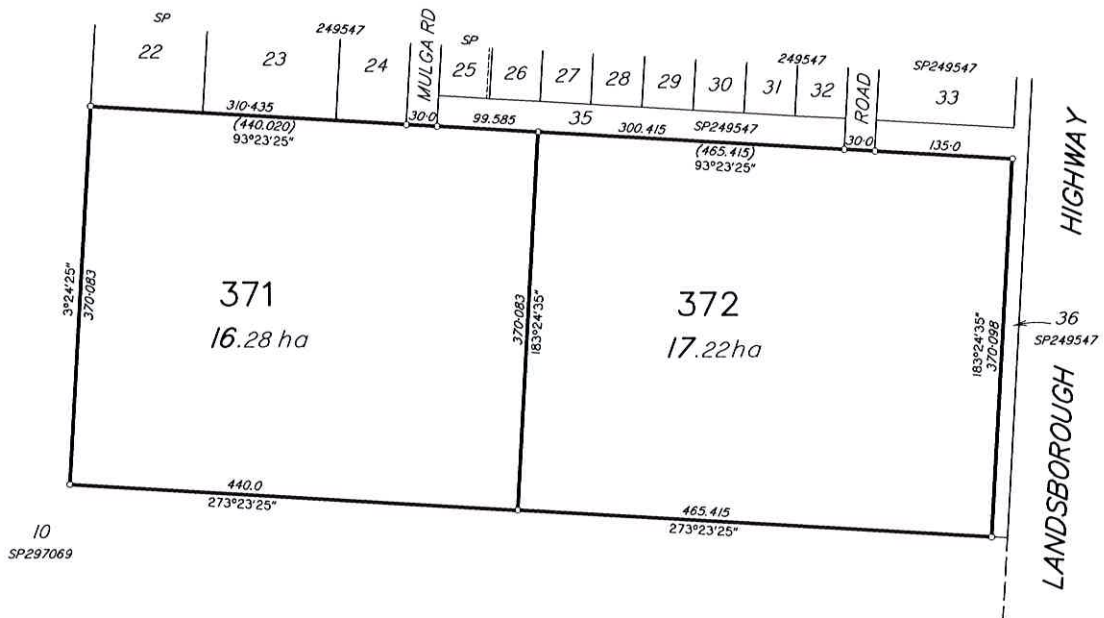
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Rev.	Reason for Issue or Amendment	Date	Drawn	Checked	Surveyed
B	Revision as per updated of dimensions from GBA	9/5/19	NT	FW	
A	Original	14/01/19	NT	FW	

PLANS AND DOCUMENTS referred to in the REFERRAL AGENCY RESPONSE

SARA ref: 1907.12386.BRA

Date: 7 September 2019

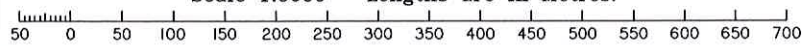


This plan was prepared as a proposed subdivision and should not be used for any other purpose. The dimensions, areas and total number of lots shown hereon are subject to field survey and also to the requirements of Council and any other authority which may have requirements under any relevant legislation. In particular, no reliance should be placed on the information on this plan for any financial dealing involving the land. This note is an integral part of the plan.

Plan of Proposed Lots 371 & 372
Cancelling Lot 37 on SP249547



Scale 1:5000 - Lengths are in Metres.



HOFFMANN SURVEYORS 07 4922 3834 hoffmannsurveyors.com.au Rockhampton Longreach Blackall Charleville	Project: BRC Barcaldine Clay Target Club Subdivision Project	Local Government: Barcaldine R.C.	Locality: Barcaldine
	Title: Proposed Lots 371 and 372	Co-ord System:	Level Datum:
	Client: Barcaldine R.C.	Scale: 1:5000 a:A3	Sheet: 1 of 1 1
			Revision: B

Attachment 3

Extract of Appeal Provisions (Chapter 6, Part 1
and Schedule 1 of the *Planning Act 2016*)

ALPHA OFFICE

Phone: 07 4985 1166
Fax: 07 4985 1162

ARAMAC OFFICE

Phone: 07 4652 9999
Fax: 07 4652 9990

BARCALDINE OFFICE

Phone: 07 4651 5600
Fax: 07 4651 1778

Attachment 3

Extract of Appeal Provisions

The following is an extract from the *Sustainable Planning Act 2009* (Chapter 7)

MATERIAL CHANGE OF USE, RECONFIGURING A LOT & OPERATIONAL WORKS

Division 8 Appeals to court relating to development applications and approvals

461 Appeals by applicants

(1) An applicant for a development application may appeal to the court against any of the following—

- (a) the refusal, or the refusal in part, of the development application;
- (b) any condition of a development approval, another matter stated in a development approval and the identification or inclusion of a code under section 242;
- (c) the decision to give a preliminary approval when a development permit was applied for;
- (d) the length of a period mentioned in section 341;
- (e) a deemed refusal of the development application.

(2) An appeal under subsection (1)(a), (b), (c) or (d) must be started within 20 business days (the ***applicant's appeal period***) after—

- (a) if a decision notice or negotiated decision notice is given—the day the decision notice or negotiated decision notice is given to the applicant; or
- (b) otherwise—the day a decision notice was required to be given to the applicant.

(3) An appeal under subsection (1)(e) may be started at any time after the last day a decision on the matter should have been made.

462 Appeals by submitters—general

(1) A submitter for a development application may appeal to the court only against—

- (a) the part of the approval relating to the assessment manager's decision about any part of the application requiring impact assessment under section 314; or
- (b) the part of the approval relating to the assessment manager's decision under section 327.

(2) To the extent an appeal may be made under subsection (1), the appeal may be against 1 or more of the following—

- (a) the giving of a development approval;
- (b) any provision of the approval including—
 - (i) a condition of, or lack of condition for, the approval; or
 - (ii) the length of a period mentioned in section 341 for the approval.

(3) However, a submitter may not appeal if the submitter—

- (a) withdraws the submission before the application is decided; or

(b) has given the assessment manager a notice under section 339(1)(b)(ii).

(4) The appeal must be started within 20 business days (the **submitter's appeal period**) after the decision notice or negotiated decision notice is given to the submitter.

463 Additional and extended appeal rights for submitters for particular development applications

(1) This section applies to a development application to which chapter 9, part 7 applies.

(2) A submitter of a properly made submission for the application may appeal to the court about a referral agency's response made by a concurrence agency for the application.

(3) However, the submitter may only appeal against a referral agency's response to the extent it relates to—

(a) development for an aquacultural ERA; or

(b) development that is—

(i) a material change of use of premises for aquaculture; or

(ii) operational work that is the removal, damage or destruction of a marine plant.

(4) Despite section 462(1), the submitter may appeal against the following matters for the application even if the matters relate to code assessment—

(a) a decision about a matter mentioned in section 462(2) if it is a decision of the chief executive;

(b) a referral agency's response mentioned in subsection (2).

464 Appeals by advice agency submitters

(1) Subsection (2) applies if an advice agency, in its response for an application, told the assessment manager to treat the response as a properly made submission.

(2) The advice agency may, within the limits of its jurisdiction, appeal to the court about—

(a) any part of the approval relating to the assessment manager's decision about any part of the application requiring impact assessment under section 314; or

(b) any part of the approval relating to the assessment manager's decision under section 327.

(3) The appeal must be started within 20 business days after the day the decision notice or negotiated decision notice is given to the advice agency as a submitter.

(4) However, if the advice agency has given the assessment manager a notice under section 339(1)(b)(ii), the advice agency may not appeal the decision.

465 Appeals about decisions relating to extensions for approvals

(1) For a development approval given for a development application, a person to whom a notice is given under section 389, other than a notice for a decision under section 386(2), may appeal to the court against the decision in the notice.

(2) The appeal must be started within 20 business days after the day the notice of the decision is given to the person.

(3) Also, a person who has made a request under section 383 may appeal to the court against a deemed refusal of the request.

(4) An appeal under subsection (3) may be started at any time after the last day the decision on the matter should have been made.

466 Appeals about decisions relating to permissible changes

(1) For a development approval given for a development application, the following persons may appeal to the court against a decision on a request to make a permissible change to the approval—

(a) if the responsible entity for making the change is the assessment manager for the application—

(i) the person who made the request; or

(ii) an entity that gave a notice under section 373 or a pre-request response notice about the request;

(b) if the responsible entity for making the change is a concurrence agency for the application—the person who made the request.

(2) The appeal must be started within 20 business days after the day the person is given notice of the decision on the request under section 376.

(3) Also, a person who has made a request under section 369 may appeal to the court against a deemed refusal of the request.

(4) An appeal under subsection (3) may be started at any time after the last day the decision on the matter should have been made.

467 Appeals about changing or cancelling conditions imposed by assessment manager or concurrence agency

(1) A person to whom a notice under section 378(9)(b) giving a decision to change or cancel a condition of a development approval has been given may appeal to the court against the decision in the notice.

(2) The appeal must be started within 20 business days after the day the notice of the decision is given.