



STATEMENT OF REASONS

(Notice about the decision given under section 63(4) of the *Planning Act 2016*)

APPLICANT DETAILS

Applicant name: Sun Mining Services Pty Ltd

APPLICATION DETAILS

Application number: 6216/2018/MCU

Application type: Material Change of Use

Approval sought: Development Permit

Description of proposed development: Material Change of Use - Special Industry (Chemical Manufacturing) and Environmentally Relevant Activity (ERA) 7 - Chemical Manufacturing

Level of Assessment: Impact

SITE DETAILS

Street address: 191 Whitwood Road, Lot 4 Whitwood Road, 62 Austin Street and 217 Barclay Street, NEW CHUM QLD 4303

Real property description: Lot 2 RP147482 TO DEPTH 15.24M, Lot 4 RP22539, Lot 251 S3185 TO DEPTH 15.24M & Lot 1 RP180876

DECISION

Date of decision: [TBC]

Decision: Approved in full with conditions

Decision Authority: Full Council

1. Reasons for the Decision:

The reasons for this decision are:

- The application was properly made and followed the Development Assessment Rules in effect.
- The application was assessed against the applicable Assessment Benchmarks.
- The assessment manager, after carrying out the assessment, found that the development complied with the Assessment Benchmarks applicable to the development, with the exception of those set out in Part 3 – Compliance with Benchmarks.
- The development was not prohibited development under a categorising instrument or local categorising instrument.

2. **Assessment Benchmarks**

The following are the assessment benchmarks applying for this development:

Categorising Instrument	Assessment Benchmarks
Planning Regulation 2017, Schedule 10	Part 5, division 3 – Environmentally Relevant Activities Part 7, division 2 – Hazardous chemical facilities
State Planning Policy July 2017, Part E	Planning for liveable communities and housing Planning for economic growth Planning for environment and heritage Planning for safety and resilience to hazards Planning for infrastructure
Ipswich Planning Scheme 2006	Desired Environmental Outcomes and Performance Indicators (Part 3) Regionally Significant Business and Industry Areas Code (Part 6) Development Constraints Overlays Code (Part 11, division 4) Commercial and Industrial Code (Part 12, division 7) Parking Code (Part 12, division 9) Local Government Infrastructure Plan (Part 13) Implementation Guideline No. 25 New Chum Enterprise Area Planning Study
Temporary Local Planning Instrument	Temporary Local Planning Instrument No. 1 of 2018 (Waste Activity Regulation)

3. Compliance with Benchmarks

The following are the reasons why the application was approved despite the development not complying with the following assessment benchmarks:

Categorising Instrument, Assessment benchmark	Reasons for approval despite non-compliance
Part 6 – Regionally Significant Business Enterprise and Industry Areas	
Part 6, Division 3 – Overall and Specific Outcomes for the Regionally Significant Business and Industry Areas	
<i>Overall Outcome 6.7(a)(i)(D) – Overall Vision:</i> Development is of the highest environmental standards and occurs in a fully master planned and landscaped setting.	The subject site does not form part of a master planned setting, however it is noted that the use will cease within 10 years of the approval taking effect. Accordingly, the proposed development does not preclude the ability for the site to be developed in a master planned manner in the future.
<i>Overall Outcome 6.7(a)(i)(G) – Overall Vision:</i> Development will progressively lead to the rehabilitation of areas degraded by past mining activities and the integration of these areas within a network of open space.	The proposed development does not seek to rehabilitate areas degraded by past mining activities, however the use is considered to be an interim use (up to 10 years of operations) and will not prevent the site from being rehabilitated in the future.
<i>Overall Outcome 6.7(a)(iv)(D) – Quality Efficient Infrastructure Services:</i> Infrastructure contributes to the evolution of an industrial ecology where the by products and wastes of one industry are recycled as inputs to another.	The proposed development is not considered to contribute to the evolution of industrial ecology. It is considered that the type of uses which would achieve this outcome are limited. It is noted that the proposed use is considered to be a consistent use under the relevant zone code.
<i>Overall Outcome 6.7(a)(iv)(E) – Quality Efficient Infrastructure Services:</i> Business and industry embraces alternative energy options.	The proposed development does not seek to utilise alternative energy options. Notwithstanding, the applicant is proposing the use of generators for the main power supply. Given the scale of the development, with limited gross floor area proposed, in addition to the temporary nature of the proposal, it is considered appropriate that alternative energy options are not required for this development.
Part 6, Division 5 – Regional Business and Industry Investigation Zone	
Overall Outcomes (2)(j) – Environmental Management and Greenspace: Degraded or contaminated sites (including former mining sites and overburden stockpiles) are rehabilitated and used in an appropriate manner	The proposed development does not seek to rehabilitate the former mining site, however the use is considered to be an interim use (up to 10 years of operations) and will not prevent the site from being rehabilitated in the future.

Part 12 – Assessment Criteria for Development for a Stated Purpose or of a Stated Type	
Part 12, Division 7 – Commercial and Industrial Code	
Specific Outcome (3) Site Amalgamation: Where the site for the proposed development comprises more than one lot, all lots are amalgamated by survey into one parcel prior to the subdivision of an application for the approval of building works.	The proposed use is located over four (4) parcels of land. It is noted that there are several approvals over the site which would be impacted by the amalgamation of the four (4) parcels of land. In addition, as the approval applies to all land required by the use, it is considered that there is no risk associated with not amalgamating the lots.

4. Relevant matters for development subject to impact assessment

Not applicable.

5. Matters raised in submissions for development subject to impact assessment

The following is a description of the matters raised in any submissions and how they were dealt with:

Matter raised	How matters were dealt with in reaching a decision
Proposed Use – General	
Description of use: <ul style="list-style-type: none"> The applicant has applied for Chemical Manufacturing as opposed to Explosive Materials Manufacturing which is misleading. 	<p>The Material Change of Use component of the application is defined as a Special Industry (Chemical Manufacturing) as outlined in the Ipswich Planning Scheme.</p> <p>Clarification on this issue has also been sought from the Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP).</p> <p>DSDMIP has advised that regulation and licencing under the Explosives Act 1999 is managed by the Chief Inspectorate of Explosives, Department of Natural Resources, Mines and Energy (DNRME) and is separate to the development assessment and Environmental Authority process.</p> <p>A decision under the Environmental Protection Act 1994 is not inconsistent with any regulation under the Explosives Act 1999 because the two pieces of legislation have different purposes. The Environmental Authority includes a condition which does not authorise the manufacturing of 'explosives', as well as a definition for 'explosives' for the purpose of the Environmental Authority. The</p>

	<p>definition for 'explosives' has been based on the UN Globally Harmonised System of Classification and Labelling of Chemicals (GHS). The separate definition clarifies that explosives are not authorised by the Environmental Authority.</p> <p>The Department of Environment and Science (DES) received advice from the Chief Inspectorate of Explosives during the assessment of the application that GHS was the most appropriate classification system to determine the nature of the material being manufactured. The 'explosive' definition under the Explosives Act 1999 was not considered appropriate for the purposes of the assessment under the Environmental Protection Act 1994 as it was wide-ranging and specific to the Explosives Act 1999. The Chief Inspectorate has confirmed that the materials to be manufactured by Sun Mining Services are not classified as 'explosive' under the GHS.</p>
<p>Environmentally Relevant Activity:</p> <ul style="list-style-type: none"> The applicant has not applied for the correct ERA, being ERA 7 (3)(d) – manufacturing, in a year, a total of 200t or more of explosives. 	<p>The applicant lodged a minor change to the application after consultation with the Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP), to include a second Environmentally Relevant Activity (ERA) category to ERA 7, resulting in the following ERA's being applicable to the proposed use:</p> <ul style="list-style-type: none"> ERA 7 (5) – Chemical Manufacturing: Manufacturing, in a year, the following quantities of organic chemicals, other than organic chemicals to check items 1 and 4 apply, (b) more than 1000t by not more than 10,000t ERA 7(6) – Chemical Manufacturing: Manufacturing, in a year, the following quantities of inorganic chemicals, other than inorganic chemicals to check items 1 and 4 apply, (b) more than 1000t by not more than 10,000t <p>It is noted that DSDMIP raised no concerns in relation to the ERA's applied for and did not identify the need for any additional ERA's to carry out the proposed development.</p>
The proposed use incorporates the explosives which has not been considered (i.e. WALA and WALA gels are registered as authorised	Clarification on this issue has also been sought from the Department of State Development, Manufacturing, Infrastructure and Planning

<p>explosives in Queensland under the <i>Explosives Act 1999</i>)</p>	<p>(DSDMIP).</p> <p>DSDMIP has advised that regulation and licencing under the Explosives Act 1999 is managed by the Chief Inspectorate of Explosives, Department of Natural Resources, Mines and Energy (DNRME) and is separate to the development assessment and Environmental Authority process.</p> <p>A decision under the Environmental Protection Act 1994 is not inconsistent with any regulation under the Explosives Act 1999 because the two pieces of legislation have different purposes. The Environmental Authority includes a condition which does not authorise the manufacturing of 'explosives', as well as a definition for 'explosives' for the purpose of the Environmental Authority. The definition for 'explosives' has been based on the UN Globally Harmonised System of Classification and Labelling of Chemicals (GHS). The separate definition clarifies that explosives are not authorised by the Environmental Authority.</p> <p>The Department of Environment and Science (DES) received advice from the Chief Inspectorate of Explosives during the assessment of the application that GHS was the most appropriate classification system to determine the nature of the material being manufactured. The 'explosive' definition under the Explosives Act 1999 was not considered appropriate for the purposes of the assessment under the Environmental Protection Act 1994 as it was wide-ranging and specific to the Explosives Act 1999. The Chief Inspectorate has confirmed that the materials to be manufactured by Sun Mining Services are not classified as 'explosive' under the GHS.</p>
<p>Unlawful use of the site:</p> <ul style="list-style-type: none"> • The applicant has been operating unlawfully for years; • Previously spills have occurred on site (not reported); • Site not listed on the Management Register (MER) or Contaminated Land Register (CLR) under the Environmental Protection Act as site identification 	<p>The applicant has operated from the site for approximately five (5) years. Previously, the chemical manufacturing facility was associated with the function of mining operations onsite and was permitted through a mining lease that exists over the property (ML50115). As a result of changes to the business operations and proposed increases in production (including exporting materials overseas), the proposed development can no longer be</p>

<p>details were not provided to DES for the notifiable activities;</p> <ul style="list-style-type: none"> The use is not compliant with the <i>Environmental Protection Act 1994</i>. 	<p>associated with the mining lease; thus the Council has received the subject development application.</p> <p>Alleged contravention of the <i>Environmental Protection Act 1994</i> is not considered to be a valid planning consideration.</p>
<p>Incompatible use with the proposed 1149/2018/CA</p>	<p>It is acknowledged that there is a separate development application that has been lodged over the subject site that is currently being assessed by Council for a Material Change of Use for a Special Industry (waste recycling, reprocessing and disposal - waste transfer station), Caretakers Residence and Environmentally Relevant Activities – ERA 60(2)(h), ERA 33 and ERA 62 (Council reference 1149/2018/CA).</p> <p>Whilst 1149/2018/CA has not been granted a development permit, the applicant has acknowledged that both uses may become incompatible in the future (should 1149/2018/CA be approved). To resolve this issue, the applicant has recommended that Council impose a 10 year sunset condition (i.e. the chemical manufacturing facility must cease within 10 years of the approval taking effect), which is considered to be sufficient time before the use proposed under 1149/2018/CA may encroach into the lease buffer area. The applicant has also provided an alternative internal access arrangement should 1149/2018/CA be approved.</p>
<p>Community has no confidence in 'strict environmental condition' of Environmental Authorities as they are heavily depended on self-regulation.</p>	<p>This submission is not considered to be a valid planning consideration.</p>
<p>Errors and inconsistencies in technical reporting have been identified.</p>	<p>The applicant has prepared a number of technical reports, prepared by suitable qualified professionals. A technical review of all submitted material has been undertaken by Council officers to make an informed recommendation.</p>
<p>Hazard/Risk</p>	
<p>Errors and omissions in submitted Risk Assessment Report</p>	<p>It is noted that a number of concerns were raised in the submissions in relation to errors and omissions in the submitted Risk Assessment Report. The key areas of concern relate to assessment benchmarks outlined in State Development Code 21: Hazardous Chemical Facilities and State Development</p>

	<p>Code 22: Environmentally Relevant Activities. These codes were assessed by DSDMIP as a referral agency for the application. It is noted that the Referral Agency Response states that the proposed development complies with both of these state codes.</p> <p>In addition, it is noted that some comments in the submissions were based on current operational practices. The applicant will be required to undertake the use in accordance with all conditions of approval, including the Environmental Authority Permit.</p>
<p>Safety for the population:</p> <ul style="list-style-type: none"> • The risk to community was not considered in site selection; • Explosives are a dangerous good – no precaution for accidents; and • A blast could affect nearby houses, schools, Ripley town centre etc. 	<p>The applicant submitted a Risk Assessment Report to address risks associated with the proposal. Due to the nature of the proposed activities, the application required assessment against State Development Code 21: Hazardous Chemical Facilities. The proposal has been assessed against this code by the State Assessment and Referral Agency (SARA) as a referral agency for the application. In their response dated 31 May 2019, SARA advised that they did not object to the development subject to the inclusion of conditions.</p> <p>In the Statement of Reasons provided by SARA, Council was advised that:</p> <ul style="list-style-type: none"> • The proposal complies with the purpose and performance outcomes of State code 1: Development in a state controlled road environment, State code 21: Hazardous facilities and State code 22: Environmentally relevant activities of the State Development Assessment Provisions. • The location of the use footprint and proposed activities do not adversely impact upon the safety and efficiency of the Cunningham Highway. • The development application material demonstrates that risks associated with the facility have been identified and can be managed appropriately to protect human health and safety, proportionate to the sensitive of the surrounding land uses and zones. • The development application material demonstrates the proposal is located

	and design to avoid environmental harm on environmental values and avoids impacts on matters of state environmental significance.
Lack of security onsite	<p>The submitted Risk Assessment Report outlines the securing measures for the site and includes the following:</p> <ul style="list-style-type: none"> • Fencing of the use area (including barb wire at the bottom to deter people from climbing the fence) • CCTV system, including seven (7) cameras • Warning signs at the facility gate • Security padlock • Restricted access to gate keys • Security checks for employees • Use of seals for the reception of Oxidising substance 1 • Licenced oxidising substance 1/precursors transport company contractors • Oxidising substance 1 stacks covers by a tarpaulin (making it difficult to access by an unauthorised person).
Heightened level of hazard from potential fires and explosions due to proximity to other uses (i.e. Cleanaway, Chip Tyre) that have had fires.	<p>The applicant has stated that they have a lease agreement with the landowner that requires a 180 metre buffer around the perimeter of the use area to protect the ongoing operations of the proposed chemical manufacturing facility. The applicant has acknowledged that potential future uses on the subject site may encroach within the lease buffer area in the long term, resulting in such uses becoming incompatible in the future. To resolve this issue, the applicant has recommended that Council impose a 10 year sunset condition (i.e. the chemical manufacturing facility must cease within 10 years of the approval taking affect), which is considered appropriate.</p> <p>Further, the applicant has submitted a Risk Assessment Report which includes an Emergency Response Plan, with fire being anticipated as an event that will activate the emergency procedure. It is noted that the following devices will be available for firefighting:</p> <ul style="list-style-type: none"> • Fire hose reel; • Fire extinguisher (dry chemical powder);

	<ul style="list-style-type: none"> • Mobile firefighting system for bush fires; • Soda ash bins, distributed throughout the plant for liquid spillages.
Planning Guide State Code 21 Hazardous Chemical Facilities needs to be considered – no hazardous risk assessment has been provided.	<p>The applicant submitted a Risk Assessment Report to address risks associated with the proposal.</p> <p>Due to the nature of the proposed activities, the application required assessment against State Development Code 21: Hazardous Chemical Facilities. The proposal has been assessed against this code by the State Assessment and Referral Agency (SARA) as a referral agency for the application. In their response dated 31 May 2019, SARA advised that they did not object to the development subject to the inclusion of conditions.</p> <p>In the Statement of Reasons provided by SARA, Council was advised that:</p> <ul style="list-style-type: none"> • The proposal complies with the purpose and performance outcomes of State code 1: Development in a state controlled road environment, State code 21: Hazardous facilities and State code 22: Environmentally relevant activities of the State Development Assessment Provisions. • The location of the use footprint and proposed activities do not adversely impact upon the safety and efficiency of the Cunningham Highway. • The development application material demonstrates that risks associated with the facility have been identified and can be managed appropriately to protect human health and safety, proportionate to the sensitive of the surrounding land uses and zones. • The development application material demonstrates the proposal is located and design to avoid environmental harm on environmental values and avoids impacts on matters of state environmental significance. •

Environmental Concerns

Concerns regarding underground workings and geotechnical hazard including:

- Risks associated with ground subsidence and deep fissuring; and
- Risks of spontaneous combustion makes the site unsuitable for explosive manufacturing and storage.

The applicant submitted a Desktop Mining Study, prepared by a suitable qualified professional, where the risks associated with the site were considered. In conclusion the report states that:
"This site could be subject to total and differential settlement and mine subsidence effects with time. The existing structures however have the ability to be relevelled, repositioned or replaced if or when required. Maintenance as necessary, including regrading the surface, was considered acceptable to the Manager as mentioned during the site inspection".

The applicant also submitted a Risk Assessment Report to address risks associated with the proposal. Due to the nature of the proposed activities, the application required assessment against State Development Code 21: Hazardous Chemical Facilities. The proposal has been assessed against this code by the State Assessment and Referral Agency (SARA) as a referral agency for the application. In their response dated 31 May 2019, SARA advised that they did not object to the development subject to the inclusion of conditions.

In the Statement of Reasons provided by SARA, Council was advised that:

- The proposal complies with the purpose and performance outcomes of State code 1: Development in a state controlled road environment, State code 21: Hazardous facilities and State code 22: Environmentally relevant activities of the State Development Assessment Provisions.
- The location of the use footprint and proposed activities do not adversely impact upon the safety and efficiency of the Cunningham Highway.
- The development application material demonstrates that risks associated with the facility have been identified and can be managed appropriately to

	<p>protect human health and safety, proportionate to the sensitive of the surrounding land uses and zones.</p> <ul style="list-style-type: none"> The development application material demonstrates the proposal is located and design to avoid environmental harm on environmental values and avoids impacts on matters of state environmental significance. <p>It is therefore considered that the risks associated with underground mining have been appropriately considered.</p>
<p>Potential for environmental contamination:</p> <ul style="list-style-type: none"> Previous spill which took place on site had no containment and flowed freely into waterway; Existing bund directs flows to existing mining void; No bunding in mixing area and therefore cannot control the leaking of any of their products into the soil or water void nearby; Bunds in reports are different to what has been installed. <p>Potential for water pollution:</p> <ul style="list-style-type: none"> ground water and surface waters; impacts on aquatic environments downstream; impacts on Six Mile Creek; no bunding of Wala SX2 proposed; unclear how waste wash water will be managed. <p>Potential for air pollution:</p> <ul style="list-style-type: none"> It is unclear how dust generation will be managed (discrepancy in reporting) – should be part of a site based management plan. 	<p>The applicant has provided an Environmentally Relevant Activity Report which outlines mitigation measures proposed to minimise adverse impacts to air, water, land, noise and other environmental values such as litter. An example of the mitigation measures outlined in the report include:</p> <ul style="list-style-type: none"> Storage of goods in accordance with the Australian Standards; Acid storage and 2 Wala gel to occur within concrete bunds; Earthen bund drain along the eastern boundary of the compound to capture any spill that may discharge from the compound; Mixing and handling of chemicals to occur undercover and on concrete hardstand; and Spill kits located on-site. <p>Following an assessment of the ERA 7 – Chemical Manufacturing component of the application, DES issued an Environmental Authority to Sun Mining Services on 29 May 2019 with appropriate conditions to manage the environmental risk of the activity in relation to impacts on environmental values under the <i>Environmental Protection Act 1994</i>.</p> <p>The Environmental Authority Permit includes a suite of conditions addressing potential contamination risks, including water, land and airborne contaminants.</p> <p>The applicant will be required to undertake any works required to ensure compliance with these conditions.</p>

Impacts on surrounding wildlife habitat should there be incident (i.e. explosion)	While the Risk Assessment Report takes into consideration risks associated with human life and not wildlife, it is reasonable to assume that generally the same risk areas apply to wildlife.
Public Notification	
Public notification was undertaken during the Christmas break, which was deliberately deceptive timing.	Public notification was undertaken from 7 January 2019 to 29 January 2019 in accordance with the <i>Development Assessment Rules</i> under the <i>Planning Act 2016</i> .