

26 September 2023

**Enquiries:** Jenny Elphinstone  
**Our Ref:** CA 2023\_5331/1 (Doc ID 1183505)  
**Your Ref:** 23006

Angela Whittaker  
C/ Scope Town Planning  
38 Kowa Street  
MAREEBA QLD 4880

Email: [jburns@scopetownplanning.com.au](mailto:jburns@scopetownplanning.com.au)

Attention Mr Jonathan Burns

Dear Sir

**Development Application for Combined Application-Material Change of Use of light industry, and Reconfiguration of a Lot (for a lease agreement for more than ten years for part of the land and creating an access easement to a road).  
At 6133 Captain Cook Highway Craiglie  
On Land Described as Lot 3 on RP743352**

Please find attached the Decision Notice for the above-mentioned development application.

Please quote Council's application number: CA 2023\_5331/1 in all subsequent correspondence relating to this development application.

Should you require any clarification regarding this, please contact Jenny Elphinstone on telephone 07 4099 9444.

Yours faithfully



**Paul Hoyer**  
**Manager Environment & Planning**

cc. State Assessment and Referral Agency (SARA) E: [CairnsSARA@dilgp.qld.gov.au](mailto:CairnsSARA@dilgp.qld.gov.au)

encl.

- Decision Notice
  - Concurrence Agency Response
- Advice For Making Representations and Appeals (Decision Notice)



## Decision Notice Refused

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*Given under s 63 of the Planning Act 2016*

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### Applicant Details

Name: Angela Whittaker

Postal Address: C/ Scope Town Planning  
38 Kowa Street  
Mareeba Qld 4880

Email: [jburns@scopetownplanning.com.au](mailto:jburns@scopetownplanning.com.au)

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### Property Details

Street Address: 6133 Captain Cook Highway Craiglie

Real Property Description: Lot: 3 on RP743352

Local Government Area: Douglas Shire Council

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### Details of Proposed Development

Development Permit for a Combined Application for Combined Application over land described as Lot 3 on RP743352 for:

- A. A. Material Change of Use for Low Impact Industry for the manufacture of residential and commercial window and door fabrication in addition to the continuing use of the dwelling house and secondary dwelling; and
- B. Reconfiguring of a Lot of part of the lot by lease agreement for a period of more than ten (10 years); and
- C. Reconfiguring of a Lot creating an access easement to a road.

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### Decision

Date of Decision: 26 September 2023

Decision Details: Refused on the following grounds.

1. The development conflicts with the Strategic Framework under 3.4.2 Element – Urban settlement, as the industrial development does not occur in an identified area and there are no supporting planning considerations to justify the conflict. The nature of the proposed industry serves residential development in the urban area and this should be contained to the urban area.

2. The development conflict with the Strategic Framework under 3.4.4 Element – Industry areas and activities as proposal seeks to expand industrial development outside both Mossman and Port Douglas and there are no supporting planning considerations to justify the conflict. The development should occur in an industrial zone in Mossman or Port Douglas / Craiglie. Sufficient land and infrastructure are already supplied in Industry areas such as Craiglie and Mossman South to accommodate new and expanding enterprises.
3. The development conflicts with the Overall Outcomes of the Rural Zone Code:
  - a. The development further fragments rural land and compromise the long-term use of the land for rural purposes; and
  - b. The development does not provide for rural uses including cropping, intensive horticulture, intensive animal industries, animal husbandry, animal keeping and other primary production activities
4. The development conflicts with Performance Criteria PO4 of the Rural Zone:
  - a. The development is an intrusion of an inconsistent use in the rural Zone.
5. The development cannot be appropriately conditioned to overcome the non-compliance with the Strategic Framework or assessment benchmarks of the applicable codes.

## Assessment Benchmarks

The following are the benchmarks applying to the development.

| Benchmarks applying for the development  | Benchmark reference  |
|--|--|
| Strategic Framework                      | Douglas Shire Planning Scheme 2018 (V1.0) in effect 2 January 2018 |
| Rural zone code                          |  |
| Reconfiguring a lot code                 |  |
| Acid sulphate soils overlay code         |  |
| Bushfire hazard                          |  |
| Flood and storm tide hazard overlay code |  |
| Landscape values overlay code            |  |
| Natural areas overlay code               |  |
| Transport network overlay code           |  |
| Industry activities code                 |  |
| Access, parking and servicing code       |  |
| Environmental performance code           |  |
| Infrastructure works code                |  |
| Landscaping code                         |  |

## **Concurrence Agency Response**

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Refer to attachment

## **Rights of Appeal**

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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*.

A copy of the relevant appeal provisions is attached.

## Concurrence Agency Response

RA6-N



SARA reference: 2304-34249 SRA  
Council reference: CA 2023\_5331/1  
Applicant reference: 23006

26 May 2023

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

Attention: Jenny Elphinstone

Dear Sir/Madam

### **SARA referral agency response— Reconfiguring a Lot and Industrial Use at 6133 Captain Cook Highway, Craiglie**

(Referral agency response given under section 56 of the *Planning Act 2016*)

The development application described below was confirmed as properly referred by the State Assessment and Referral Agency (SARA) on 20 April 2023.

#### **Response**

|                   |  |
|-------------------|--|
| Outcome:          | Referral agency response – with conditions   |
| Date of response: | 26 May 2023  |
| Conditions:       | The conditions in <b>Attachment 1</b> must be attached to any development approval |
| Advice:           | Advice to the applicant is in <b>Attachment 2</b>                                  |
| Reasons:          | The reasons for the referral agency response are in <b>Attachment 3</b>            |

#### **Development details**

|              |                    |   |
|--------------|--------------------|---|
| Description: | Development permit | Reconfiguring a lot (1 lot into 2 plus access easement) by lease agreement for a period of more than 10 years, and material change of use for low impact industry |
| SARA role:   | Referral agency    |   |

Page 1 of 8

Far North Queensland regional office  
Ground Floor, Cnr Grafton and Hartley  
Street, Cairns  
PO Box 2358, Cairns QLD 4870

|  |   |
|--|---|
| SARA trigger:                                | <p><b>Schedule 10, Part 9, Division 4, Subdivision 2, Table 1</b> (Planning Regulation 2017) – Reconfiguring a lot near a state-controlled road</p> <p><b>Schedule 10, Part 9, Division 4, Subdivision 2, Table 4</b> (Planning Regulation 2017) – Material change of use near a state-controlled road</p>  |
| SARA reference:                              | 2304-34249 SRA  |
| Assessment manager:                          | Douglas Shire Council   |
| Street address:                              | 6133 Captain Cook Highway, Craiglie   |
| Real property description:                   | Lot 3 on RP743352   |
| Applicant name:                              | Angela Whittaker  |
| Applicant contact details:                   | <p>C/- Scope Town Planning<br/> 38 Kowa Street<br/> Mareeba QLD 4880<br/> jburns@scopetownplanning.com.au</p>   |
| State-controlled road access permit:         | <p>This referral included an application for a road access location, under section 62A(2) of <i>Transport Infrastructure Act 1994</i>. Below are the details of the decision:</p> <ul style="list-style-type: none"> <li>• Approved</li> <li>• Reference: TMR23-039143 (500-1754)</li> <li>• Date: 22 May 2023</li> </ul> <p>If you are seeking further information on the road access permit, please contact Mr Ronald Kaden, Technical Officer (Development Control) at the Department of Transport and Main Roads by email at <a href="mailto:caid_cm@tmr.qld.gov.au">caid_cm@tmr.qld.gov.au</a> or on (07) 4045 7151.</p> |
| <i>Human Rights Act 2019</i> considerations: | <p>Section 58 of the <i>Human Rights Act 2019</i> specifies required conduct for public entities when acting or making a decision. Sections 15 – 37 of the <i>Human Rights Act 2019</i> identifies the human rights a public entity must consider in making a decision.</p> <p>This decision does not limit the above identified human rights.</p>  |

## Representations

An applicant may make representations to a concurrence agency, at any time before the application is decided, about changing a matter in the referral agency response (s.30 Development Assessment Rules). Copies of the relevant provisions are in **Attachment 4**.

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

For further information please contact Anthony Westbury, Planning Officer, on 40373214 or via email CairnsSARA@dsdilgp.qld.gov.au who will be pleased to assist.

Yours sincerely



Brett Nancarrow  
Manager (Planning)

cc     Angela Whittaker, scopetownplanning@gmail.com

enc    Attachment 1 - Referral agency conditions  
         Attachment 2 - Advice to the applicant  
         Attachment 3 - Reasons for referral agency response  
         Attachment 4 - Representations about a referral agency response  
         Attachment 5 - Documents referenced in conditions



## Attachment 1—Referral agency conditions

(Under section 56(1)(b)(i) of the *Planning Act 2016* the following conditions must be attached to any development approval relating to this application) (Copies of the plans and specifications referenced below are found at Attachment 5)

| Reconfiguring a lot  |  |  |
|--|--|--|
| Schedule 10, Part 9, Division 4, Subdivision 2, Table – Reconfiguring a lot near a state-controlled road and intersection—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 conditions:                  |  |  |
| 1.   | <p>(a) The road accesses are to be located generally in accordance with TMR Layout Plan (20A – 61.45km), prepared by Queensland Government Transport and Main Roads, dated 18/05/2023, Reference TMR23-39143 (500-1754), Issue A.</p> <p>(b) Road access works comprising of a sealed 'Type B' rural property access must be provided at the road access junction.</p> <p>(c) The road access works must be designed and constructed in accordance with the Department of Transport and Main Roads' Standard Rural Property Access Drawing, Sheets 1 &amp; 2, Drawing No. 1807, Type B – Rural Property Access, dated 11/2021, and Revision B.</p> | <p>(a) At all times.</p> <p>(b) and (c) Prior to submitting the Plan of Survey to the local government for approval.</p> |
| 2.   | <p>(a) The applicant must register an access easement on the title of Lot 3 on RP7463352 for shared access to the proposed lease area.</p> <p>(b) The applicant must provide to Cairns Corridor Management Unit (Far.North.Queensland.IDAS@tmr.qld.gov.au) of the Department of Transport and Main Roads a copy of Registration Confirmation Statement/s and easement registration dealing number/s as evidence of the registration of the easement/s referred to in part (a) of this condition.</p>   | <p>(a) At the time of survey plan registration.</p> <p>(b) Within 20 business days of registration of the easement.</p>  |
| Material change of use   |  |  |
| Schedule 10, Part 9, Division 4, Subdivision 2, Table 4 – Material change of use of premises near a state-controlled road and intersection—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 conditions: |  |  |
| 3.   | <p>(a) The road accesses are to be located generally in accordance with TMR Layout Plan (20A – 61.45km), prepared by Queensland Government Transport and Main Roads, dated 18/05/2023, Reference TMR23-39143 (500-1754), Issue A.</p> <p>(b) Road access works comprising of a sealed 'Type B' rural property access must be provided at the road access junction.</p> <p>(c) The road access works must be designed and constructed in accordance with the Department of Transport and Main Roads' Standard Rural Property Access Drawing, Sheets 1 &amp; 2, Drawing No. 1807, Type B – Rural Property Access, dated 11/2021, and Revision B.</p> | <p>(a) At all times.</p> <p>(b) and (c) Prior to the commencement of use.</p>  |



## Attachment 2—Advice to the applicant

| General advice |   |
|----------------|---|
| 1.             | Terms and phrases used in this document are defined in the <i>Planning Act 2016</i> its regulation or the State Development Assessment Provisions (SDAP) v3.0. If a word remains undefined it has its ordinary meaning.   |
| 2.             | <p><b>Advertising device</b></p> <p>If the low impact industry development does decide to erect an advertising device that will be visible from a state-controlled road, the applicant should seek advice from the Department of Transport and Main Roads (DTMR) to ensure that the advertising device visible from a state-controlled road, and beyond the boundaries of the state-controlled road, is unlikely to create a traffic hazard for the state-controlled road.</p> <p>Note: DTMR has powers under section 139 of the Transport Operations (Road Use Management - Accreditation and Other Provisions) Regulation 2015 to require removal or modification of an advertising sign and / or a device which is deemed to create a danger to traffic.</p> |
| 3.             | <p><b>Road works approval</b></p> <p>Under section 33 of the <i>Transport Infrastructure Act 1994</i>, written approval is required from the DTMR to carry out road works on a state-controlled road.</p> <p>Please contact DTMR on 4045 7144 to make an application for road works approval.</p> <p>This approval must be obtained prior to commencing any works on the state-controlled road reserve. The approval process may require the approval of engineering designs of the proposed works, certified by a Registered Professional Engineer of Queensland (RPEQ).</p> <p>Please contact DTMR as soon as possible to ensure that gaining approval does not delay construction.</p>   |

**Attachment 3—Reasons for referral agency response**

(Given under section 56(7) of the *Planning Act 2016*)

**The reasons for the SARA decision are:**

The proposed development, with conditions, complies with the relevant provisions of State code 1:  
Development in a state-controlled road environment as follows:

- The proposed development is unlikely to compromise the safety, function, and efficiency of Captain Cook Highway, a state-controlled road.
- An upgraded vehicle access crossover to be constructed to Captain Cook Highway, will ensure compliance with the Department of Transport and Main Roads' current access standards and requirements.
- The increased traffic generation by the proposed development will be low and can be adequately accommodated by the upgraded access to Captain Cook Highway.

**Material used in the assessment of the application:**

- the development application material and submitted plans
- *Planning Act 2016*
- Planning Regulation 2017
- the State Development Assessment Provisions (version 3.0)
- the Development Assessment Rules
- SARA DA Mapping system
- State Planning Policy mapping system
- *Human Rights Act 2019*

## **Attachment 4—Representations about a referral agency response**

(page left intentionally blank – attached separately)

## Development Assessment Rules—Representations about a referral agency response

The following provisions are those set out in sections 28 and 30 of the Development Assessment Rules<sup>1</sup> regarding **representations about a referral agency response**

### Part 6: Changes to the application and referral agency responses

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#### 28 Concurrence agency changes its response or gives a late response

- 28.1. Despite part 2, a concurrence agency may, after its referral agency assessment period and any further period agreed ends, change its referral agency response or give a late referral agency response before the application is decided, subject to section 28.2 and 28.3.
- 28.2. A concurrence agency may change its referral agency response at any time before the application is decided if—
- (a) the change is in response to a change which the assessment manager is satisfied is a change under section 26.1; or
  - (b) the Minister has given the concurrence agency a direction under section 99 of the Act; or
  - (c) the applicant has given written agreement to the change to the referral agency response.<sup>2</sup>
- 28.3. A concurrence agency may give a late referral agency response before the application is decided, if the applicant has given written agreement to the late referral agency response.
- 28.4. If a concurrence agency proposes to change its referral agency response under section 28.2(a), the concurrence agency must—
- (a) give notice of its intention to change its referral agency response to the assessment manager and a copy to the applicant within 5 days of receiving notice of the change under section 25.1; and
  - (b) the concurrence agency has 10 days from the day of giving notice under paragraph (a), or a further period agreed between the applicant and the concurrence agency, to give an amended referral agency response to the assessment manager and a copy to the applicant.

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<sup>1</sup> Pursuant to Section 68 of the *Planning Act 2016*

<sup>2</sup> In the instance an applicant has made representations to the concurrence agency under section 30, and the concurrence agency agrees to make the change included in the representations, section 28.2(c) is taken to have been satisfied.

## **Part 7: Miscellaneous**

### **30 Representations about a referral agency response**

30.1. An applicant may make representations to a concurrence agency at any time before the application is decided, about changing a matter in the referral agency response.<sup>3</sup>

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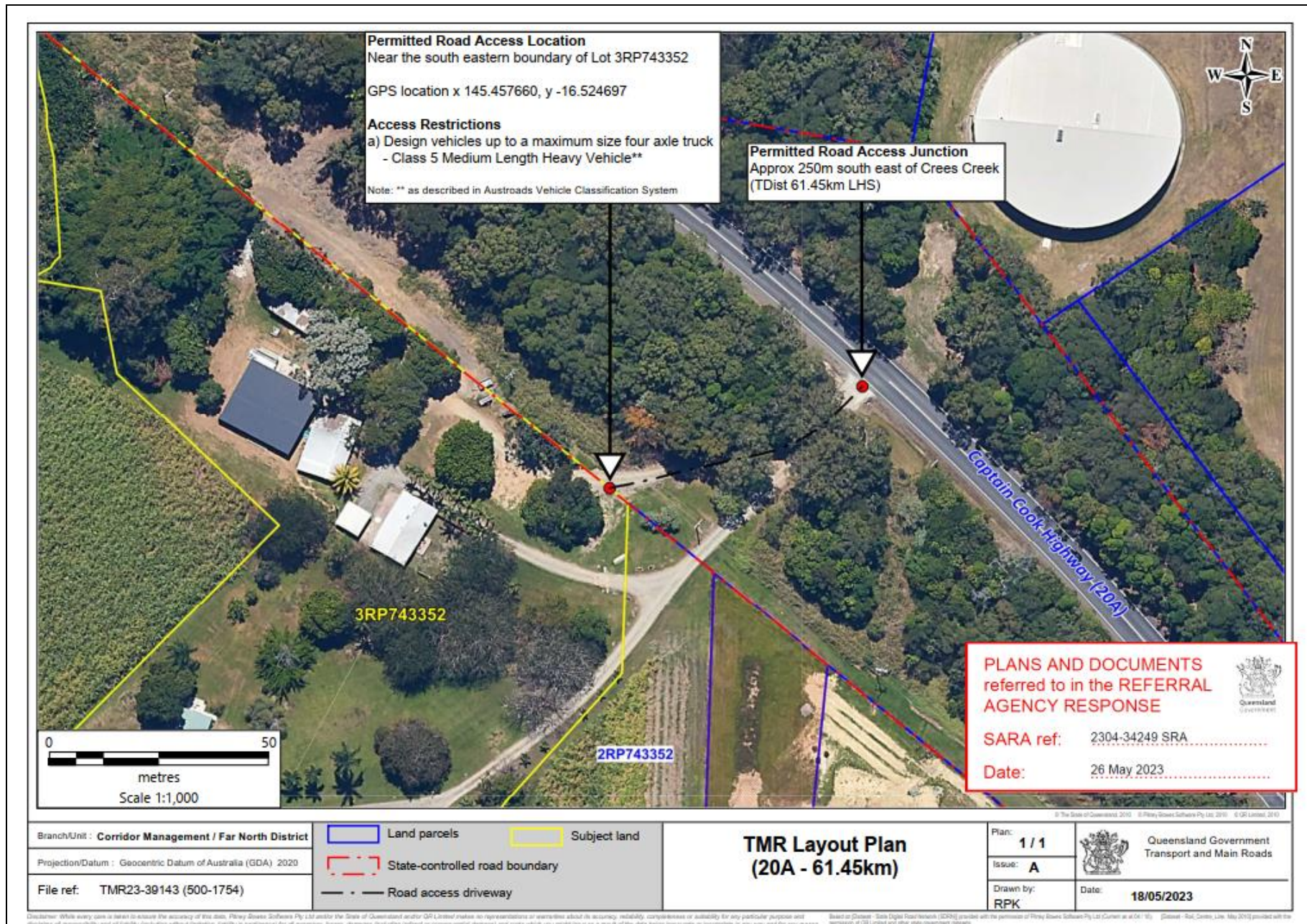
<sup>3</sup> An applicant may elect, under section 32, to stop the assessment manager's decision period in which to take this action. If a concurrence agency wishes to amend their response in relation to representations made under this section, they must do so in accordance with section 28.

## **Attachment 5—Documents referenced in conditions**

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(page left intentionally blank – attached separately)



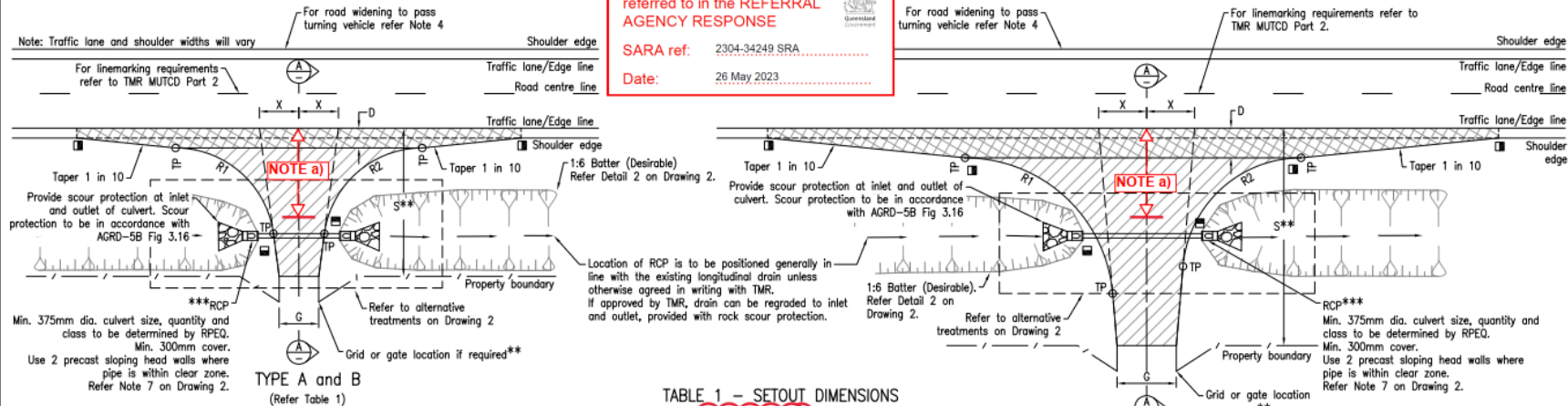




**PLANS AND DOCUMENTS  
referred to in the REFERRAL  
AGENCY RESPONSE**

SARA ref: 2304-34249 SRA

Date: 26 May 2023



**LEGEND**

- Pavement Type 1 – Bitumen surfacing, 2 coat bitumen seal. Pavement depth and type to match existing or proposed through road pavement. Refer to Table 2 for minimum depths.
- Pavement Type 2 – Gravel, unbound pavement. Refer to Table 2 for depths. Access may be required to be sealed for up to 10m width from edge line (to minimise gravel on through road) to be determined by the RPEQ.
- \* Maintain existing shoulder crossfall and superelevation.
- \*\* Length 'S' to property boundary by TMR. Where length 'S' is greater than the road reserve boundary, then fencing and grid/gate shall be recessed at the cost of owner from property boundary to ensure vehicle does not impede through lane.
- \*\*\* RCBC (min. size 600x300) can be used instead of RCP, or invert option where table drain is of insufficient depth for a culvert.
- Denotes Road Edge Guide Post. The Filled in portion denotes a red reflector and the open portion a white reflector.

**TABLE 2 – MINIMUM PAVEMENT DETAILS AND DEPTH**

|                                  | TYPE A<br>Residential<br>(Car/Service Vehicle) | TYPE B<br>Commercial<br>(Single Unit Truck/Bus) | TYPE C & D<br>Special<br>(Articulated Vehicles) |
|----------------------------------|--|---|---|
| Sealed Pavement<br>Base Course   | 150mm(Min.)<br>Type 2.2 or<br>match existing   | 200mm(Min.)<br>Type 2.2 or<br>match existing    | 280mm(Min.)<br>Type 2.2 or<br>match existing    |
| Unsealed Pavement<br>Base Course | 150mm(Min.)<br>Type 2.4 or<br>match existing   | 200mm(Min.)<br>Type 2.4 or<br>match existing    | #   |

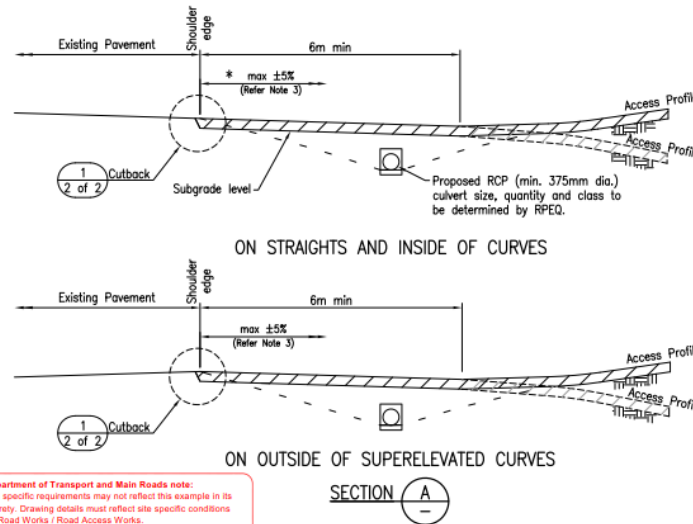
**NOTE:**

1. Refer to additional notes on drawing 2 of 2
  2. Where access is located on curves, intersections or is Type C, or excessive screwing motion will occur, pavement seal to extend to property boundary at the owner's cost to the engineer's/designer's discretion.
- # Bitumen sealed pavement only.  
Type 3.1 or 4.3 or match existing is permissible if Type 2.2/2.4 is unable to be used.

**TABLE 1 – SETOUT DIMENSIONS**

|    | TYPE A<br>Residential<br>(Car/Service Vehicle) | TYPE B<br>Commercial<br>(Single Unit Truck/Bus) | TYPE C<br>Special<br>(Articulated Vehicles) | TYPE D<br>Special<br>(Road Train Type 1) |
|----|--|---|---|--|
| R1 | 10m  | 10m   | 15m   | 20m                                      |
| R2 | 10m  | 10m   | 12m   | 12m                                      |
| D  | 2m   | 2m  | 3m  | 3m                                       |
| X  | 3m   | 5m  | 4m  | 5m                                       |
| S  | 12m  | 15m   | 22m   | 30m**                                    |
| G  | 4-6m   | 4-6m  | 6m  | 6m                                       |

Ø 6m Minimum width for two-way two-lane access.



**TYPE C and D  
(Refer Table 1)**

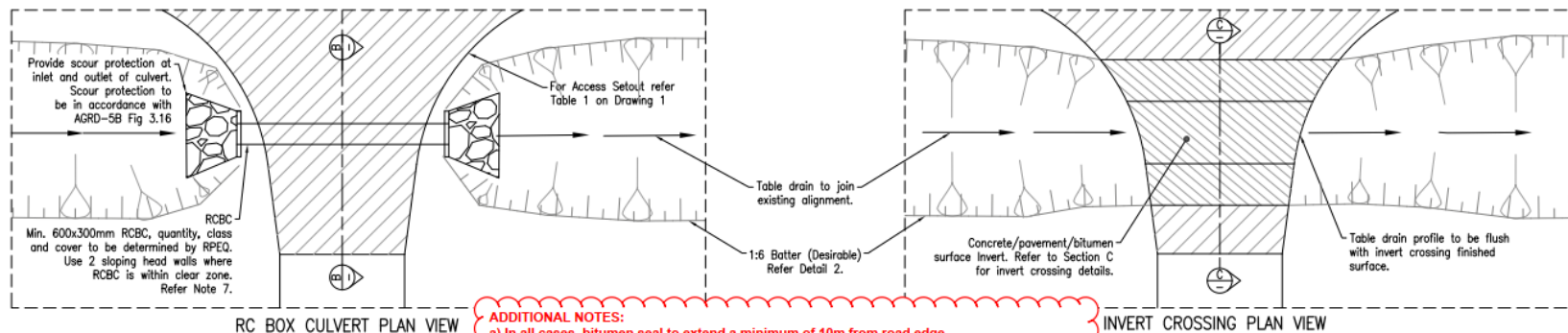
**NOTES:**

1. Details shown on this drawing are the minimum layout requirements for a private rural property access. For additional requirements and other design considerations refer to Sections 7.2.1 and 7.2.3 of the AGRD-4 (2009).
2. For sight distance requirements refer to Section 3.4 of the RPDM (2nd Edition) Volume 3 Supplement to AGRD-4A, and Section 3 of the AGRD-4A (2010).
3. Vertical clearance checks to be carried out for proposed vehicle in accordance with AS 2890.2 – Parking Facilities Off-Street Commercial Vehicle Facilities.
4. RPEQ or designer to conduct traffic impact assessment to determine if turning treatments are required. Rural right-turn treatments maybe appropriate, refer to Section 7.5 of the AGRD-4A (2010) for pavement widening requirements. Pavement type to match existing or minimums specified in Table 2 of this drawing.
5. This drawing is to be read in conjunction with Drawing 2 of 2.
6. All dimensions in metres and are minimum unless specified.

**REFERENCED DOCUMENTS:**

- Departmental Standard Drawings:
- 1243 Precast Culvert Headwalls – Headwall Connections for Culverts
  - 1305 Pipe Culverts – Headwall and Apron for Pipe Diameter 375 to 675
  - 1359 Culverts – Installation, Bedding and Filling/Backfilling Against/Over Culverts
- Departmental Documents:
- RPDM Road Planning and Design Manual (2nd Edition)
  - MRTS03 Drainage, Retaining Structures and Protective Treatment
  - Austrorads Guide to Road Design:
  - AGRD-4 (2009) Part 4: Intersections and Crossings – General (2009)
  - AGRD-4A (2010) Part 4A: Unsignalised and Signalised Intersections (2010)
  - AGRD-5B (2013) Part 5B: Drainage – Open Channels, Culverts and Floodways (2013)

|  |   |                     |  |
|--|---|---------------------|--|
| Department of Transport and Main Roads |   |                     |  |
| PROPERTY ACCESS                        |   | Standard Drawing No |  |
| RURAL PROPERTY ACCESS                  |   | 1807                |  |
| DRAWING 1 OF 2                         |   | Date 11/2021        |  |
| A                                      | B |                     |  |



**ADDITIONAL NOTES:**  
a) In all cases, bitumen seal to extend a minimum of 10m from road edge.  
b) Annexure to construction drawings is to be read in conjunction with standard drawing 1807.

#### LEGEND

- Pavement Type 2 – Gravel, unbound pavement. Refer to Table 2 of Drawing 1 for depths. Access may be required to be sealed for up to 10m width from edge line (to minimize gravel on through road) to be determined by the RPEQ.
- Invert crossing surface
- \* Maintain existing shoulder crossfall and superelevation.

#### NOTES:

- This drawing is to be read in conjunction with Drawing 1 of 2.
- Minimum longitudinal fall for concrete or bitumen invert is 0.3%.
- 1 in 6 grade can be further levelled for larger design vehicles. Ensure sufficient area for drainage remains. Dimensions to be based on stormwater flow rate for appropriate design ARI event to ensure invert crossing can meet required capacity. Type 22 and Type 28 inverts can be used if drainage design criteria is met.
- Vertical clearance checks to be carried out for small rigid vehicle to ensure adequate transition between change in grade. Refer to AS 2890.2.
- For pavement or bitumen surfacing inverts, refer Table 2 on Drawing 1 for minimum depths.
- Concrete access to have minimum N32 concrete, 100mm thick on 100mm thick sub-base gravel. Concrete access to be reinforced with SL72 mesh with minimum 40mm top cover.
- Culvert clear zone varies with location and speed environment. Refer to TMR Road Planning and Design Manual – Supplement to AGRD Part 6, and Austroads Guide to Road Design – Part 6.

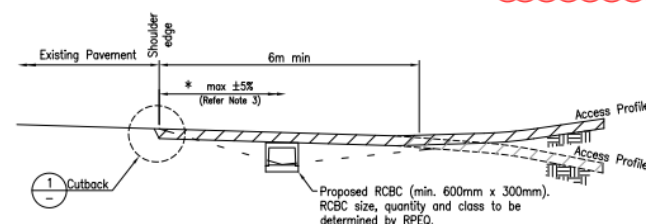
#### REFERENCED DOCUMENTS:

Departmental Standard Drawings:  
1260 R C Box Culverts and Slab Link Box Culverts – Culverts Height = 375 To 600  
1033 Kerb and Channel – Profiles

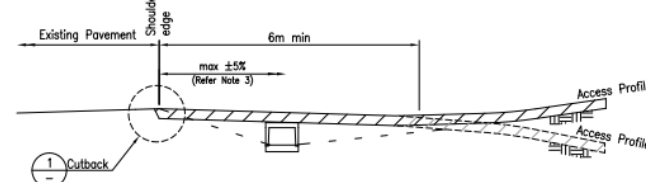
Australian Standards Documents:

AS2890.2 Parking Facilities – Off-Street Commercial Vehicle Facilities

|  |              |                     |
|--|--------------|---------------------|
| Department of Transport and Main Roads |              |                     |
| PROPERTY ACCESS                        | A3           | Standard Drawing No |
| RURAL PROPERTY ACCESS                  | Not to Scale | 1807                |
| DRAWING 2 OF 2                         | Scale        | Date 11/2021        |

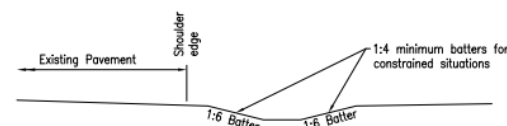


#### ON STRAIGHTS AND INSIDE OF CURVES



#### ON OUTSIDE OF SUPERELEVATED CURVES

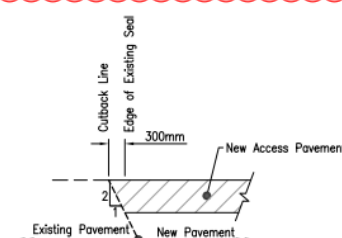
#### SECTION (B)



#### BATTER DETAIL

#### DETAIL (2)

Department of Transport and Main Roads note:  
Site specific requirements may not reflect this example in its entirety. Drawing details must reflect site specific conditions for Road Works / Road Access Works.



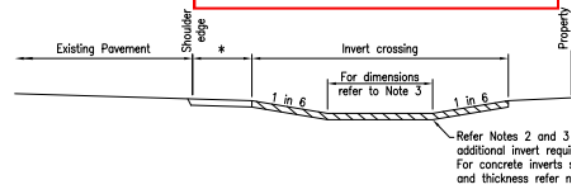
#### CUTBACK DETAIL

#### DETAIL (1)

#### PLANS AND DOCUMENTS referred to in the REFERRAL AGENCY RESPONSE

SARA ref: 2304-34249 SRA

Date: 26 May 2023



#### INVERT CROSSING

#### SECTION (C)

Refer Notes 2 and 3 for additional invert requirements. For concrete inverts strength and thickness refer note 6. For other surface inverts depths refer Note 4.

Our ref TMR23-039143 (500-1754)  
Your ref 23008  
Enquiries Ronald Kaden



22 May 2023

Department of  
Transport and Main Roads

## Decision Notice – Permitted Road Access Location (s62(1) *Transport Infrastructure Act 1994*)

**This is not an authorisation to commence work on a state-controlled road<sup>1</sup>**

Development application reference number CA 2023\_5331/1, lodged with Douglas Shire Council involves constructing or changing a vehicular access between Lot 3RP743352, the land the subject of the application, and Captain Cook Highway (a state-controlled road).

In accordance with section 62A(2) of the *Transport Infrastructure Act 1994* (TIA), this development application is also taken to be an application for a decision under section 62(1) of TIA.

### Applicant Details

Name and address Angela Whittaker  
C/- Scope Town Planning  
38 Kowa Street  
Mareeba QLD 4880

### Application Details

Address of Property 6133 Captain Cook Highway, Craiglie QLD 4877  
Real Property Description 3RP743352  
Aspect/s of Development Development Permit for Material Change of Use for Window and door Manufacturing  
Development Permit for Reconfiguration of a Lot for 1 Lot into 2 Lots and an Access Easement

### Decision (given under section 67 of TIA)

It has been decided to approve the application, subject to the following conditions:

| No. | Conditions of Approval   | Condition Timing |
|-----|--|------------------|
| 1   | The permitted road access location is near the south eastern boundary of Lot 3RP743352, in accordance with:<br>1. TMR Layout Plan (20A - 61.45km) Issue A 18/05/2023     | At all times.    |
| 2   | Direct access is prohibited between Captain Cook Highway and Lot 3RP743352 at any other location other than the permitted road access location described in Condition 1. | At all times.    |

<sup>1</sup> Please refer to the further approvals required under the heading 'Further approvals'

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ABN: 39 407 690 291

| No. | Conditions of Approval   | Condition Timing   |
|-----|--|--|
| 3   | <p>The use of the permitted road access location is to be restricted to:</p> <p>a) Design vehicles up to a maximum size Four Axle Truck - Class 5 Medium Length Heavy Vehicle**</p> <p>Note: ** as described in Austroads Vehicle Classification System</p>                    | At all times.  |
| 4   | <p>Road access works comprising Type B property access must be provided for the permitted access location, generally in accordance with:</p> <p>a) Property Access drawing prepared by Queensland Government dated 11/2021 reference 1807 Issue B (with additional notes).</p> | <p>MCU - Prior to commencement of use</p> <p>ROL - Prior to submitting the Plan of Survey to the local government for approval</p> |

#### Reasons for the decision

The reasons for this decision are as follows:

- Currently the subject site (Lot 3 on RP743352) has road frontage and vehicle access via Captain Cook Highway, a state-controlled road,
- The proposed development is for a Reconfiguration of a Lot (Creation of a Lease Area and access easement) and Material Change of Use (Window and Door Manufacturing),
- The proposed development will require a changed access as the proposed development is increasing vehicle movements to the 'Lease Area' via the existing access,
- An assessment by the department indicates that the existing access is required to be modified to a Type B property access to suit the stated vehicle types for the proposed development,
- As the proposed development is seeking a new access and increasing generation, a new section 62 approval is required to be issued by TMR.

Please refer to **Attachment A** for the findings on material questions of fact and the evidence or other material on which those findings were based.

#### Information about the Decision required to be given under section 67(2) of TIA

- There is no guarantee of the continuation of road access arrangements, as this depends on future traffic safety and efficiency circumstances.
- This decision has been based on the current land use and the historic nature of the access subject to this decision. Be advised that if the land is further developed and/or intensified, the department will reassess the access requirements in accordance with the department's policies at that time to ensure that the road safety and transport efficiency outcomes for the state-controlled road network are maximised. This may or may not require all future access to be provided via the local road network.
- In accordance with section 70 of the TIA, the applicant for the planning application is bound by this decision. A copy of section 70 is attached as **Attachment B**, as required, for information.



#### Further information about the decision

1. In accordance with section 67(7) of TIA, this decision notice:
  - a) starts to have effect when the development approval has effect; and
  - b) stops having effect if the development approval lapses or is cancelled; and
  - c) replaces any earlier decision made under section 62(1) in relation to the land.
2. In accordance with section 485 of the TIA and section 31 of the *Transport Planning and Coordination Act 1994* (TPCA), a person whose interests are affected by this decision may apply for a review of this decision only within 28 days after notice of the decision was given under the TIA. A copy of the review provisions under TIA and TPCA are attached in **Attachment C** for information.
3. In accordance with section 485B of the TIA and section 35 of TPCA a person may appeal against a reviewed decision. The person must have applied to have the decision reviewed before an appeal about the decision can be lodged in the Planning and Environment Court. A copy of the Appeal Provisions under TIA and TPCA is attached in **Attachment C** for information.

#### Further approvals

The Department of Transport and Main Roads also provides the following information in relation to this approval:

1. Road Access Works Approval Required – Written approval is required from the department to carry out road works that are road access works (including driveways) on a state-controlled road in accordance with section 33 of the TIA. This approval must be obtained prior to commencing any works on the state-controlled road. The approval process may require the approval of engineering designs of the proposed works, certified by a Registered Professional Engineer of Queensland (RPEQ). Please contact the department to make an application.

If further information about this approval or any other related query is required, Ronald Kaden, Technical Officer (Development Control) should be contacted by email at [caid\\_cm@tmr.qld.gov.au](mailto:caid_cm@tmr.qld.gov.au) or on (07) 4045 7151.

Yours sincerely



Liliya Yates  
Senior Engineer (Civil)

Attachments: Attachment A – Decision evidence and findings  
Attachment B - Section 70 of TIA  
Attachment C - Appeal Provisions  
Attachment D - Permitted Road Access Location Plan

**Attachment A**  
**Decision Evidence and Findings**

Evidence or other material on which findings were based:

| <b>Title of Evidence / Material</b>                 | <b>Prepared by</b>                                   | <b>Date</b>   | <b>Reference no.</b>      | <b>Version / Issue</b> |
|---|--|---------------|---------------------------|------------------------|
| TMR Layout Plan<br>(20A - 61.45km)                  | Queensland<br>Government Transport<br>and Main Roads | 18 May 2023   | TMR23-39143<br>(500-1754) | A                      |
| Rural Property Access<br>(with additional notes)    | Queensland<br>Government                             | November 2021 | 1807                      | B                      |
| Site Plan   | Angel Construction                                   | 13 April 2023 | AC000121<br>A100          | -                      |
| Vehicle Access to state-<br>controlled roads policy | Queensland<br>Government Transport<br>and Main Roads | 2019          | -                         | -                      |
| Planning Report                                     | Scope Town Planning                                  | March 2023    | 23006                     | -                      |

**Attachment B**  
**Section 70 of TIA**

*Transport Infrastructure Act 1994*  
Chapter 6 Road transport infrastructure  
Part 5 Management of State-controlled roads

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**70 Offences about road access locations and road access works, relating to decisions under s 62(1)**

- (1) This section applies to a person who has been given notice under section 67 or 68 of a decision under section 62(1) about access between a State-controlled road and adjacent land.
- (2) A person to whom this section applies must not—
- (a) obtain access between the land and the State-controlled road other than at a location at which access is permitted under the decision; or
  - (b) obtain access using road access works to which the decision applies, if the works do not comply with the decision and the noncompliance was within the person's control; or
  - (c) obtain any other access between the land and the road contrary to the decision; or
  - (d) use a road access location or road access works contrary to the decision; or
  - (e) contravene a condition stated in the decision; or
  - (f) permit another person to do a thing mentioned in paragraphs (a) to (e); or
  - (g) fail to remove road access works in accordance with the decision.

Maximum penalty—200 penalty units.

- (3) However, subsection (2)(g) does not apply to a person who is bound by the decision because of section 68.



**Attachment C**  
**Appeal Provisions**

*Transport Infrastructure Act 1994*  
Chapter 16 General provisions

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**485 Internal review of decisions**

- (1) A person whose interests are affected by a decision described in schedule 3 (the *original decision*) may ask the chief executive to review the decision.
- (2) The person is entitled to receive a statement of reasons for the original decision whether or not the provision under which the decision is made requires that the person be given a statement of reasons for the decision.
- (3) The *Transport Planning and Coordination Act 1994*, part 5, division 2—
  - (a) applies to the review; and
  - (b) provides—
    - (i) for the procedure for applying for the review and the way it is to be carried out; and
    - (ii) that the person may apply to QCAT to have the original decision stayed.

**485B Appeals against decisions**

- (1) This section applies in relation to an original decision if a court (the appeal court) is stated in schedule 3 for the decision.
- (2) If the reviewed decision is not the decision sought by the applicant for the review, the applicant may appeal against the reviewed decision to the appeal court.
- (3) The *Transport Planning and Coordination Act 1994*, part 5, division 3—
  - (a) applies to the appeal; and
  - (b) provides—
    - (i) for the procedure for the appeal and the way it is to be disposed of; and
    - (ii) that the person may apply to the appeal court to have the original decision stayed.
- (4) Subsection (5) applies if—
  - (a) a person appeals to the Planning and Environment Court against a decision under section 62(1) on a planning application that is taken, under section 62A(2), to also be an application for a decision under section 62(1); and
  - (b) a person appeals to the Planning and Environment Court against a decision under the Planning Act on the planning application.

- (5) The court may order—
  - (a) the appeals to be heard together or 1 immediately after the other; or
  - (b) 1 appeal to be stayed until the other is decided.
- (6) Subsection (5) applies even if all or any of the parties to the appeals are not the same.
- (7) In this section—

***original decision*** means a decision described in schedule 3.

***reviewed decision*** means the chief executive's decision on a review under section 485.

**31 Applying for review**

- (1) A person may apply for a review of an original decision only within 28 days after notice of the original decision was given to the person under the transport Act.
- (2) However, if—
  - (a) the notice did not state the reasons for the original decision; and
  - (b) the person asked for a statement of the reasons within the 28 days mentioned in subsection (1)the person may apply within 28 days after the person is given the statement of the reasons.
- (3) In addition, the chief executive may extend the period for applying.
- (4) An application must be written and state in detail the grounds on which the person wants the original decision to be reviewed.

**32 Stay of operation of original decision**

- (1) If a person applies for review of an original decision, the person may immediately apply for a stay of the decision to the relevant entity.
- (2) The relevant entity may stay the original decision to secure the effectiveness of the review and any later appeal to or review by the relevant entity.
- (3) In setting the time for hearing the application, the relevant entity must allow at least 3 business days between the day the application is filed with it and the hearing day.
- (4) The chief executive is a party to the application.
- (5) The person must serve a copy of the application showing the time and place of the hearing and any document filed in the relevant entity with it on the chief executive at least 2 business days before the hearing.
- (6) The stay—
  - (a) may be given on conditions the relevant entity considers appropriate; and
  - (b) operates for the period specified by the relevant entity; and
  - (c) may be revoked or amended by the relevant entity.
- (7) The period of a stay under this section must not extend past the time when the chief executive reviews the original decision and any later period the relevant entity allows the applicant to enable the applicant to appeal against the decision or apply for a review of the decision as provided under the QCAT Act.
- (8) The making of an application does not affect the original decision, or the carrying out of the original decision, unless it is stayed.

(9) In this section—

**relevant entity** means—

- (a) if the reviewed decision may be reviewed by QCAT—QCAT; or
- (b) if the reviewed decision may be appealed to the appeal court—the appeal court.

### **35 Time for making appeals**

(1) A person may appeal against a reviewed decision only within—

- (a) if a decision notice is given to the person—28 days after the notice was given to the person; or
- (b) if the chief executive is taken to have confirmed the decision under section 34(5)—56 days after the application was made.

(2) However, if—

- (a) the decision notice did not state the reasons for the decision; and
- (b) the person asked for a statement of the reasons within the 28 days mentioned in subsection (1)(a);

the person may apply within 28 days after the person is given a statement of the reasons.

(3) Also, the appeal court may extend the period for appealing.



# Attachment D

**Permitted Road Access Location**  
Near the south eastern boundary of Lot 3RP743352

GPS location x 145.457660, y -16.524697

## Access Restrictions

- a) Design vehicles up to a maximum size four axle truck  
- Class 5 Medium Length Heavy Vehicle\*\*

Note: \*\* as described in Austroads Vehicle Classification System

**Permitted Road Access Junction**  
Approx 250m south east of Crees Creek  
(TDist 61.45km LHS)



Branch/Unit : Corridor Management / Far North District

Projection/Datum : Geocentric Datum of Australia (GDA) 2020

File ref: TMR23-39143 (500-1754)

Land parcels

State-controlled road boundary

Road access driveway

Subject land

## TMR Layout Plan (20A - 61.45km)

Plan: 1 / 1

Issue: A

Drawn by:  
RPK



Queensland Government  
Transport and Main Roads

Date: 18/05/2023

Disclaimer: While every care is taken to ensure the accuracy of this data, Pricer Systems Software Pty Ltd and/or the State of Queensland and/or QP Limited makes no representations or warranties about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which you might incur as a result of the data being inaccurate or incomplete in any way and for any reason.

Based on (Dataset: "State Digital Road Network (SDRN)" provided with the permission of Pricer Systems Software Pty Ltd (Current as at 01/10/2022) (Dataset: "Road, Centre, Line, May 2013") provided with the permission of QP Limited and other state government datasets.



## 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 an appeal relating to the *Plumbing and Drainage Act 2018*—
  - (i) for an appeal against an enforcement notice given because of a belief mentioned in the *Plumbing and Drainage Act 2018*, section 143(2)(a)(i), (b) or (c)—5 business days after the day the notice is given; or
  - (ii) for an appeal against a decision of a local government or an inspector to give an action notice under the *Plumbing and Drainage Act 2018*—5 business days after the notice is given; or
  - (iii) for an appeal against a failure to make a decision about an application or other matter under the *Plumbing and Drainage Act 2018*—at anytime after the period within which the application or matter was required to be decided ends; or
  - (iv) otherwise—20 business days after the day the notice is given; or
- (g) 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, section 1, table 1, item 1—each principal submitter for the application whose submission has not been withdrawn; and
  - (d) for an appeal about a change application under schedule 1, section 1, table 1, item 2—each principal submitter for the application whose submission has not been withdrawn; and

- (e) each person who may elect to be a co-respondent for the appeal other than an eligible submitter for a development application or change application the subject of the appeal; 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 to an appeal by filing a notice of election in the approved form—
  - (a) if a copy of the notice of appeal is given to the person—within 10 business days after the copy is given to the person; or
  - (b) otherwise—within 15 business days after the notice of appeal is lodged with the registrar of the tribunal or the P&E Court.
- (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 Non-appealable decisions and matters**

- (1) Subject to this chapter, section 316(2), 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 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.