

7.9. MINOR CHANGE TO OPERATIONAL WORKS AND MATERIAL CHANGE OF USE APPROVAL AT 14 MURPHY STREET

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| REPORT AUTHOR | Acting Team Leader Planning |
| MANAGER | Manager Environment and Planning |
| DEPARTMENT | Environment and Planning |
| APPLICATION NO | OP 2024_5601/1 |
| PROPOSAL | Minor Change to Operational Works Development Permit and Material Change of Use Development Permit |
| APPLICANT | Mr George Argyrou C/- Planning Plus PO Box 399 REDLYNCH QLD 4870 |
| LOCATION | Road Reserve adjacent 12 Murphy Street PORT DOUGLAS and 14 Murphy Street PORT DOUGLAS |
| PROPERTY | LOT: 113 TYP: PTD PLN: PARCEL 2375 2094, LOT: 114 TYP: PTD PLN: 2094 |
| PLANNING SCHEME | 2018 Douglas Shire Council Planning Scheme Version 1.0 |
| ZONING | Environmental Management Zone |
| LEVEL OF ASSESSMENT | Code |
| PROPERLY MADE DATE | 1 August 2025 |
| STATUTORY ASSESSMENT DEADLINE | 30 September 2025 |
| REFERRAL AGENCIES | N/A |

LOCALITY



Figure 1 – Locality Plan

RECOMMENDATION

That Council refuses the change applications to Development Approval OP2024_5601 for Operational Works and MCUC2022_4732 for Material Change of Use over land described as the adjacent road reserve to 14 Murphy Street and 14 Murphy Street, Port Douglas being formally described as Lot 114 on PTD2094, on the following grounds:

- 1. The proposed secondary driveway creates an unacceptable traffic risk due to the grade at the intersection between the proposed and approved driveway, the introduction of additional conflict points and conflict with Councils infrastructure, the proposal is not compliant with the Access, Parking and Servicing Code from the 2018 Douglas Shire Planning Scheme version 1.0;**
 - 2. The proposed secondary driveway is in conflict with the Port Douglas and Craiglie Local Plan Code from the 2018 Douglas Shire Planning Scheme version 1.0 as it does not protect flagstaff hill from inappropriate development and does not minimise the visibility of the development;**
 - 3. The development is inconsistent with the Environmental Management Zone Code from the 2018 Douglas Shire Planning Scheme version 1.0 as it is not designed to respond to the characteristics of the site and its surrounds.**
 - 4. The development is not capable of being conditioned to achieve compliance with the relevant benchmarks of the 2018 Douglas Shire Planning Scheme version 1.0.**
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EXECUTIVE SUMMARY

Council is in receipt of two applications which both seek to formalise a secondary temporary access to a new dwelling at 14 Murphy Street. An application for a minor change to an Operational Works development approval for driveway access to 12 and 14 Murphy Street has been received as well as an application for a minor change to the Material Change of Use development permit for the house. This is because the applications must be consistent.

The approved alignment for shared access allows for the establishment of a deep landscaping buffer between the two new houses and the road which is necessary to screen the bulk and scale of the houses when viewing from Murphy Street.

The applicant was given a permit for temporary construction access which made deliveries safer than only utilising the approved driveway access. This permit allowed delivery trucks to get off Murphy Street and unload on the benched pad near the house pads. The proposed secondary driveway is not compliant with the design benchmarks for safety and functionality given by the Access, Parking and Service Code. The proposal is not compliant with the amenity requirements given by the Environmental Management Zone Code and the Port Douglas and Craiglie Local Plan Code.

TOWN PLANNING CONSIDERATIONS

Background

The applicant is the owner of 14 Murphy Street and was given approval to have shared driveway access on road reserve with the owner of 12 Murphy Street. This is because the property boundaries are 25 metres from the bitumen on Murphy Street. Essentially the two

owners have been allowed to build a private driveway on road reserve to get to their properties. This existing alignment represents the lawful access for both 12 and 14 Murphy Street and is intended to allow access to 10 Murphy Street when a house is developed. This access was approved as a shared access and is designed below a road standard but remains fit for purpose.

The temporary permit was given with fundamental conditions being that the surface was to be removed and a landscaping and remediation plan was to be implemented. Council has also taken a \$20,000 bond from the applicant to cover remediation costs in the event that the applicant fails to remove the temporary access.

Proposal

The applicant proposes to retain a secondary driveway access for use as their primary driveway which is sited on the Murphy Street Road Reserve. The proposed access is around 35 metres in length on road reserve and is three metres wide. The existing alignment and finished surface levels made of fibre reinforced concrete is not representative of the finished surface levels. The proposed driveway increases grade from -4%, to 17.9% then to 28.7% where it intersects the other approved shared driveway on road reserve servicing 10, 12 and 14 Murphy Street.

State Planning Requirements

The application did not trigger any referrals and does not involve any State interests.

DOUGLAS SHIRE PLANNING SCHEME ASSESSMENT

The following benchmarks are applicable to the proposed development:

| Douglas Shire Planning Locality | Comment |
|---|---|
| Planning Zone | |
| Environmental Management Zone | The proposal is unable to comply with two critical benchmarks of the zone code. See discussion below. |
| Local Plan Code | |
| Port Douglas and Craiglie Local Plan Code | The proposal is within the Flagstaff Hil sub-precinct 1f of the local plan code. The proposal is unable to comply with the two primary performance outcomes which regulate development on the hill. See discussion below. |
| Overlay Codes | |
| Hillslopes overlay | The land the subject of the application is within the Hillslopes overlay area. The proposal is unable to comply with a key benchmark of the code. See discussion below. |
| Development Codes | |
| Access, parking and servicing code | The proposal is in conflict with benchmarks of the code which are discussed below. |

Compliance Issues

Environmental Management Zone Code

The zone code anticipates that development minimises disturbance. Acceptable Outcomes AO5.1 requires that access infrastructure is sited to minimise additional vegetation clearing. A permit to clear regrowth with trees around 150mm diameter at breast height (DBH) was issued for the re-establishment of the temporary construction access that Ergon had historically constructed on that basis that this area was to be revegetated to Councils satisfaction. This process allowed for a better outcome as the alignment only had five trees which were growing. The revegetation would result in a denser planting regime and a higher standard of environmental value would be achieved. The corresponding Performance Outcome that must be met at PO5 requires that development is located and designed to respond to the characteristics of the site and its surrounds.

The site and the neighbouring sites have an existing lawfully approved driveway which is fit for purpose. There is no justification for an additional driveway in place of the area designated for revegetation on the road reserve. AO6.2 of the code also represents a non-compliance as the acceptable outcome seeks that vehicle manoeuvring and parking areas are constructed and maintained to follow the natural contours of the site. The approved driveway does this. The proposed secondary driveway is particularly steep and opens up the hillside because of its alignment up the slope resulting in a 28.7% grade. This diminishes the ability for tiered planting to screen the driveway as opposed to an alignment that follows the contours minimising cut and fill.

Where proposals cannot comply with the Performance Outcomes of the code, they must then be assessed against the Overall Outcomes of the code. In this case, and for the same reasons as the proposal does not comply with the lower order benchmarks, the proposal fails to comply with the Overall Outcomes. Adverse impacts on adjoining land are not minimised if the secondary driveway remains, the proposal does not respond to the natural features and environmental values of the site and visual impacts are not minimised through location and design.

Port Douglas/ Craiglie Local Plan Code

The local plan code includes specific Performance Outcomes which regulate development on Flagstaff Hill as it recognises its importance to the amenity of Port Douglas. PO63 requires that the hill is protected from inappropriate development and that the hill remains an important natural landmark feature of Port Douglas and as a vegetated backdrop to the town centre. The site already has a fit for purpose driveway design that is being constructed. There is no need for an additional driveway which diminishes the vegetated backdrop of the hill and lessens the screening qualities that a vegetation buffer provides.

PO64 of the code requires that all development on Flagstaff Hill is designed to minimise the visibility of the development and to ensure development is subservient to the natural landscape and topography of the site. The additional driveway opens up visibility of the particularly large set of houses that have been constructed on 12 and 14 Murphy Street and was relied upon to justify the concessions given in the original development applications of both houses as the buffer that the vegetation in the road reserve provided was to be more than 15 metres wide.

Two distinct non-compliances which the proposal cannot overcome are evident within the Overall Outcomes of the local plan code. Overall Outcome 3(f) requires that Flagstaff Hill and other areas of scenic and environmental significance will be protected from development. Vegetation cover will dominate over built form. The secondary driveway being in place of a revegetated buffer on the hill represents a direct non-compliance.

Overall Outcome 3(h) requires that development will be indistinguishable from view from Four Mile Beach. In addition, development on Flagstaff Hill will be indistinguishable when viewed from vantage points in Port Douglas. While the development is likely indistinguishable from Four Mile Beach, it will be distinguishable from Murphy Street as the vegetated buffer will

not be replaced. In summary the proposal is non-compliant with the bulk of the relevant parts of the local plan code.

Hillslopes Overlay Code

The hillslopes overlay code seeks to regulate disturbance on the vegetated hillslopes of the shire. Acceptable Outcome AO2.4 of the Code requires that the clearing of vegetation is limited to clearing and disturbance that is necessary for the construction of driveways and is necessary to contain the proposed development. An existing cleared driveway alignment already exists and is nominated as the sites lawful access. It is not necessary to retain more clearing to have a second driveway. The corresponding Performance Outcome PO2 requires that the visual amenity quality of hillslopes areas is retained to protect the scenic backdrop to the region. The proposal is non-compliant with this performance outcome as the driveway represents a circa 100 square metre concrete void on the vegetated hillslope. The proposal is largely non-compliant with the overall outcomes from the purpose of the code as the landscape character, ecological values and visual quality of the hillslope is not protected from development. Further, the secondary driveway is not necessary and does not have regard to the topographic constraints and environmental characteristics of the land.

Access, Parking and Servicing Code

The development code for access is the benchmark for functionality and safety assessment for the minor changes to both applications. Acceptable Outcome AO3.1 requires that access is limited to one access crossover per lot, which in this case is somewhat compliant as the property boundary is only crossed at one location, however, the proposal is to have two private driveways on road reserve instead of the approved shared access. The proposal represents an additional conflict point on Murphy Street which is known to be a constrained road. The additional conflict is not supported due to adverse impacts on the operation of this constrained section of Murphy Street and the existence of an alternative approved shared access arrangement that inherently reduces conflict and improves safety on Murphy Street. For this reason the proposal is in conflict with PO3 which requires that access points are to be constructed safely and efficiently.

AO3.1 nominates Australian Standard 2890.1 as the relevant design standard to comply with. The applicant claims that the design is compliant with *AS2890- Off Street Parking Code*. The driveway design does not comply with the FNQROC Development Manual or AS/NZS 2890.1 1 – Off Street parking Code.

For the lower section of the driveway, the land tenure is road reserve and the Far North Queensland Regional Organisation of Councils (FNQROC) Development Manual would apply. The proposed longitudinal grade exceeds FNQROC maximum road grade of 20%.

At the time of assessing the original shared driveway, Council Officers sought for that driveway design to be revised to comply with this maximum grade. Ultimately a minor dispensation (to 23% driveway grade) was permitted with the mitigating factors being:

- *the preservation of screening vegetation; and*
- *the consolidation of the accesses for three properties (10, 12 and 14) to the single driveway.*

This new application seeks a further driveway and steeper grades both in the road reserve and in private land and conflicts with the understanding Officers had at the time of assessing the original application.

The applicant's submission states that "*the project engineer confirms compliance with AS2890*".

The longitudinal grade exceeds AS2890.1 maximum grade of 25% (which applies to domestic driveways **within domestic** properties). See extracts of definitions included below.

If the applicant seeks to rely on the AS/NZS 2890.1 – Off Street parking Code provisions in section 2.6.2, these are not applicable for the following reasons:

1. The section of driveway within Murphy Street is not a domestic driveway on domestic property; and
2. the note to Section 2.6.2 advises that "*limiting domestic driveway grades **may not be practical as some particularly hilly residential locations.***" However, two Registered Professional Engineers of Queensland (RPEQ) have submitted designs for 14 Murphy Street certifying that a driveway **is practical** and can be achieved with grades not exceeding the recommended maximum of 25%. Therefore, it is practical to limit the driveway to 25% and the commentary in section 2.6.2 does not apply.

1.3.1 Access driveway

A roadway extending from the edge of the frontage roadway to the property boundary to connect with the first ramp, circulation roadway, parking aisle or domestic driveway encountered, and carrying one- or two-way traffic (see Figure 2.1).

1.3.12 Domestic driveway

A vehicular path within a domestic property.

1.3.13 Domestic property

A property comprising three or less domestic units.

2.6.2 Gradients

The maximum gradient of domestic driveways shall be 1 in 4 (25%). The maximum gradient of the associated access driveway across a property line or building alignment shall be 1 in 20 (5%) and across a footpath as specified in Clause 3.3(d).

Grade changes across a footpath and within the property shall be designed and checked in accordance with Appendix C to ensure that vehicles will not scrape their undersides when negotiating them. Transitions may be required (see Clause 2.5.3(d)). Checks may be required along one or both edges of a driveway as well as along the centre line if there are changes in the cross slope at or near a grade change.

NOTE: It is recognized that limiting domestic driveway grades to 25 percent maximum may not be practicable in some particularly hilly residential locations. The services of a professionally qualified person with appropriate experience may be required to make a judgement as to whether a particular grade line design is safe and environmentally sustainable.

Figure 2. Extracts from AS/NZS 2890.1 – Off Street Parking Code

The current approved arrangement including the horizontal geometry (U-Bend) within the property boundary of 14 Murphy Street was certified by the applicants consulting engineer on 1 May 2024 (RPEQ 6073) and no concerns were raised in their submission when seeking that approval. It is therefore understood that the approved driveway is safe and serviceable and complies with the relevant standards (as certified by the RPEQ).

Further, the proposed driveway introduces a vehicle crossing conflict with the existing driveway approval for 10, 12 and 14 and crosses at an acute angle introducing the sight line safety issue. See Figure 3 below detailing the crossing location.

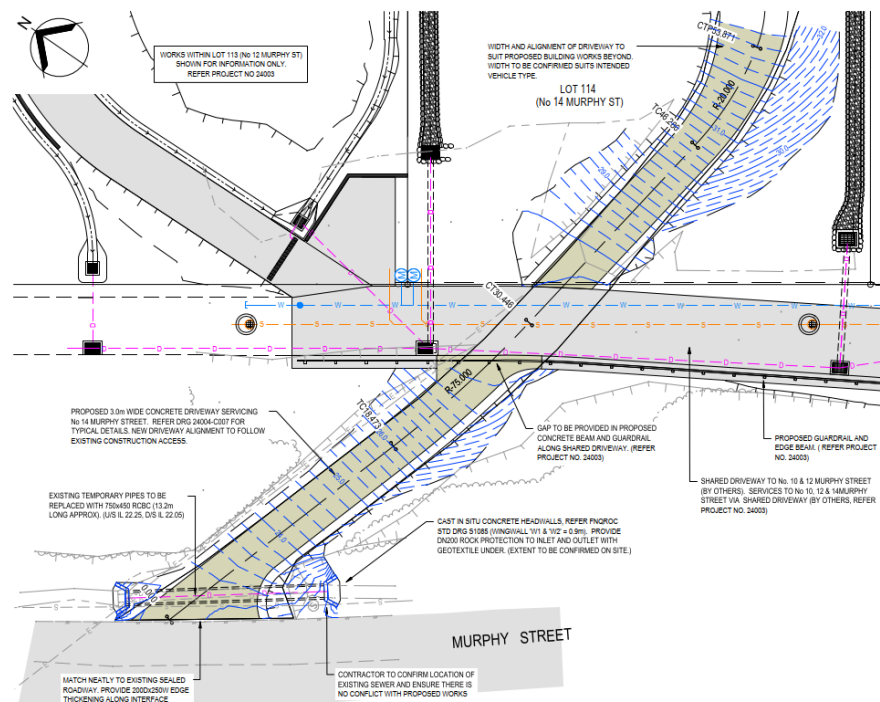


Figure 3. Approved and proposed driveway alignments

The conflict occurs within the road reserve and therefore would be a liability issue for Council due to the land tenure.

A vehicle accessing 14 Murphy Street via the proposed driveway would be climbing at 29% grade (1v in 3.45h) with the driver on the right-hand side. Any vehicle exiting 10 or 12 Murphy Streets would approach the conflict zone from an acute angle from behind the left-hand side of the entering driver.

Best practice guidelines Austroads and Queensland Streets advise that approach angles should be as close to 90 degrees as possible and not less than 70 degrees.

The application does not achieve these approach angles. See figure 4 from Austroads below.

The angle between the street centrelines should be **90°**, unless some skewing is essential in which case the **minimum** angle is 70°. The minor street centreline should be straight for a minimum of 10 m from the tangent point of the kerb return.

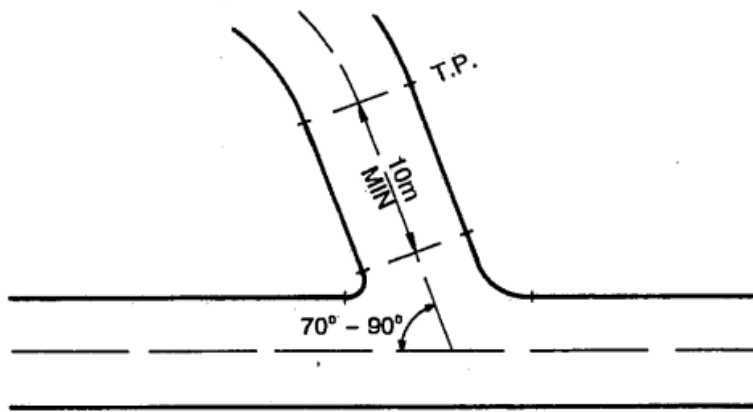


Fig. 2.11.C

Figure 4. Austroads extract detailing intersection angle guideline

The new statement that the access is greatly improved by a revised design does not acknowledge the steeper grades that reduce safety, increased conflict points that reduce the safety and does not provide objective evidence against benchmarks to support the statement of how the applicant assessed that this was an improved outcome.

Public Notification / Submissions

The minor changes relate to code assessable applications. No public notification is required.

ADOPTED INFRASTRUCTURE CHARGES

The development did not trigger Infrastructure Charges.

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

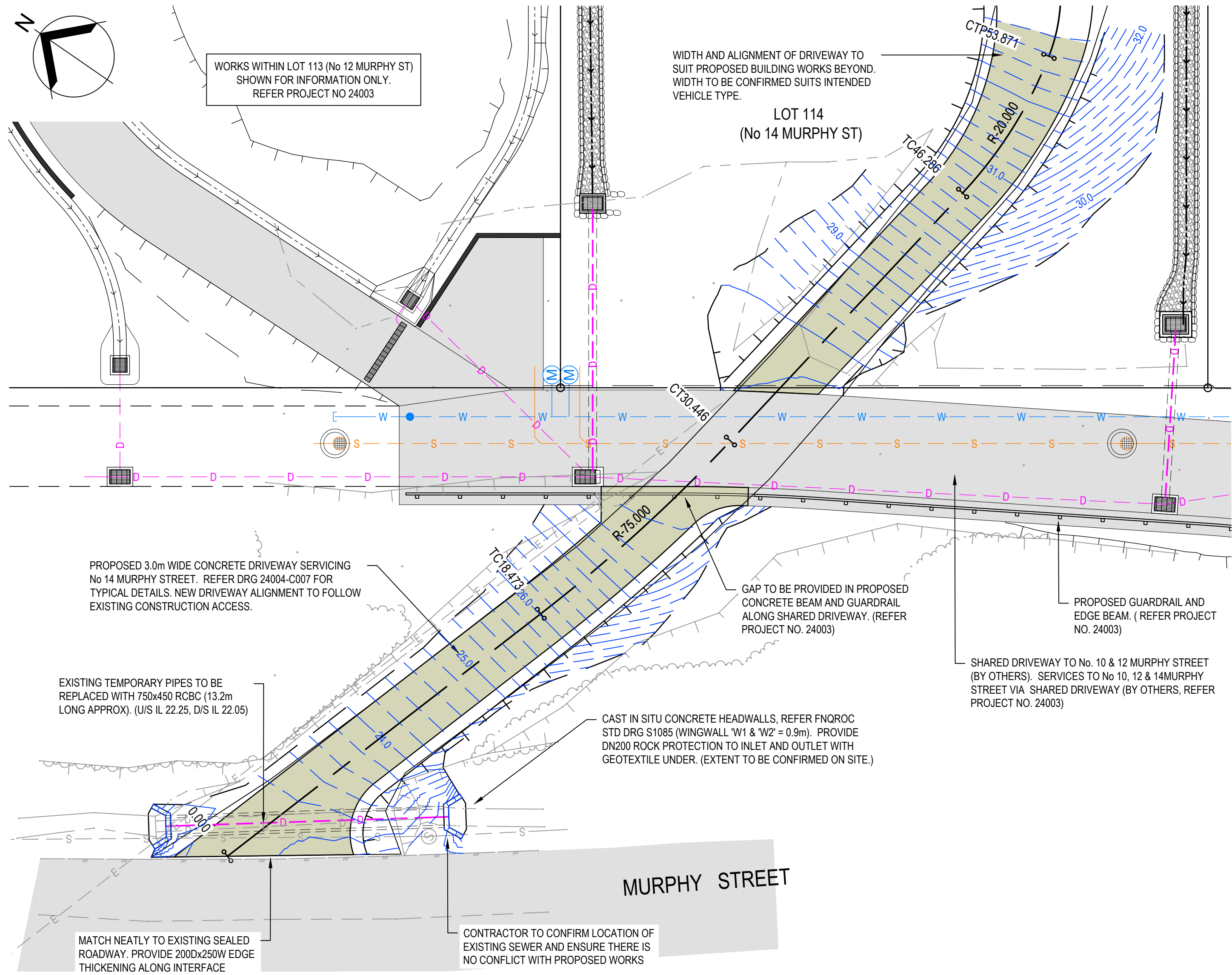
The following area outlines where Council has a clear responsibility to act:

Regulator: Council has a number of statutory obligations detailed in numerous regulations and legislative Acts. Council also makes local laws to ensure that the Shire is well governed. In fulfilling its role as regulator, Council will utilise an outcomes based approach that balances the needs of the community with social and natural justice.

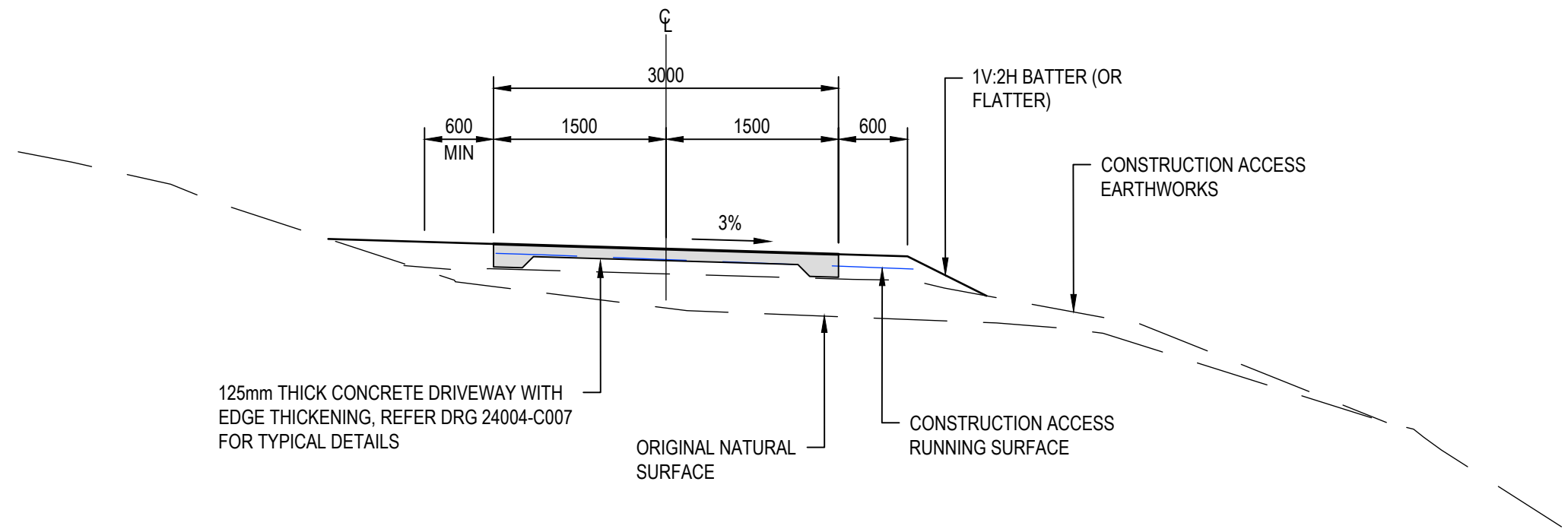
Under the *Planning Act 2016* and the *Planning Regulation 2017*, Council is the assessment manager for the application.

ATTACHMENTS

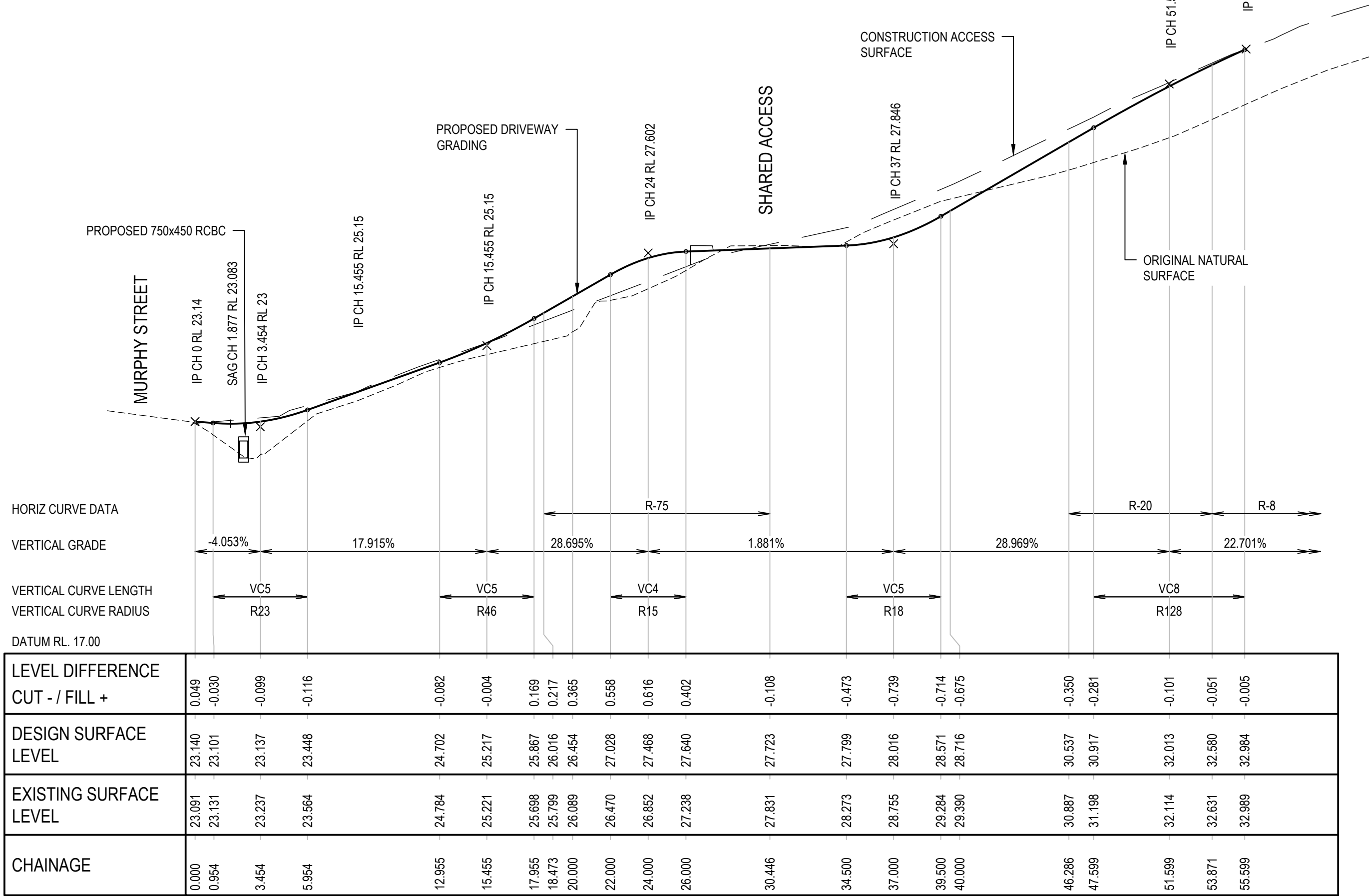
1. Attachment 1- Proposal Plan [7.9.1 - 1 page]



PLAN
SCALE 1:150



DRIVEWAY TYPE SECTION
SCALE 1:50



LONGITUDINAL SECTION - PROPOSED DRIVEWAY (LOT 114)

HORZ 1:200 VERT 1:100

LEGEND

| | | | |
|--|--------------------------------------|--|----------------------------|
| | SHARED DRIVEWAY (BY OTHERS) | | WATER MAIN (BY OTHERS) |
| | PROPOSED CONCRETE DRIVEWAY | | SEWER MAIN (BY OTHERS) |
| | NEW TOP OF BATTER | | EXISTING TOP OF BANK |
| | NEW SURFACE CONTOURS (1.0m INTERVAL) | | EXISTING ROAD SHOULDER |
| | NEW DRAINAGE LINE | | EXISTING DRAINAGE LINE |
| | DRAINAGE LINE (BY OTHERS) | | EXISTING ELECTRICITY (U/G) |
| | | | EXISTING SEWER MAIN |

NOTES

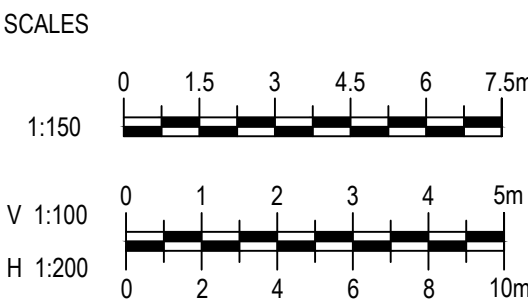
- THIS PLAN HAS BEEN PREPARED FOR DISCUSSION PURPOSES ONLY.
- THE CONTRACTOR IS TO CONFIRM THE LOCATION OF ALL EXISTING SERVICES PRIOR TO COMMENCING WORKS.
- ALL WORKS TO BE CARRIED OUT IN ACCORDANCE WITH THE REQUIREMENTS OF FNQROC.



| REV | DESCRIPTION | GB | GA | 26/02/25 |
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| A | PRELIMINARY ISSUE | | | |
| REV | DESCRIPTION | DRN | APP | DATE |
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PROJECT
KYRENIA RESIDENCE
14 MURPHY STREET (LOT 114 PTD2094)
TITLE
PROPOSED DRIVEWAY

| | |
|-------------------------------|---------------|
| STATUS PRELIMINARY | |
| SCALE (AT FULL SIZE) 1:100 | SIZE A1 |
| DRAWING NUMBER 24004-SK002 | REVISION A |