

5.2. MATERIAL CHANGE OF USE FOR A DANCE SCHOOL, 59 FRONT STREET, MOSSMAN

REPORT AUTHOR(S)	Jenny Elphinstone, Senior Planning Officer
GENERAL MANAGER	Michael Kriedemann, Acting General Manager Operations
DEPARTMENT	Development Assessment and Coordination
PROPOSAL	Material Change of Use for Community Facilities Activity (Educational Establishment – Dance School).
APPLICANT	V Petruszewski & RR Petruszewski PO Box 329 MOSSMAN QLD 4873
LOCATION OF SITE	59 Front Street, Mossman
PROPERTY	Lot 9 on RP707030

LOCALITY PLAN



Figure 1 - Locality Plan

LOCAL PLAN	Mossman Local Plan – Precinct 5 Town Centre
ZONE	Centre
PLANNING SCHEME	2018 Douglas Shire Planning Scheme
REFERRAL AGENCIES	Department of State Development, Manufacturing, infrastructure and Planning.
NUMBER OF SUBMITTERS	Not Applicable.
STATUTORY ASSESSMENT DEADLINE	25 July 2018
APPLICATION DATE	12 April 2018

RECOMMENDATION

That Council approves the development application for a material change of use for a Community Facilities Activity (Educational Establishment - Dance School) over land described as Lot 9 on RP707030, located at 59 Front Street, Mossman, subject to the following:

A. APPROVED DRAWING(S) AND / OR DOCUMENT(S)

The term ‘approved drawing(s) and / or document(s)’ or other similar expressions means:

Drawing or Document	Reference	Date
Site Plan and Floor Plan	Applicant’s drawings	As submitted to Council on 12 April 2018 (Council electronic document ID 850329).

B. ASSESSMENT MANAGER CONDITIONS AND ADVICES

The approval is subject to the following conditions and advices

Assessment Manager Conditions

1. Carry out the approved development generally in accordance with the approved drawing(s) and/or document(s), and in accordance with:
 - a. The specifications, facts and circumstances as set out in the application submitted to Council; and
 - b. The following conditions of approval and the requirements of Council’s Planning Scheme and the FNQROC Development Manual.

Except where modified by these conditions of approval

Timing of Effect

- 2. The conditions of the Development Permit must be effected prior to Commencement of Use, except where specified otherwise in these conditions of approval.**

Availability of Parking Areas

- 3. The parking area must be available for use for all times that the Educational Establishment (Dance School) operates and cannot be sublet for another use.**

Line Marking of Car Parking Area

- 4. Within four months of the approval having effect the car parking spaces must be freshly line marked for twenty (20) spaces including one (1) disabled driver car parking space. All parking, driveway and vehicular manoeuvring areas must be imperviously sealed, drained and line marked and these attributes must be maintained for the life of the development.**

Damage to Council Infrastructure

- 5. In the event that any part of Council's existing sewer, water or road infrastructure is damaged as a result of construction activities occurring on the site, including but not limited to; mobilisation of heavy construction equipment, stripping and grubbing, the applicant/owner must notify Council immediately of the affected infrastructure and have it repaired or replaced at the developer's/owners/builders cost, prior to the Commencement of Use.**

Protection of Landscaped Areas from Parking

- 6. Landscaped areas adjoining the parking area must be protected by a 150 mm high vertical concrete kerb or similar obstruction. The kerb must be set back from the garden edge sufficiently to prevent vehicular encroachment and damage to plants by vehicles.**

Bicycle Parking

- 7. A bicycle parking rack for four spaces must be provided within four months of the approval having effect and must be maintained for the life of the development.**

Lighting

- 8. All lighting installed upon the premises including car parking areas must be certified by Ergon Energy (or such other suitably qualified person). The vertical illumination at a distance of 1.5 metres outside the boundary of the subject land must not exceed eight (8) lux measured at any level upwards from ground level.**

Storage of Machinery and Plant

9. The storage of any machinery, material and vehicles must not cause a nuisance to surrounding properties, to the satisfaction of the Chief Executive Officer.

Landscaping Areas

10. Landscaped areas must be maintained at all times to the satisfaction of the Chief Executive Officer.

Lawful Point of Discharge

11. All stormwater from the property must be directed to a lawful point of discharge such that it does not adversely affect surrounding properties or properties downstream from the development, all to the requirements and satisfaction of the Chief Executive Officer.

Advertising Signage

12. All additional signage associated with the use must be approved by the Chief Executive Officer and must comply with the Douglas Shire Planning Scheme.

Crime Prevention Through Environmental Design

13. All lighting and landscaping requirements are to comply with Council's General Policy Crime Prevention Through Environmental Design (CPTED).

Advices

1. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.
2. For information relating to the *Planning Act 2016* log on to www.dsdip.qld.gov.au. To access the *FNQROC Development Manual*, Local Laws and other applicable Policies, log on to www.douglas.qld.gov.au.

LAND USE DEFINITIONS*

In accordance with the *2018 Douglas Shire Planning Scheme* the approved land use is defined as follows.

Column 1 Use	Column 2 Definition	Column 3 Examples	Column 4 Does not include the include following examples
Educational establishment	Premises used for training and instruction designed to impart knowledge and develop skills.	Pre-preparatory, preparatory and primary school, secondary school,	Child care centre, home based child care, family

Column 1 Use	Column 2 Definition	Column 3 Examples	Column 4 Does not include the following examples
	The use may include outside hours school care for students or on-site student accommodation.	special education, college, university, technical institute, outdoor education centres.	day care.

*This definition is provided for convenience only. This Development Permit is limited to the specifications, facts and circumstances as set out in the application submitted to Council and is subject to the abovementioned conditions of approval and the requirements of Council's Planning Scheme and the FNQROC Development Manual.

Referral Agency Conditions

The Queensland Department of State Development, Manufacturing, Infrastructure and Planning, a referral agency, has issued a Decision (DSDMIP Reference 1805-5146 SRA, Council electronic reference document ID: 857741) requiring conditions to be applied to the approval.

C. Further Permits

1. The following Development Permits are required to be obtained before the development can be carried out:
 - a. Development Permit for Building Work;

D. Currency period for the approval

Under section 85(1)(a)(i) of the *Planning Act 2016*, the relevant period for the Preliminary Approval is to be six (6) years starting from the day the approval takes effect.

E. Reasons for Decision

The reasons for this decision are:

1. Sections 60, 62 and 63 of the *Planning Act 2016*:
 - a. the approved plan(s) and document(s) as per A above;
 - b. the Conditions and advices as per B above; and
 - c. to ensure the development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme;
 - d. to apply the referral agency decision, including the attaching of conditions to the approval as per B above; and

- e. to ensure compliance with the *Planning Act 2016*.
2. Findings on material questions of fact:
- a. the development application was properly lodged to the Douglas Shire Council on 12 April 2018 under section 51 of the *Planning Act 2016* and Part 1 of the Development Assessment Rules;
 - b. the application was properly referred to the Department of State Development, Manufacturing, Infrastructure and Planning (previously known as Department of Infrastructure, Local Government and Planning) to which a referral agency decision was received;
 - c. the development application contained information from the applicant which Council reviewed together with Council's own investigation of assessment against the State Planning Policy and the 2018 Douglas Shire Planning Scheme in making its assessment manager decision.
3. Evidence or other material on which findings were based:
- a. the development triggered assessable development under the Assessment Table associated with the Centre Zone Code;
 - b. Council undertook an assessment in accordance with the provisions of sections 60, 62 and 63 of the *Planning Act 2016*; and
 - c. the applicant's reasons have been considered and the following findings are made:
 - i. Subject to conditions the development satisfactorily meets the Planning Scheme requirements; and
 - ii. The onsite provision of twenty (20) car spaces together with the previous off-site provision of five (5) spaces is considered to satisfy the Performance Outcome PO1 of the Access, Parking and Servicing Code.
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EXECUTIVE SUMMARY

The land supports a commercial building that is setback from the street with car parking area directly adjacent to the street frontage. Until recently the building has remained vacant. Application has been made to use the premises as an Educational Establishment – Dance School. The use has already commenced. No concerns are raised with the development. It is recommended the application be approved subject to conditions.

TOWN PLANNING CONSIDERATIONS

Background

The land has an area of 1,200m² and a frontage to Front Street of approximately 20 metres. A single storey warehouse/shop was established under a Development Permit 026/02 issued by the former Douglas Shire Council on 12 July 2002. The Permit was later amended by the Council on the 25 October 2002. The building sits at the rear of the property with car parking to the front. A condition of the approval required the provision of twenty-five (25) car parking spaces. Twenty (20) car parking spaces, including one disabled driver car park are provided on the site. A monetary contribution was paid for five (5) car spaces and this credit remains with the land. The existing crossover to Front Street was required by the Department of Main Roads when the land was developed through the previous Development Permit. The shop use was commenced.

Prior to the recent tenancy, by the dance school, the premise has been unoccupied for a number of years.

With the exception of the neighbouring dwelling to the south, surrounding land is used for commercial/community uses.

The adjacent road is a declared state-controlled road and includes a narrow bicycle lane and a constructed footpath along the site's frontage. A separate shared pedestrian /bicycle path is provided on the east side of Front Street.

Proposal

Application has been made to change the use to an Education Establishment for a dance school. The dance school, operated by Bodies in Motion, has relocated from another site within the Mossman Town Centre Precinct and is currently occupying the premises.

The building has been divided internally to provide three dance studios, a reception area and amenities. New fire walled corridors have been installed to provide safe exit from the dance studios. A simple plan of the new layout together with a plan of the general site layout is included in Attachment 1. While Council has not as yet received a record of an engagement notice, the applicant has confirmed discussions have been undertaken with a local building certifier.

The building has a gross floor area of 500m² and has solid core filled walls to the side and rear boundaries and sound proofing has been installed internally to each studio to reduce rebounding noise. A 1.8m high acoustic timber fence is constructed to the side boundaries.

The school has two teachers with four assistant teachers. The school usually operates one teacher per studio dance class with classes predominantly being held on school days (Mondays to Fridays) during the school terms. The majority of dance classes are provided to school aged children. The dance studios are generally used between 3:00pm to 9:00pm and the office use occurs between 10:00 am to 5:00pm. During the first half of the year some additional, private classes may be provided on Saturdays (8:00 am to 2:00pm) for catch-up lessons, to assist a student's preparation for an exam or to prepare for an eisteddfod. Younger children are dropped off and collected from classes. Older children attend classes by walking, driving themselves or are driven by parents. Parents do not

accompany their child into the studio. While viewing windows are available from the foyer area, parents are not encouraged to stay. Occasionally the studio may be used during the day for yoga/pilates classes or for teaching pre-school children.

External lighting is limited to the extent of illuminating the entrance for safe use of the car park and illumination of signage when the dance school operates. Advertising signs have been placed on the front façade and the window areas. A photograph of the existing signage is included in Attachment 1.

Relevant Matters

State Planning Benchmarks Applying To This Development and Referral

The development is within the urban footprint and consideration has been given to State Infrastructure, being the adjacent state-controlled road. The State has required conditions be applied to the approval. These conditions and requirements are included in Attachment 2. All other considerations of a State nature have been suitably addressed through assessment against the Planning Scheme.

2018 Douglas Shire Planning Scheme Assessment

The building, car parking area, landscaping and access onto the state-controlled road were developed under the previous planning approval. As the adjacent road is a declared-state controlled road and a pedestrian path has already been provided no further assessment is necessary under the Planning Scheme. The following table details compliance aspects for the proposed land use against the relevant Planning Scheme Codes. The use of an Educational Establishment falls within the category of Community Facilities Activities, which is code assessable development in the Centre Zone.

Table 1.

Benchmark Description	Benchmark Reference	Compliance
Centre Zone Code	AO4 Inconsistent uses are not established.	Complies, use is code assessable.
	AO5 Development complies with the requirements specified in a Local Plan.	Complies, see below.
Mossman Local Plan Code	AO1.1 Development provides for the retention for existing mature trees.	Complies – no change is proposed.
Access, Parking and Servicing Code	AO1.1 The minimum number of on-site vehicle parking spaces is not less than the number prescribed for that particular use.	For a primary or secondary school the scheme nominates 1 car space per two teaches plus provision to be used for setting down and picking up of students. The Planning Scheme does not consider

Benchmark Description	Benchmark Reference	Compliance
		students self-driving or quantify a number of set-down pickup spaces.
Advertising Devices Code	The benchmarks state the signage should be on the building with limited illumination and not obstruct pedestrians or vehicles.	The signage is consistent with the Code's benchmarks.
Environmental Performance Code	<p>AO1.1-1.3 Lighting. Restricted to the site and vehicle headlights accessing car parking areas do not impact on nearby residential uses.</p> <p>AO2.1- 2.2Noise. Development activities do not cause noise related environmental harm or nuisance; or Through the use of materials noise emissions do not adversely impact on adjacent uses.</p>	<p>Complies, impacts contained to the land.</p> <p>Complies, impacts are contained to the land. Building is attenuated within the studios and external walls are core filled.</p>

Non-Compliance with Benchmarks

Table 2.

Benchmark reference	Reasons for the approval or approval subject to conditions despite non-compliance with any of the benchmark.
<p>Onsite Parking</p> <p>PO1 Sufficient on-site car parking is provided to cater for the amount and type of vehicle traffic expected to be generated by the use or uses of the site, having particular regard to:</p> <ul style="list-style-type: none"> (a) the desired character of the area; (b) the nature of the particular use and its specific characteristics and scale; (c) the number of employees and the likely number of visitors to the site; (d) the level of local accessibility; (e) the nature and frequency of any public transport serving 	<p>The respective Performance outcome is considered to be achieved having regard to the nature of the use and the onsite provision of twenty car spaces and the previous and off-site provision of a further five spaces. A condition of the approval requires the car parking remain available for the approved use and cannot be subleased.</p>

Benchmark reference	Reasons for the approval or approval subject to conditions despite non-compliance with any of the benchmark.
<p>the area;</p> <p>(f) whether or not the use involves the retention of an existing building and the previous requirements for car parking for the building;</p> <p>(g) whether or not the use involves a heritage building or place of local significance; and</p> <p>(h) whether or not the proposed use involves the retention of significant vegetation.</p>	

ADOPTED INFRASTRUCTURE CHARGES

The proposed development does not trigger Adopted 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.

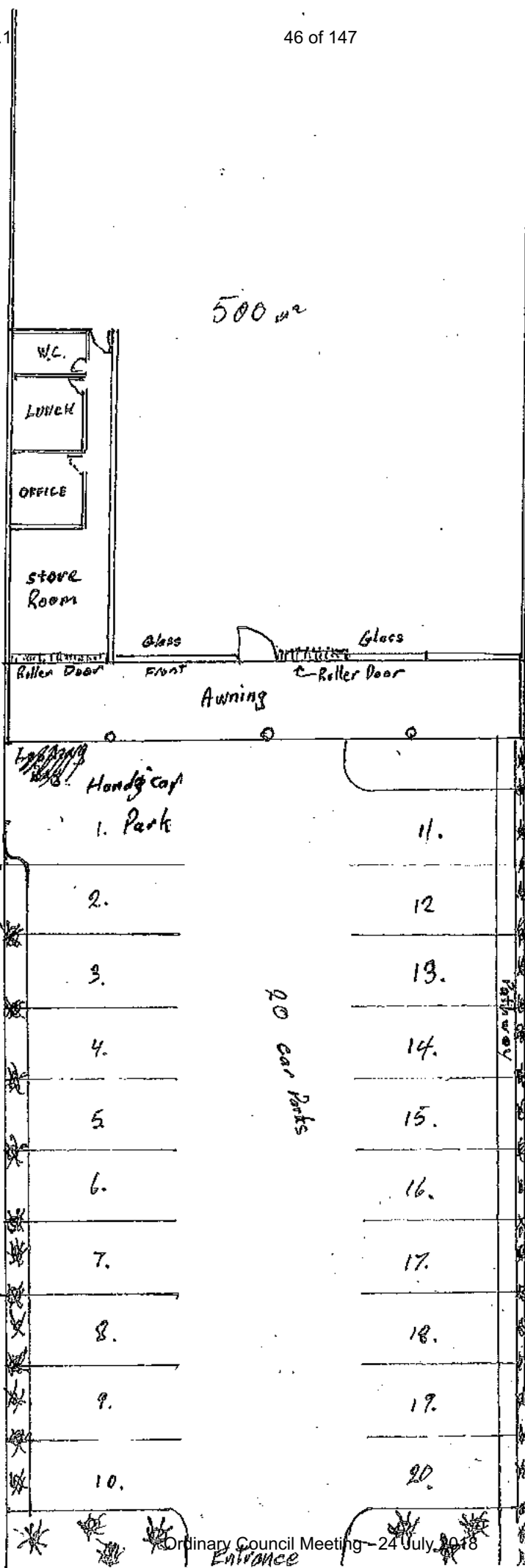
The following area outlines where Council has a clear responsibility to act:

Regulator: Meeting the responsibilities associated with regulating activities through legislation or local law.

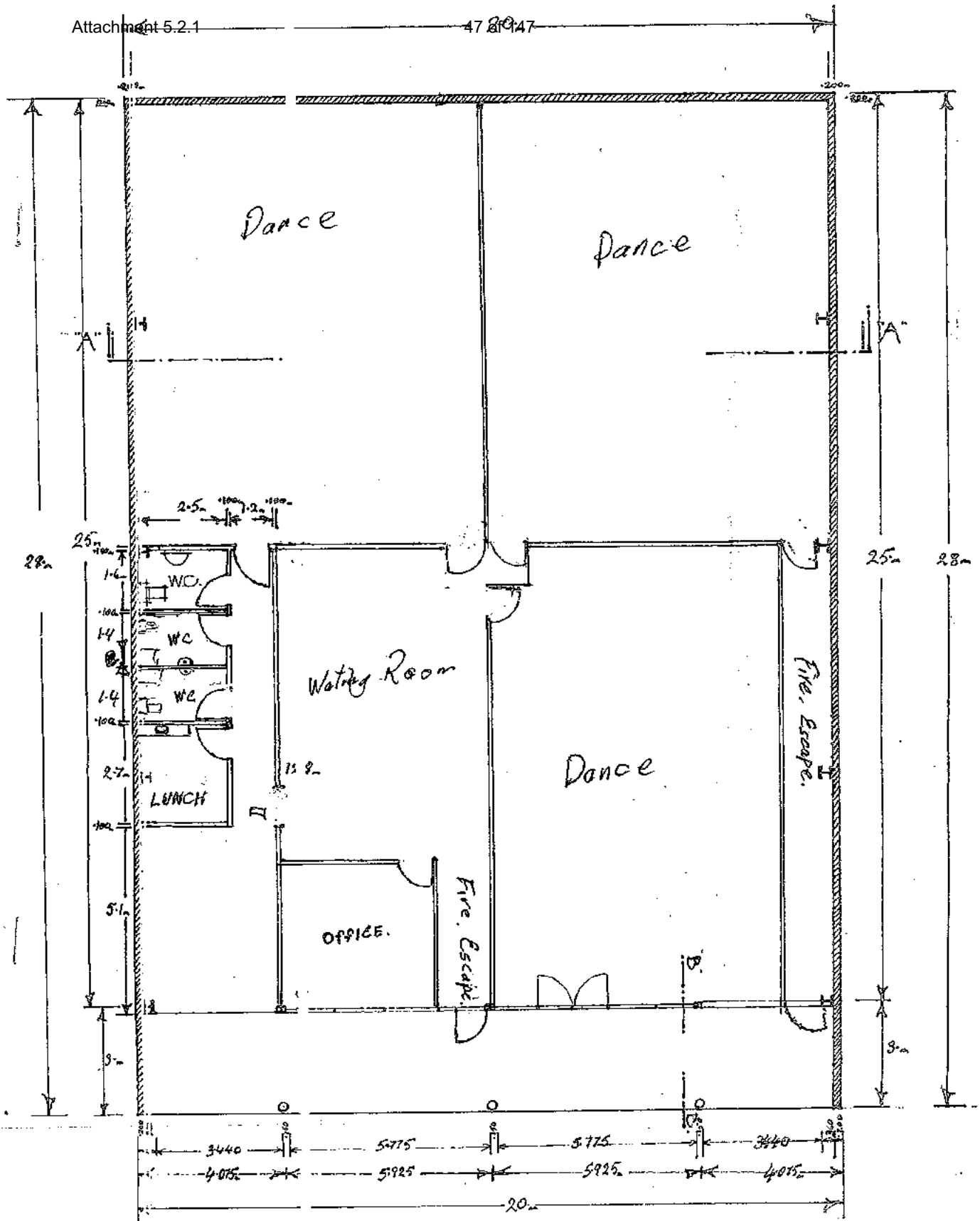
Under the *Sustainable Planning Act 2009* and the *Sustainable Planning Regulation 2009*, Council is the assessment manager for the application.

ATTACHMENTS

1. 59 Front St Attachment 1 [5.2.1]
2. 59 Front St Attachment 2 [5.2.2]



59. Front. St.
Mossman.



FLOOR PLAN.

1:100.

59. front St.



**BODIES IN MOTION
DANCE SCHOOL**



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

Our reference: 1805-5146 SRA
 Your reference: MCUC 2592/2018

29 May 2018

Chief Executive Officer
 Douglas Shire Council
 PO Box 723
 Mossman Qld 4873
 enquiries@douglas.qld.gov.au

Attention: Jenny Elphinstone

Dear Sir/Madam

Referral agency response—with conditions

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

The development application described below was properly referred to the Department of State Development, Manufacturing, Infrastructure and Planning on 10 May 2018.

Applicant details

Applicant name:	V Petruszewski and RR Petruszewski
Applicant contact details:	PO Box 329 Mossman QLD 4873 vrpetrus@bigpond.com

Location details

Street address:	59 Front Street, Mossman
Real property description:	Lot 9 on RP707030
Local government area:	Douglas Shire Council

Application details

Development permit	Material change of use for Community Facilities (Educational Establishment - Dance School)
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Referral triggers

The development application was referred to the department under the following provisions of the Planning Regulation 2017:

- 10.9.4.2.4.1 State transport corridors and future State transport corridors

Conditions

Under section 56(1)(b)(i) of the *Planning Act 2016* (the Act), the conditions set out in Attachment 1 must be attached to any development approval.

Reasons for decision to impose conditions

The department must provide reasons for the decision to impose conditions. These reasons are set out in Attachment 2.

Advice to the assessment manager

Under section 56(3) of the Act, the department offers advice about the application to the assessment manager—see Attachment 3.

Approved plans and specifications

The department requires that the plans and specifications set out below and enclosed must be attached to any development approval.

Drawing/report title	Prepared by	Date	Reference no.	Version/issue
Aspect of development: Material change of use				
TMR Layout Plan (20A – 74.33km)	Queensland Government Transport and Main Roads	18/05/2018	TMR18-24557 (500-1262)	A

A copy of this response has been sent to the applicant for their information.

For further information please contact Tony Croke, Principal Planner, on 40373205 or via email CairnsSARA@dsmip.qld.gov.au who will be pleased to assist.

Yours sincerely



Brett Nancarrow
Manager (Planning)

cc V Petruszewski and RR Petruszewski, vrpetrus@bigpond.com

enc Attachment 1—Conditions to be imposed
Attachment 2—Reasons for decision to impose conditions
Attachment 3—Advice to the assessment manager
Approved plans and specifications

Attachment 1—Conditions to be imposed

No.	Conditions	Condition timing
Material change of use		
Schedule 10, Part 9, Division 4, Subdivision 2, Table 4, Item 1: State transport corridors and future State transport corridors—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):		
1.	The road access location, is to be located is approximately 10 metres from the northern boundary of Lot 9 on RP707030, and approximately 70m south of Johnston Road in accordance with TMR Layout Plan (20A-74.33km), prepared by Queensland Government Transport and Main Roads, dated 18/05/2018, reference TMR18-24557 (500-1262) and issue A.	At all times
2.	Direct access is not permitted between Captain Cook Highway (Front Street) and the subject site at any location other than the permitted road access location described in condition 1.	At all times

Attachment 2—Reasons for decision to impose conditions

The reasons for this decision are:

- To ensure the road access location to the state-controlled road from the site does not compromise the safety and efficiency of the state-controlled road.
- To ensure the road access location to the state-controlled road from the site does not compromise the safety and efficiency of the state-controlled road, direct access to the state-controlled road is prohibited where not required.

Attachment 3—Advice to the assessment manager

General advice	
Ref.	Advertising Device
1.	<p>A local government should obtain advice from the Department of Transport and Main Roads (DTMR) if it intends to approve the erection, alteration or operation of an advertising sign or another advertising device that would be visible from a state-controlled road, and beyond the boundaries of the state-controlled road, and reasonably likely to create a traffic hazard for the state-controlled road.</p> <p>Note: DTMR has powers under section 139 of the <i>Transport Operations (Road Use Management - Accreditation and Other Provisions) Regulation 2015</i> to require removal or modification of an advertising sign and/or a device which is deemed that it creates a danger to traffic.</p>

Approved plans and

