

# Cloncurry Shire Council

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Our ref: ID:LT – TP16/21

16 December 2021

Jeremy Saunders  
M.H. Lodewyk Pty Ltd  
PO Box 1386  
MOUNT ISA QLD 4825  
**Email:** [survey@lodewyk.com.au](mailto:survey@lodewyk.com.au)

Dear Jeremy

**DECISION NOTICE – DEVELOPMENT APPLICATION FOR DEVELOPMENT PERMIT FOR RECONFIGURING A LOT (BOUNDARY REALIGNMENT) AT LOTS 1-4 MCILWRAITH, DUTTON AND PALMER STREETS, CLONCURRY DESCRIBED AS LOT 1-14 ON SP248011**

(Given under section 63 of the *Planning Act 2016*)

The development application described below was properly made to the Cloncurry Shire Council on 9 November 2021.

**Applicant details**

Applicant name:	M.H. Lodewyk Pty Ltd
Applicant contact details:	Jeremy Saunders PO Box 1386 MOUNT ISA QLD 4825

**Application details**

Application number:	TP16/21
Approval sought:	Development Permit
Nature of development proposed:	Reconfiguration of a lot
Description of the development proposed:	Boundary Realignment
Category of assessment:	Code Assessment

**Location details**

Street address:	McIlwraith, Dutton and Palmer Streets, Cloncurry
Real property description:	Lot 1-4 on SP248011
Local government area:	Cloncurry Shire Council

**Decision**

Date of decision:	14 December 2021
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**Details of the approval**

Development permit: Reconfiguration of a lot – boundary realignment  
Decision details:

**Moved: Cr V Campbell** **Seconded: Cr Swalling**  
That Development Application TP16/21 for Reconfiguring a lot (boundary realignment) on the corner of McIlwraith, Dutton and Palmer Streets, Cloncurry, described as Lot 1-4 on SP248011, be approved, subject to relevant and reasonable conditions set out in Attachment 2.  
**CARRIED: 16.211214**

**Conditions**

This approval is subject to the conditions in Attachment 1.

**Properly made submissions**

There were no properly made submissions for this application.

**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*. 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*).

A copy of the relevant appeal provision is attached.

**Currency period for the approval**

This development approval will lapse unless substantially started at the end of the period set out in section 85 of *Planning Act 2016* which is 4 years after this approval starts to take effect.

**Approved plans and specifications**

**Table 1 Supporting documentation/reports**

Report/Plan/Drawing Number	Plan/Document Name	Date
Proposal 21-072	Proposed Boundary Realignment	

Should you have any questions or concerns in respect of this matter please contact Council’s Senior Town Planner, Larinda Turrell, at this office.

Yours faithfully

Philip Keirle  
Chief Executive Officer

- Enc: Attachment 1—Conditions of the approval
- Attachment 2—Extract on appeal rights
- Attachment 3 – Statement of Reasons
- Attachment 4 - Approved Plan

## ATTACHMENT 1 – CONDITIONS OF APPROVAL

NATURE OF DECISION				
<p><b>A</b> This approval is subject to the following conditions, the facts set out in the application and all relevant Council provisions of the <i>Cloncurry Shire Planning Scheme 2016</i> and <i>Schedule 12</i> of the <i>Planning Regulation 2017</i>.</p>				
GENERAL				
<p><b>1. Site Layout</b> The development must generally comply with the approved proposal plans and design drawings as referenced in the table below, which forms part of this application, except as otherwise specified by any condition of this approval.</p>				
Title	Plan Number	Rev no	Date	Prepared by
Proposed Boundary Realignment	21-072			M.H. Lodewyke Pty Ltd
<p><b>2. Compliance with conditions</b> (a) All conditions must be complied with prior to the commencement of the use, unless specified in an individual condition. (b) The conditions of this development approval are to be read in conjunction with the approved plans /drawings/ documents at all times. Where a conflict occurs between the conditions of this approval and the approved plans / documents, the conditions of this development approval shall prevail.</p>				
<p><b>3. Building works</b> This Development Approval does not include an assessment of building work against the requirements of the <i>Building Act 1975</i> and does not permit building work to occur unless, prior to the commencement of any building work, a Development Permit to carry out assessable building work under the <i>Building Act 1975</i> has been issued.</p>				
<p><b>4. Plan of survey</b> A Plan of Survey prepared by an appropriately qualified person (surveyor), is to be submitted for approval by Council prior to lodgement with the Registrar of Titles at the Department of Resources. This Plan of Survey is to include the metes and bounds measurements based on accurate survey of each boundary. Final survey plans will not be sealed until all relevant conditions of the Development Permit have been satisfied.</p>				
<p><b>5. Waste Management</b> A screened waste storage area in the vicinity of a hose cock for cleaning proposes for general waste and regulated waste are to be provided within the site at accessible locations to allow for collection and removal to approved facilities</p>				
<p><b>6. Stormwater Drainage</b> Stormwater discharging from the site is to be directed to a lawful point of discharge to the satisfaction of Council.</p>				
<p><b>7. Water Supply</b> Each lot must be connected to Council's reticulated water supply network in accordance with the <i>Water Reticulation Code of Australia WSA03.1999</i>. i. Connection to Council's reticulated water system must be carried out at the developer's expense.</p>				
<p><b>8. Sewerage</b> Each lot, where possible, must be connected to Council's reticulated wastewater supply network in accordance with the <i>Sewerage Code of Australia WSA02-2002</i>. i. Connection to Council's reticulated sewerage system must be carried out at the developer's expense.</p>				
<p><b>18. Electricity and Telecommunications Supply</b> (a) Each lot must be provided with connection to the reticulated electricity supply network so as to achieve compliance with Schedule 2 of the Planning Scheme – Construction Standards for Infrastructure Works.</p>				

- (b) Each lot must be provided with connection to the telecommunications network where available so as to achieve compliance with Schedule 2 of the Planning Scheme – Construction Standards for Infrastructure Works.

**ADVICE – Please note that these are not conditions**

**A.** The Applicant is responsible for securing all necessary approvals, permits and tenure, providing statutory notifications and complying with all relevant laws. Nothing in this development approval alleviates the need for the Applicant to comply with all relevant Local, State and Commonwealth laws and to ensure appropriate tenure arrangements have been made where the use of/reliance upon land other than that owned by the Applicant is involved. Without limiting this obligation, the Applicant is responsible for:

- (a) Obtaining all other/further necessary approvals, licences, permits, resource entitlements etc by whatever name called (this may include further development approvals under the “*Planning Act 2016*” and the planning scheme) required by law before the development the subject of this approval can be lawfully commenced and to carry out the activity for its duration;
- (b) Providing any notifications required by law (by way of example only, to notify the administering authority pursuant to the “*Environmental Protection Act 1994*” of environmental harm being caused/threatened by the activity, and upon becoming aware the premises is being used for a ‘notifiable activity’); and
- (c) Ensuring the correct siting of structures on the land. An identification survey demonstrating correct siting and setbacks of structures may be requested of the Applicant to ensure compliance with this decision notice and applicable codes.

**B. Indigenous Cultural Heritage Legislation and Duty of Care Requirement**

The “*Aboriginal Cultural Heritage Act 2003*” (ACHA) establishes a duty of care to take **all** reasonable and practicable measures to ensure any activity does not harm Aboriginal cultural heritage. This duty of care:

- (a) Is not negated by the issuing of this development approval;
- (b) Applies on all land and water, including freehold land;
- (c) Lies with the person or entity conducting an activity; and
- (d) If breached, is subject to criminal offence penalties.

Those proposing an activity involving surface disturbance beyond that which has already occurred at the proposed site must observe this duty of care. Details of how to fulfil this duty of care are outlined in the duty of care guidelines gazetted with the ACHA. The Applicant should contact NRW’s Cultural Heritage Coordination Unit on (07) 3238 3838 for further information on the responsibilities of developers under the ACHA.

**C. Limitation of Approval**

The Council and its officers make no representations and provide no warranties as to the accuracy of the information contained in the development application including its supporting material provided to it by the Applicant.

The Council and its officers rely upon the applicant concerning the accuracy and completeness of the application and its supporting material and accepts the development application and supporting material as constituting a representation by the applicant as to its accuracy and completeness.

## Chapter 6 Dispute resolution

### Part 1 Appeal rights

#### 229 Appeals to tribunal or P&E Court

- (1) Schedule 1 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.
- (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 is 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.
- (7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department's website for this purpose.

## 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—
  - (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 the 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, any tribunal or another entity; and
- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, any 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 rules of the P&E Court.

## **ATTACHMENT 3 – STATEMENT OF REASONS**

### **STATEMENT OF REASONS – TP15/21**

#### ***NOTICE ABOUT DECISION - STATEMENT OF REASONS***

The following information is provided in accordance with section 63(5) of *the Planning Act 2016*

#### **Details of the Development**

The proposed development is for a Reconfiguring a Lot (boundary realignment) on the corner of McIlwraith, Dutton and Palmer Streets, Cloncurry described as Lots 1-4 on SP248011.

On 14 December 2021, the above development application was approved in full with conditions.

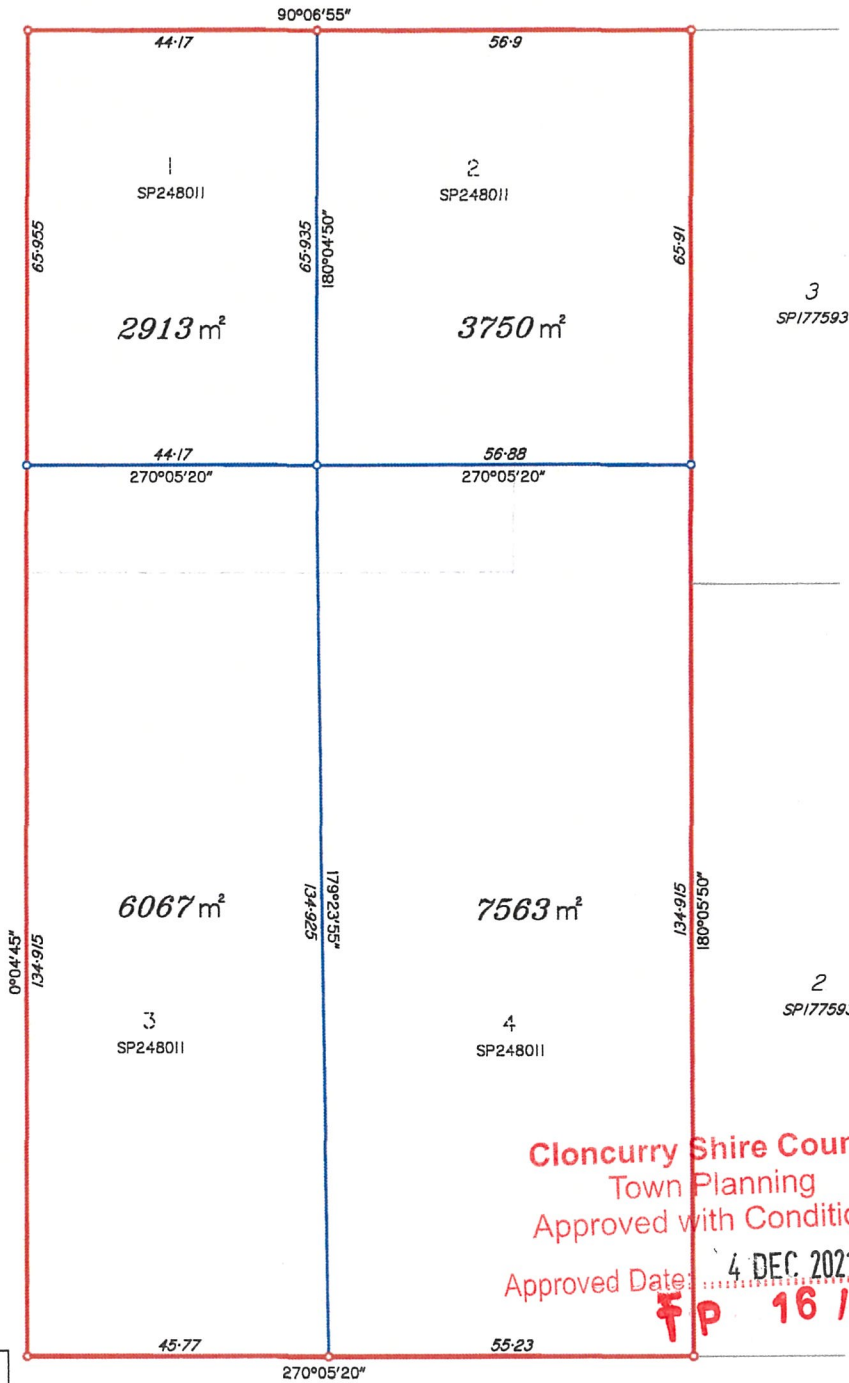
#### **Reason for the decision**

The development application has demonstrated compliance with all of the relevant benchmarks of *Schedule 12 of the Planning Regulation 2017* and the purpose of the Mixed-use zone of the *Cloncurry Shire Planning Scheme 2016* as prescribed by the *Planning Regulation 2017*.



PALMER STREET

DUTTON STREET



Cloncurry Shire Council  
Town Planning  
Approved with Conditions  
Approved Date: 4 DEC 2021  
FP 16/21

McILWRAITH STREET

0 | 50mm | 100mm | 150mm

LEGEND

- Unchanged Boundary
- Reconfigured Boundary
- - - - - Cancelled Boundary
- Adjoining Boundary

Dimensions shown are subject to formal survey

M.H.LODEWYK PTY LTD  
GEOMATICIAN



6 SECOND AVE  
P.O. BOX 1386  
MOUNT ISA 4825  
PHONE (07 4743 4155  
Email :- survey@lodewyk.com.au

Proposed Boundary Realignment  
of  
Lots 1-4 on SP248011

LOCAL GOVERNMENT: CLONCURRY SHIRE  
LOCALITY: CLONCURRY SHIRE

PROPOSAL  
21-072

MERIDIAN  
MGA z54

SCALE  
1:750

Job Ref  
21-072