

Decision Notice

Planning Act 2016

16 May 2023

Section 83 of the *Planning Act 2016*

Application Details

This Decision Notice relates to the below Development Application:

Application Number:	RAL23/0003
Applicant Details:	A Sandona c/- Milford Planning
Owner Details:	A Sandona
Street Address:	39 and 43 Robins Road, Ayr
Real Property Description:	Lot 4 on RP719819
Proposal:	Reconfiguring a Lot – One (1) Lot into Two (2) Lots
Planning Scheme:	<i>Burdekin Shire IPA Planning Scheme 2011</i>
Level of Assessment:	Code

Decision Details

The information below outlines the specifics of any approval or refusal issued by the Assessment Manager resulting from development assessment as per the provision of the *Planning Act 2016*.

Type of Decision:	Approval with conditions
Date of Decision:	9 May 2023
Decision Type:	Development Permit
Deemed Approval:	The Development Permit is not a deemed approval under Section 64 of the <i>Planning Act 2016</i>
Submissions:	Not applicable – The application was not subject to public notification

Conditions of Approval

The Conditions of Approval are set out in **Attachment 1** of this Decision Notice. The conditions are identified to indicate whether the Assessment Manager or a Referral Agency imposed them.

Approved Plans and Documents

The approved development must be completed and maintained generally in accordance with the approved plans and documents, except where amended by the conditions of this permit. Copies of the approved plans are included as **Attachment 2** of this Decision Notice.

Referral Agencies

The development application did not trigger referral under the *Planning Regulation 2017*:

Further Approvals Required

Not Applicable.

Infrastructure Charges

Not Applicable.

Rights of Appeal

The rights of an applicant to appeal to the Planning and Environment Court against a decision about a Development Application area set out in Chapter 6, Part 1 of the *Planning Act 2016*. There may also be the right to make an application for a declaration by Tribunal (refer Chapter 6, Part 2 of the *Planning Act 2016*).

An applicant for a development application may appeal to the Planning and Environment Court against the following:

- the refusal of all or part of the development application
- a provision of the development approval
- the decision to give a preliminary approval when a development permit was applied for
- a deemed refusal of the development application.

The timeframes for starting an appeal in the Planning and Environment Court are set out in section 229 of the *Planning Act 2016*. A copy of the relevant appeal provisions from the *Planning Act 2016* is **attached**.

Approval Currency Period

Pursuant to Section 85 of the *Planning Act 2016*, the Development Approval will lapse four (4) years after the approval starts to have effect, unless otherwise conditioned. The currency period can only be extended if the request is received before the approval lapses.

Notice About Decision – Statement of Reasons

This Notice is prepared in accordance with s63(5) and s83(7) of the *Planning Act 2016* to inform the public about a decision that has been made in relation to a development application.

The purpose of the Notice is to enable a public understanding of the reasons for the planning decision, specifically having regard to:

- the relevant parts of the Planning Scheme and Assessment Benchmarks against which the application was assessed; and
- any other information, documents or other material Council was either required to, or able to, consider in its assessment.

All terms used in this Notice have the meanings given them in the *Planning Act 2016*.

Reasons for the Decision

- a) Assessment of the development against the relevant zone purpose, planning scheme codes and planning scheme policies demonstrates that the proposed development will not cause significant adverse impacts on the surrounding natural environment, built environment and infrastructure, community facilities, or local character and amenity; and
- b) On balance, the application should be approved because the circumstances favour Council exercising its discretion to approve the application even though the development does not comply with an aspect of the assessment benchmarks.

Assessment Benchmarks

The following assessment benchmarks applied to the proposed development:

- Rural Zone Code
- Reconfiguring a Lot Zone Code

Compliance with Assessment Benchmarks

Following an assessment of the development application against all of the assessment benchmarks listed above, it was determined the proposed development complies where relevant with the exceptions listed below:

Assessment Benchmark		Reason for the approval despite non – compliance with Benchmark
Reconfiguring a Lot Code		
Specific Outcome 06 - Lot Layout	The lot layout provides for: a) a wide range of needs for land; and b) lots of a size and dimension suitable for their intended use.	<p>The proposed development does not comply with the acceptable solutions listed for the minimum frontage and lot sizes specified for a rural zoned lot.</p> <p>Despite this, it is considered that the proposed subdivision:</p> <ul style="list-style-type: none"> • Will not result in the loss of any agricultural land, with the allotment boundaries proposed reflective of the existing extent of the residential and agricultural land uses; • Will not result in a net loss to overall agricultural productivity within the State regulated Priority Agricultural Area; • Seeks to formalise an existing sustainable land use arrangement and will provide each of the existing residential dwellings on the land within its own and separated allotment; • Will not result in any additional demand on Council's infrastructure networks; and • Aligns with Council's strategic position designed to facilitate the subdivision of established residential dwellings from agricultural land where it will not result in the loss of productive agricultural land. <p>Therefore the proposal is considered to achieve the Specific Outcome.</p>

Appeal Rights

Planning Act 2016 & The Planning Regulation 2017

Chapter 6 Dispute resolution

Part 1 Appeal rights

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 of the *Planning Act 2016* states –
 - (a) Matters that may be appealed to –
 - (i) either a tribunal or the P&E Court; or
 - (ii) only a tribunal; or
 - (iii) only the P&E Court; and
 - (b) The person-
 - (i) who may appeal a matter (**the appellant**); and
 - (ii) who is a respondent in an appeal of the matter; and
 - (iii) who is a co-respondent in an appeal of the matter; and
 - (iv) who may elect to be a co-respondent in an appeal of the matter.

(Refer to Schedule 1 of the *Planning Act 2016*)

- (2) An appellant may start an appeal within the appeal period.
- (3) The **appeal period** is –
 - (a) for an appeal by a building advisory agency – 10 business days after a decision notice for the decision is given to the agency; or
 - (b) for an appeal against a deemed refusal – at any time after the deemed refusal happens; or
 - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises – 20 business days after a notice is published under section 269(3)(a) or (4); or
 - (d) for an appeal against an infrastructure charges notice – 20 business days after the infrastructure charges notice is given to the person; or
 - (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given – 30 business days after the applicant gives the deemed approval notice to the assessment manager; or
 - (f) for any other appeal – 20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

Note –

See the P&E Court Act for the court's power to extend the appeal period.

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt. It is declared that an appeal against an infrastructure charges notice must not be about-
 - (a) the adopted charge itself; or
 - (b) for a decision about an offset or refund-
 - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
 - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

230 Notice of appeal

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that-
 - (a) is in the approved form; and
 - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar must, within the service period, give a copy of the notice of appeal to –
 - (a) the respondent for the appeal ; and
 - (b) each co-respondent for the appeal; and
 - (c) for an appeal about a development application under schedule 1, table 1, item 1 – each principal submitter for the development application; and
 - (d) for an appeal about a change application under schedule 1, table 1, item 2 – each principal submitter for the change application; and
 - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); and

- (f) for an appeal to the P&E Court – the chief executive; and
 - (g) for an appeal to a tribunal under another Act – any other person who the registrar considers appropriate.
- (4) The *service period* is –
- (a) if a submitter or advice agency started the appeal in the P&E Court – 2 business days after the appeal has started; or
 - (b) otherwise – 10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

231 Other appeals

- (1) Subject to this chapter, schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
- (2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section –
 - decision* includes–
 - (a) conduct engaged in for the purpose of making a decision; and
 - (b) other conduct that relates to the making of a decision; and
 - (c) the making of a decision or failure to make a decision; and
 - (d) a purported decision ; and
 - (e) a deemed refusal.
 - non-appealable*, for a decision or matter, means the decision or matter–
 - (a) is final and conclusive; and
 - (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the *Judicial Review Act 1991* or otherwise, whether by the Supreme Court, another court, a tribunal or another entity; and
 - (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

232 Rules of the P&E Court

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with the rules of the P&E Court.

Condition	Reason	Timing
1. General and Administration <u>Compliance with Conditions</u> 1.1 The Applicant is responsible for ensuring compliance with this development approval and the conditions of the approval by an employee, agent, contractor or invitee of the Applicant. 1.2 Where a discrepancy or conflict exists between the written condition(s) of the approval and the approved plans, the requirements of the written condition(s) will prevail. 1.3 Where these conditions refer to 'Council' in relation to requiring Council to approve or be satisfied as to any matter or conferring on 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. 1.4 The proposed development must comply in full with all conditions of this approval, relevant Planning Scheme requirements and the relevant policies, guidelines and standards, as applying at the date of this approval, except as otherwise specified by any condition, to Council's satisfaction prior to the release of the survey plan. 1.5 All civil works associated with this development permit must be constructed by a suitably qualified/ licenced contractor and delivered as per the accepted design plans, as per Council specifications and requirements. 1.6 Council's assessment of the design has been an audit only. In the issuing of this permit Council makes no acknowledgement that the design meets the above requirements. 1.7 It is a condition of this permit that any errors in the design are the responsibility of the consulting engineer, and that any rectification costs which may be applicable are to be borne by the developer. Council bears no responsibility for any errors associated with the design or any costs arising therefrom. <u>Works – Applicant's Expense</u> 1.8 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.	The development must comply with all planning scheme requirements as approved and conditioned by this development permit.	During the operation and life of the development.

Condition	Reason	Timing						
<p><u>Infrastructure Conditions</u></p> <p>1.9 All development conditions contained in this development approval about infrastructure under Chapter 4 of the <i>Planning Act 2016 (the Act)</i>, should be read as being non-trunk infrastructure conditioned under section 145 of the Act, unless otherwise stated.</p> <p><u>Works – Applicants Responsibility</u></p> <p>1.10 The Applicant must repair any damage to existing infrastructure (e.g. kerb and channel, footpath or roadway) that may have occurred during any works undertaken as part of the development. Any damage that is deemed to create a hazard to the community, it must be repaired immediately.</p> <p><u>Works – Design and Standard</u></p> <p>1.11 Unless otherwise stated, all works must be designed, constructed and maintained in accordance with the relevant Council policies, guidelines and standards.</p>								
2. Approved Plans and Supporting Documents								
<table border="1"> <thead> <tr> <th>Drawing Title</th><th>Drawing/Revision</th><th>Date</th></tr> </thead> <tbody> <tr> <td>Proposed Lots 41 and 42 cancelling Lot 4 on RP719819</td><td>E4656-SK-02, Issue C, Sheet 1</td><td>18/03/2023</td></tr> </tbody> </table> <p>Associated Reports</p> <p>Development application prepared by Milford Planning, February 2023 including the Further Information Response, March 2023.</p>			Drawing Title	Drawing/Revision	Date	Proposed Lots 41 and 42 cancelling Lot 4 on RP719819	E4656-SK-02, Issue C, Sheet 1	18/03/2023
Drawing Title	Drawing/Revision	Date						
Proposed Lots 41 and 42 cancelling Lot 4 on RP719819	E4656-SK-02, Issue C, Sheet 1	18/03/2023						
<p>2.1 The proposed development must be completed, comply with and maintained generally in accordance with the drawings/ documents identified in the above, except as otherwise specified and/or amended by any condition of this approval.</p> <p>2.2 One full set of the most up to date approved plans must be held on site and available for inspection for the duration of the construction phase.</p>	<p>The development must comply with all planning scheme requirements as approved and conditioned by this development permit.</p>	<p>At all times.</p>						

Condition	Reason	Timing
<p>2.3 The development must be constructed in the position and at the levels identified on the approved plans or as stipulated by a condition of this approval, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.</p> <p>2.4 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.</p>		
<p>3. Payment of Rates, Charges and Expenses</p> <p>3.1 Prior to signing the Plan of Survey, payment is required of any outstanding rates or charges levied by the Council or any expenses being a charge over the subject land.</p> <p>3.2 Pay the sum calculated at the current charge per lot to be levied on the Council by the Department of Natural Resources, Mines and Energy, for each new valuation.</p>	Confirmation to be provided to Council prior to the release of the Plan of Survey.	
<p>4. Water Supply</p> <p>4.1 Lot 42 must be connected to Council's reticulated water supply.</p> <p>4.2 Lot 41 is able to be connected to Council's reticulated water supply, upon application and payment of the Rural Water Supply connection fee in accordance with Council's fees and charges.</p> <p>4.3 The applicant must provide a certified statement from a licensed plumber that no existing interconnecting water supply plumbing crosses the boundaries between the proposed new lots.</p>		
<p>5. Confirmation of Existing Services</p> <p>The existing services for each lot must be contained within the individual allotments.</p>	To ensure the development is appropriately serviced in accordance with relevant code/s and policy direction.	Confirmation to be provided to Council prior to the release of the Plan of Survey.

Condition	Reason	Timing
6. Relocation/alteration of Public Utilities The developer must at its own cost undertake all necessary alterations to public utility mains and services as rendered necessary by the carrying out of any required external works or other works associated with the approved development to the satisfaction of Council, and at no cost to Council.	To ensure development is appropriately serviced by public services and/or facilities in accordance with relevant code/s and policy direction.	Prior to the release of the Plan of Survey.
7. Roadworks The construction of any crossovers to give access to the land is to be the owner's responsibility and at no cost to Council, to the satisfaction of the Chief Executive Officer.	To provide appropriate access in accordance with relevant code/s and policy direction.	Prior to the issuing of a Development Permit for Building Works.
8. Drainage/Stormwater The approved development and use(s) must not interfere with the natural flow of stormwater in the locality in such a manner as to cause ponding or concentration of stormwater on adjoining land or roads.	To convey stormwater across other lands legally and in an environmentally responsible manner in accordance with relevant code/s and policy direction.	At all times.
Advice		
1. Infrastructure Charges N/A		
2. Compliance with Conditions Unless otherwise specified by these conditions, the conditions must be complied with prior to Council's endorsement of the Plan of Survey.		

Condition	Reason	Timing
3. Limitation of Approval		
3.1	The Council and its officers make no representations and provide no warranties as to the accuracy of the information contained in the application including its supporting material provided to it by the applicant.	
3.2	The Council and its officers rely upon the applicant concerning the accuracy and completeness of the application and its supporting material and accepts the application and supporting material as constituting a representation by the applicant as to its accuracy and completeness. As far as the application and its supporting material may be incomplete and/or inaccurate giving tide to any claim by a third party the applicant agrees to indemnity and save the council harmless in respect of any claim so arising.	
4. Miscellaneous		
The Applicant is reminded of their obligations under the Aboriginal Cultural Heritage Act, 2003 and the Torres Strait Islander Cultural Heritage Act 2003. Further information and databases are available from the Department of Aboriginal and Torres Strait Islander Partnerships at: www.datsip.qld.gov.au		
5. Earthworks		
5.1	Earthworks are not approved as part of this Development Permit. If any earthworks are required and deemed assessable development, an operational works development application is to be lodged with Council for assessment in accordance with relevant code/s and policy direction.	
5.2	Should the presence of acid sulfate soils or potential acid sulfate soils be detected; an Acid Sulfate Soils Management Plan may be required to be prepared and submitted to Council for approval.	