

7 November 2023

Enquiries: Jenny Elphinstone
Our Ref: CA 2023_5398/1 (Doc ID 1192883)
Your Ref: AU008658

Administration Office
64 - 66 Front St Mossman
P 07 4099 9444
F 07 4098 2902

Peace World Pty Ltd
C/- RPS AAP Consulting Pty Ltd
PO Box 1949
CAIRNS QLD 4870

Email: Patrick.clifton@rpsgroup.com.au

Attention Mr Patrick Clifton

Dear Sir

**Development Application for Material Change of Use for Food and drink outlet and
Operational Work for an Advertising device
At 5967 Captain Cook Highway Craiglie
On Land Described as Lot 11 on C22510**

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

Please quote Council's application number: CA 2023_5398/1 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



For
Paul Hoyer
Manager Environment & Planning

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

encl.

- Decision Notice
 - Approved Drawing(s) and/or Document(s)
 - Concurrence Agency Response
 - Reasons for Decision
- Advice For Making Representations and Appeals (Decision Notice)
- Adopted Infrastructure Charges Notice
- Advice For Making Representations and Appeals (Infrastructure Charges)



Decision Notice

Approval (with conditions)

Given under s 63 of the Planning Act 2016

Applicant Details

Name: Peace World Pty Ltd
Postal Address: C/- RPS AAP Consulting Pty Ltd
PO Box 1949
Cairns Qld 4870
Email: Patrick.clifton@rpsgroup.com.au

Property Details

Street Address: 5967 Captain Cook Highway Craiglie
Real Property Description: Lot 11 on C22510
Local Government Area: Douglas Shire Council

Details of Proposed Development

Combined application for a Development Permit for a Material Change of Use for a Food and Drink Outlet with drive-through facility and a Development Permit for Operational Work for an Advertising Device.

Decision

Date of Decision: 7 November 2023
Decision Details: Approved (subject to conditions)

Approved Drawing(s) and/or Document(s) (Subject to amendments as required by the conditions of the approval).

Copies of the following plans, specifications and/or drawings are enclosed.

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

Drawing or Document	Reference	Date
Site Plan	Generally in accordance with Austart Homes, unreferenced, not dated drawing as received as part of RPS Submission dated 10 July 2023 (Council document 1169471) and as amended by the conditions of the approval.	To be determined.

Drawing or Document	Reference	Date
Ground Floor Plan	Austart Homes, unreferenced, not dated drawing as received as part of RPS Submission dated 10 July 2023 (Council document 1169471).	10 July 2023
First Floor Plan	Austart Homes, unreferenced, not dated drawing as received as part of RPS Submission dated 10 July 2023 (Council document 1169471).	10 July 2023
Elevations	Austart Homes, unreferenced, not dated drawing as received as part of RPS Submission dated 10 July 2023 (Council document 1169471).	10 July 2023
Plans (Propose Food Preparation and Signage Device)	Austart Homes, unreferenced, not dated drawing as received as part of RPS Submission dated 10 July 2023 (Council document 1169471).	10 July 2023
Turn Path Assessment	Neon Consulting Drawing 021-2301-01-SK-0001, Revision A	5 May 2023

Note – The plans referenced above will require amending in order to comply with conditions of this Decision Notice.

Assessment Manager Conditions & Advices

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;
 - 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.

Car Parking

3. Prior to the issue of a Development Permit for Building Work, provide an amended plan to the satisfaction of the Chief Executive Officer that details:
 - a. Six (6) vehicle parking spaces including one (1) all abilities parking space. Parking spaces are to be designed and constructed in accordance with Australian Standard AS1428 -Design for Access and Mobility and Australian Standard AS 2890.1- Off Street Car Parking. The all abilities parking space is to be located in the southern parking area;

- b. Queuing for five (5) vehicles on the land with swept path alignment than enables passing vehicles on the western side of the queue. The vehicle lanes are to be marked on site;
 - c. One (1) vehicle waiting area north of server window, which may be considered as a car parking space under Condition 3a above. This parking / holding area must be designed so that a holding vehicle does not limit the movement of vehicles exiting the site;
 - d. Include a 2m wide pedestrian crossing from the southern parking area to the server window and a 2m wide pedestrian crossing from the server window to the dining areas/ amenities.
- 4. All parking, driveway and vehicular manoeuvring areas must be imperviously sealed, drained and line marked.
 - 5. No parking associated with the proposed use is permitted within the State Controlled Road (Captain Cook Highway).

Bicycle Parking

- 6. Provide two (2) secured, on-site bicycle parking in accordance with Table 10-1 of *AUSTROADS Guide to Traffic Engineering Practice Part 14 – Bicycles*. The bicycle parking area must be constructed prior to Commencement of Use.

External Works

- 7. Undertake the following works external to the land at no cost to Council:
 - a. Construct a two (2) metre wide concrete footpath to the Captain Cook Highway frontage in accordance with FNQROC Development Manual Standard Drawing S1035. The footpath alignment must have consideration for future connectivity with the existing footpath further to the south.
 - b. Erect no-standing signage either side of the entrance /exit points for the length of the road frontage

The external works outlined above constitute Operational Works. Such work must be constructed in accordance with the endorsed plan to the satisfaction of the Chief Executive Officer prior to Commencement of Use.

Note: the above works are not considered to be creditable or trunk related works in accordance with Section 145 of the *Planning Act 2016*.

Landscaping

- 8. The site must be landscaped in accordance with details included on a Landscaping Plan. The Landscaping Plan must show:
 - a. Deep planting of setback areas;
 - b. Species to have regard to Council's Planning Scheme Policy No.7 Landscaping.
 - c. The maintenance of suitable sight lines having regard to the movement of vehicles on and off the adjacent State-controlled road
 - d. 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

The landscape plan must be endorsed by the Chief Executive Officer. The approval and completion of all landscaping works must be undertaken in accordance with the endorsed plan prior to the Commencement of Use.

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

Lawful Point of Discharge

9. 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.

Refuse Storage

10. A refuse storage is required to service the site. The refuse bin enclosure must be roofed and bunded and fitted with a bucket trap to the satisfaction of the Chief Executive Officer.

Liquid Waste Disposal

11. Trade waste discharge to sewer must Council's Trade Waste Environmental Management Plan (TWEMP).

A report demonstrating that the facility complies with the TWEMP must be submitted to and be approved by Council prior to the issue of a Development Permit for Building Work.

The applicant must have all measures for pre-treatment installed prior to commencement of use.

Advertising Device/s

12. No advertising device is to be animated or have any moving parts. Advertising devices are only to be illuminated when the approved use is open for trade.

Lighting

13. 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.

ADVICE

1. This approval, granted under the provisions of the *Planning Act 2016*, shall lapse four (4) years from the day the approval takes effect in accordance with the provisions of Section 85 of the *Planning Act 2016*.
2. All building site managers must take all action necessary to ensure building materials and/or machinery on construction sites are secured immediately following the first potential cyclone warning and that relevant emergency telephone contacts are provided to Council officers, prior to commencement of works.
3. Supporting documentation outlining the required information for the Dewatering Report is attached to this Development Approval. Further information can be obtained from Council.
4. This approval does not negate the requirement for compliance with relevant Local Laws and statutory requirements.
5. Prior to operation of the food business, the operator must hold a current Food Licence issued by Council's Public Health Unit under the *Food Act 2006*. Every licensed food business is required to have a Food Safety Supervisor who has met specified competencies and is reasonably available at all times the business is operating. Contact the Council's Public Health Unit for further information.
6. For information relating to the *Planning Act 2016* log on to www.dsdmip.qld.gov.au. To access the FNQROC Development Manual, Local Laws and other applicable Policies log on to www.douglas.qld.gov.au.

Infrastructure Charges Notice

7. A charge levied for the supply of trunk infrastructure is payable to Council towards the provision of trunk infrastructure in accordance with the Infrastructure Charges Notice. The original Infrastructure Charges Notice will be provided under cover of a separate letter.

The amount in the Infrastructure Charges Notice has been calculated according to Council's Infrastructure Charges Resolution.

Please note that this Decision Notice and the Infrastructure Charges Notice are stand-alone documents. The *Planning Act 2016* confers rights to make representations and appeal in relation to a Decision Notice and an Infrastructure Charges Notice separately.

The amount in the Infrastructure Charges Notice is subject to index adjustments and may be different at the time of payment. Please contact the Development Assessment Team at council for review of the charge amount prior to payment.

The time when payment is due is contained in the Adopted Infrastructure Charges Notice.

Further Development Permits

Please be advised that the following development permits are required to be obtained before the development can be carried out:

- All Building Work
- All Operational Work

All Plumbing and Drainage Work must only be carried in compliance with the Queensland *Plumbing and Drainage Act 2018*.

Concurrence Agency Response

Concurrence Agency	Concurrence Agency Reference	Date	Doc ID
State Assessment and Referral Agency (SARA)	2307-35665 SRA	21 August 2023	1178263

Note – Concurrence Agency Response is attached. This Concurrence Agency Response maybe amended by agreement with the respective agency.


Currency Period for the Approval

This approval, granted under the provisions of the *Planning Act 2016*, shall lapse six (6) years from the day the approval takes effect in accordance with the provisions of Section 85 of the *Planning Act 2016*.

Rights to make Representations & Rights of Appeal

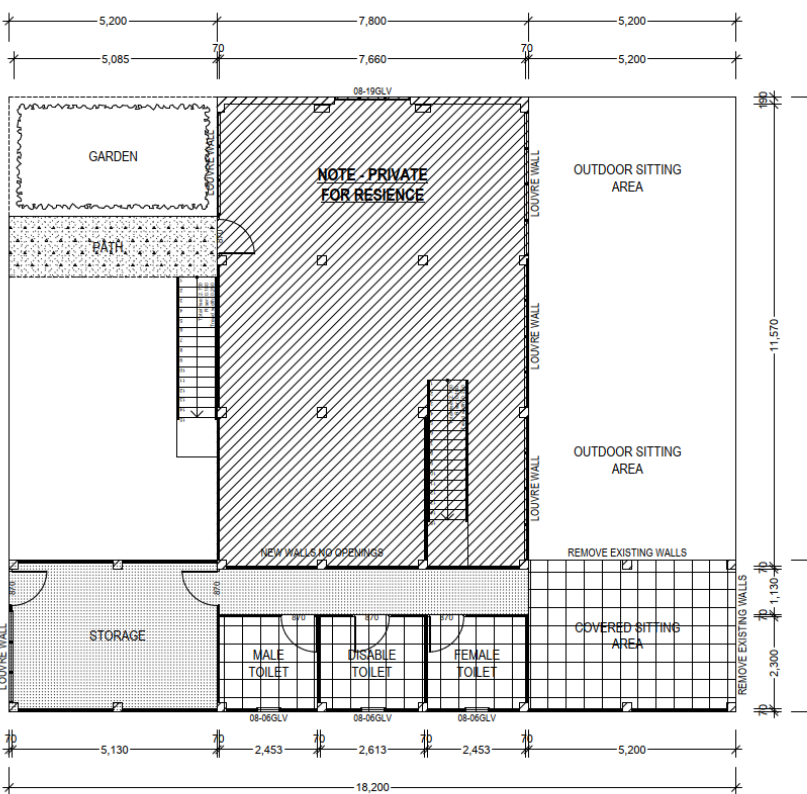
The rights of applicants to make representations and rights to appeal to a Tribunal or the Planning and Environment Court against decisions about a development application are set out in Chapter 6, Part 1 of the *Planning Act 2016*.

A copy of the relevant appeal provisions is attached.



ELEVATION KEY

North




West

East

South

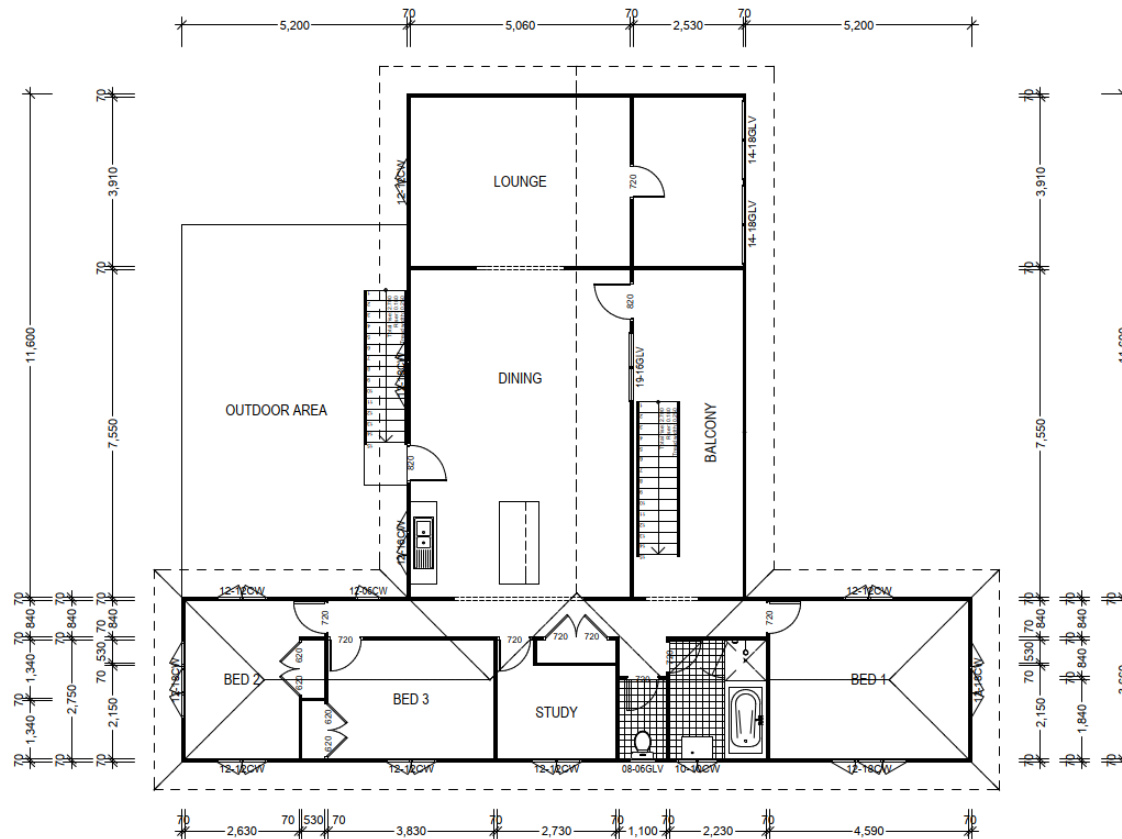
*NOTE - ALL GROUND FLOOR DOORS TO BE WHEELCHAIR SAFE

Ground Floor Plan

 <p>AUSTART HOMES <small>ABN: XXXXXXXXXX BLN: XXXXXXXX Address: XXXXXXXXXXXXXXXXXXXXXXXX Phone: XXXXXXXXXX Fax: XXXXXXXXXX</small></p>	<h2>GFL PLAN</h2>	<p>PHILL MATTHEWS - SKETCH - I CAPTAIN COOK HIGHWAY</p>	<p>Design:</p>	<p>Drawn By:</p>	<p>Amendments:</p>	
				<p>Facade:</p>	<p>Date:</p>	<p>Job Number:</p>
				<p>Inclusions:</p>	<p>Scale:</p>	<p>Sheet Number:</p>
				<p>1 : 100</p>	<p>000</p>	

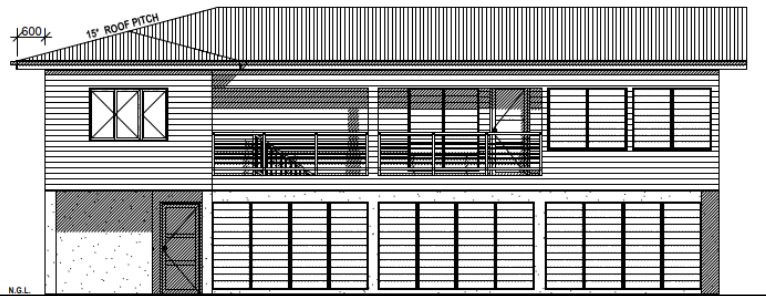
N.B. ALL WRITTEN DIMENSIONS TAKE PRECEDENCE OVER SCALED SIZES-THIS DESIGN IS THE EXCLUSIVE PROPERTY OF AUSTART HOMES AUSTRALIA Pty. Ltd.

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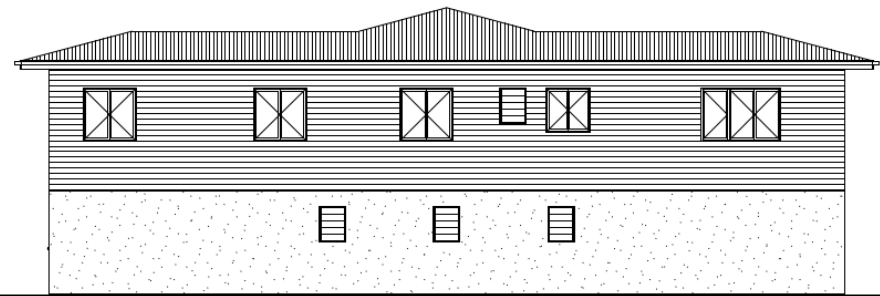


Existing Dwelling (No changes proposed)

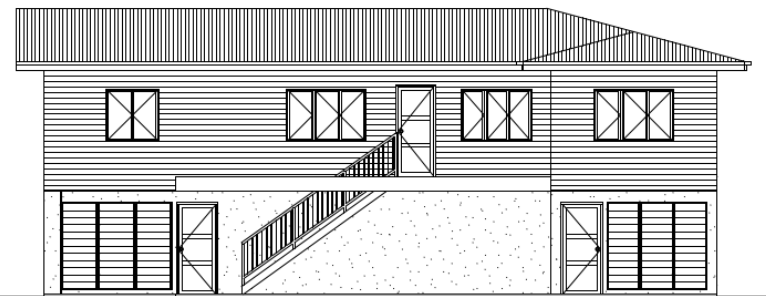
AUSTART HOMES AUSTART HOMES XXXXXXXXXX ABN: XXXXXXXXXX, BLN: XXXXXXXX Address : XXXXXXXXXXXXXXXXXXXXXXXXXXXX Phone: XXXXXXXXXX Fax: XXXXXXXXXX	FFL PLAN PHILL MATTHEWS - SKETCH - I CAPTAIN COOK HIGHWAY N.B. ALL WRITTEN DIMENSIONS TAKE PRECEDENCE OVER SCALED SIZES-THIS DESIGN IS THE EXCLUSIVE PROPERTY OF AUSTART HOMES AUSTRALIA Pty. Ltd.	Design: Facade: Inclusions:	Drawn By: Date: Scale: 1 : 100	Amendments: Job Number: 000 Sheet Number: 0 of 00
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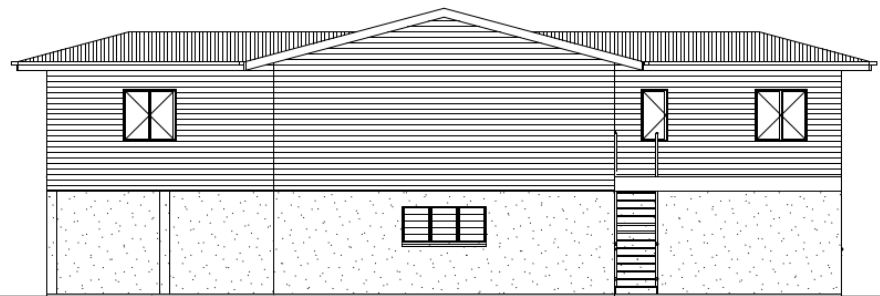
Elevation 1 - East



Elevation 2 - South



Elevation 3 - West



Elevation 4 - North



ELEVATIONS

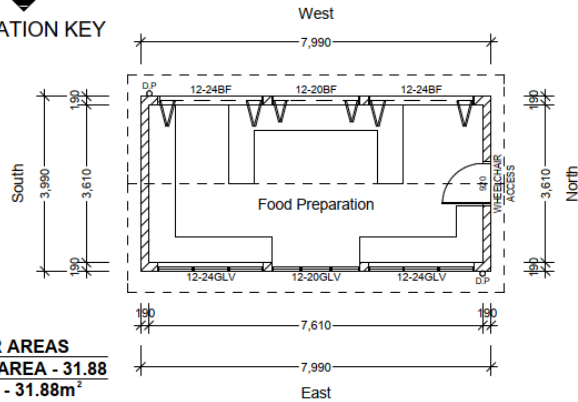
PHILL MATTHEWS - SKETCH - I
CAPTAIN COOK HIGHWAY

N.B. ALL WRITTEN DIMENSIONS TAKE PRECEDENCE OVER SCALED SIZES-THIS DESIGN IS THE EXCLUSIVE PROPERTY OF AUSTART HOMES AUSTRALIA Pty. Ltd.

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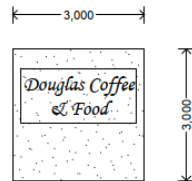


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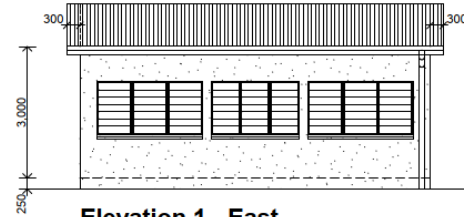


FLOOR AREAS
FOOD AREA - 31.88
TOTAL - 31.88m²
3.43 SQUARES

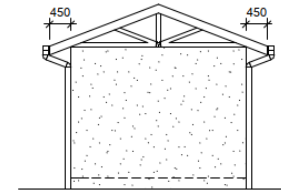
FLOOR PLAN



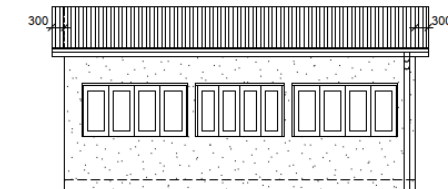
SIGN ELEVATION



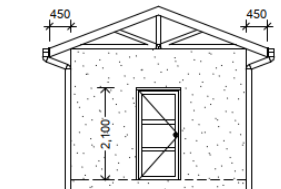
Elevation 1 - East



Elevation 2 - South



Elevation 3 - West



Elevation 4 - North

Proposed Food Preparation

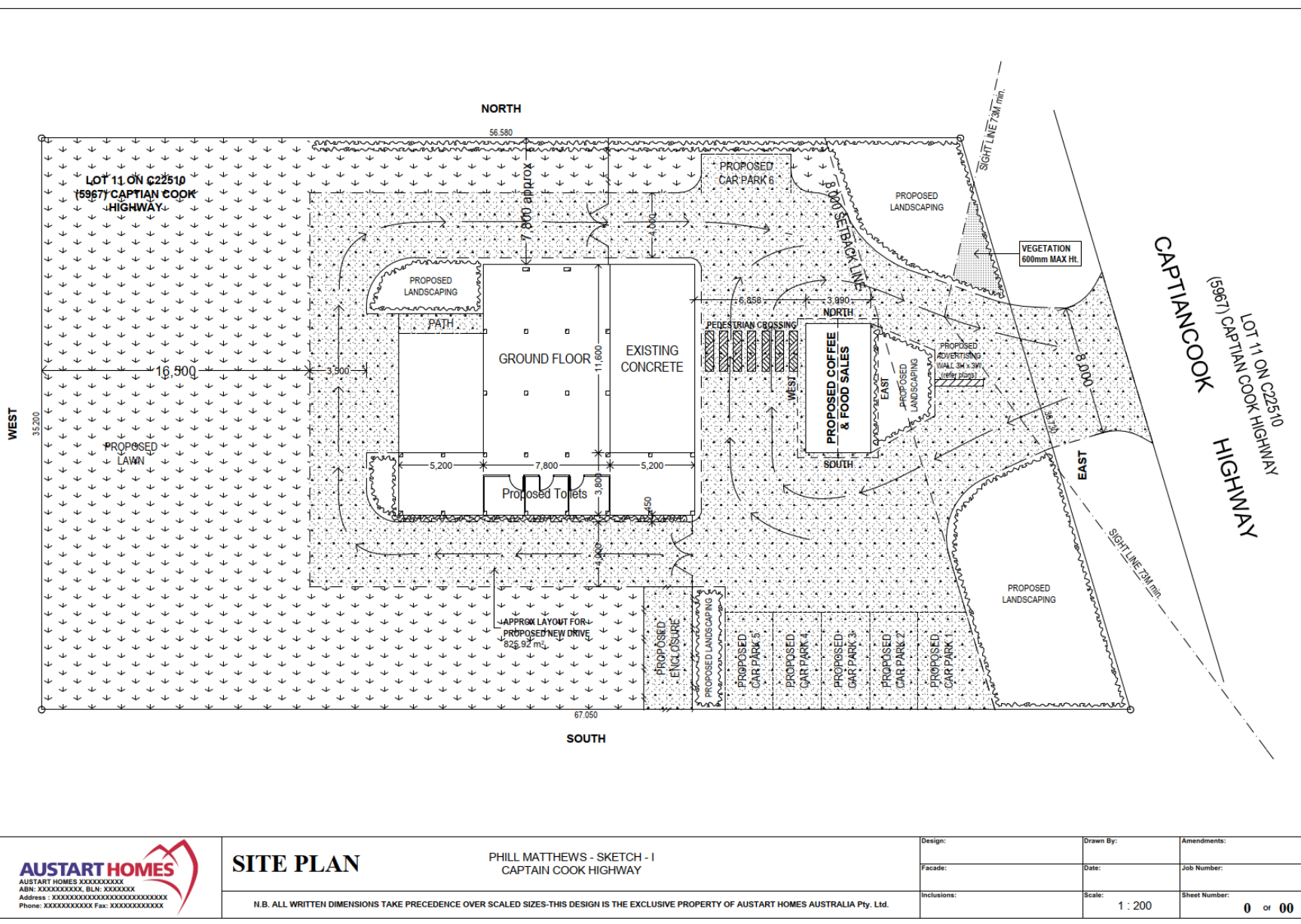


PLANS

PHILL MATTHEWS - SKETCH - I
CAPTAIN COOK HIGHWAY

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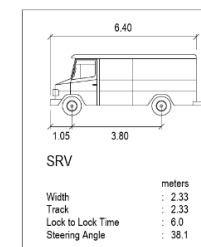
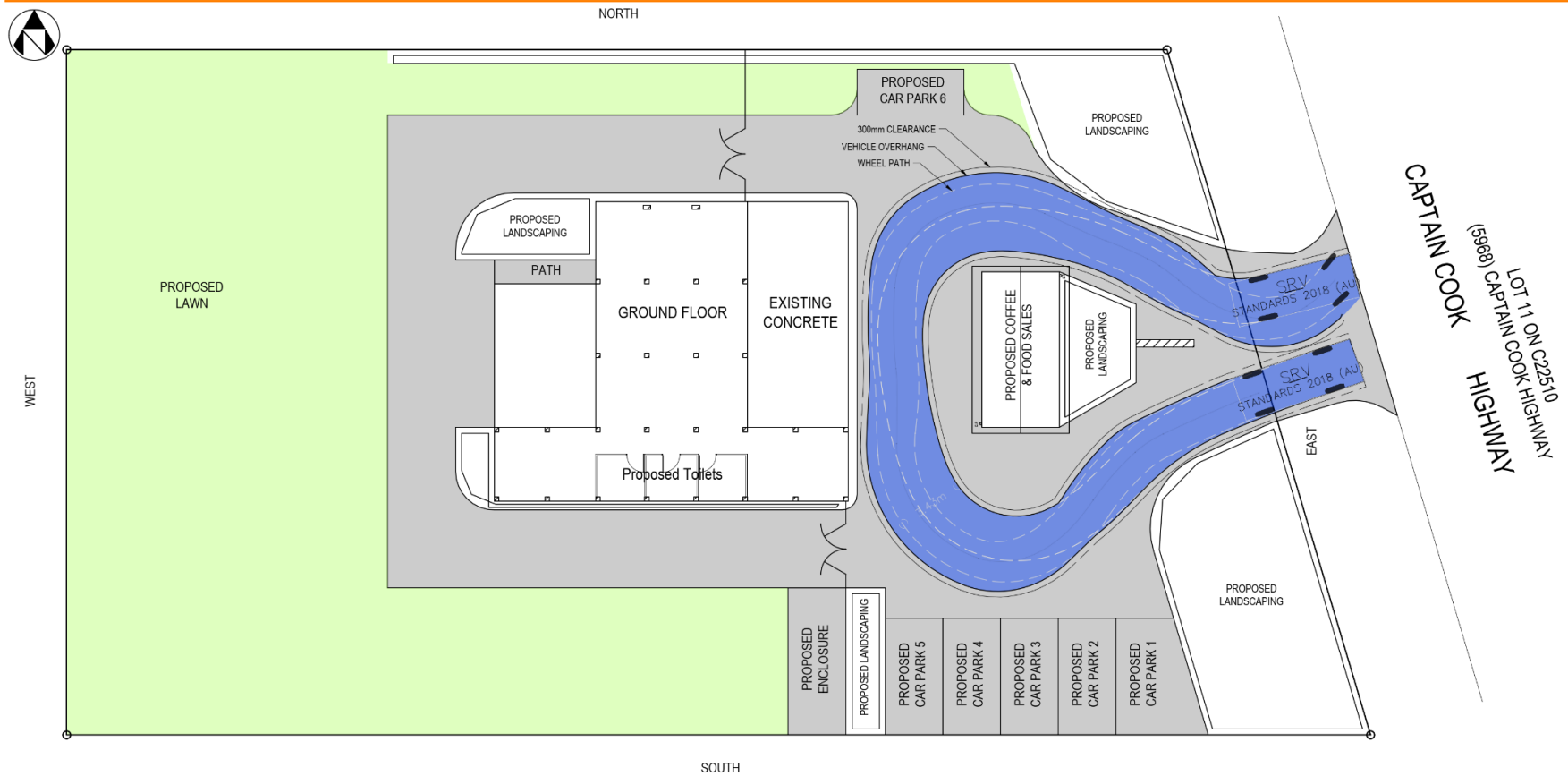
AUSTART HOMES
AUSTART HOMES XXXXXXXXXX
ABN: XXXXXXXXXX, BLN: XXXXXXXX
Address: XXXXXXXXXX
Phone: XXXXXXXXXX Fax: XXXXXXXXXX

SITE PLAN

PHILL MATTHEWS - SKETCH - I
CAPTAIN COOK HIGHWAY

N.B. ALL WRITTEN DIMENSIONS TAKE PRECEDENCE OVER SCALED SIZES-THIS DESIGN IS THE EXCLUSIVE PROPERTY OF AUSTART HOMES AUSTRALIA Pty. Ltd.

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Facade:	Date:	Job Number:
Inclusions:	Scale: 1 : 200	Sheet Number: 0 of 00



A 05.05.23 INITIAL ISSUE

Rev: 01 Date: 05.05.23 Revision: 01

05/05/2023 1:40:59 PM File: D:\Working\Drawings\0212301\01 Drawings\01 Drawings\01-2301-01-SK-0001.dwg



NEON
CONSULTING

AUSTART HOMES

5968 CAPTAIN COOK HIGHWAY

TURN PATH ASSESSMENT

Drawn: PAM Design: PAM Check: QAO Approved: QAO

Alt Tool Date (Date as shown)

021-2301-01-SK-0001

A

RA6-N



SARA reference: 2307-35665 SRA
Council reference: CA 2023_5398/1 (Doc ID 1165011)
Applicant reference: AU008658

21 August 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 –
5967 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 14 July 2023.

Response

Outcome:	Referral agency response – with conditions
Date of response:	21 August 2023
Conditions:	The conditions in Attachment 1 must be attached to any development approval.
Advice:	Advice to the applicant is in Attachment 2 .
Reasons:	The reasons for the referral agency response are in Attachment 3 .

Development details

Description:	Development permit	Material change of use for Food and drink outlet and Operational work for an Advertising device
SARA role:	Referral agency	

Attachment 5 — Approved plans and specifications

(page left intentionally blank – attached separately)

Attachment 4 — Change representation provisions

(page left intentionally blank – attached separately)

Attachment 3—Reasons for referral agency response

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

The reasons for the SARA decision are:

SARA has carried out an assessment of the development application against State code 1: Development in a state-controlled road environment of the SDAP, version 3.0 and has found that, with conditions, the proposed development complies with relevant performance outcomes in that:

- The proposed development is unlikely to compromise the safety, function, and efficiency of the Captain Cook Highway, a state-controlled road.
- The Captain Cook Highway is not identified as a limited access road at the location of the subject site.
- The proposed development is unlikely to impact the existing stormwater and drainage flows into the state-controlled road corridor.
- Required connections to council services, essential utilities and infrastructure for the proposed development can be obtained without impacting on the state-controlled road.
- The proposed application does not include noise sensitive development.

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
- *Human Rights Act 2019*

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.
Advertising device	
2.	<p>The Food & drink outlet is proposing 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><i>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.</i></p>
Further development permits required	
3.	<p>Road Works Approval</p> <p>Under section 33 of the <i>Transport Infrastructure Act 1994</i>, written approval is required from the Department of Transport and Main Roads to carry out road works.</p> <p>Please contact the Department of Transport and Main Roads 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 the Department of Transport and Main Roads as soon as possible to ensure that gaining approval does not delay construction.</p>

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)

No.	Conditions	Condition timing
Material change of use – Food and drink outlet		
Schedule 10, Part 9, Division 4, Subdivision 2, Table 4 — 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:		
Road works on a state-controlled road		
1.	<p>(a) Road works comprising the reinstatement of double barrier lines must be provided within the painted centre median adjacent to the approved road access location.</p> <p>(b) The road works must be designed and constructed in accordance with Department of Transport and Main Roads', Road Planning and Design Manual, 2nd Edition, November 2021, Volume 3 – Guide to Road Design.</p>	<p>(a) and (b): Prior to the commencement of use.</p>
Vehicular access to a state-controlled road		
2.	<p>(a) The road access location is to be located generally in accordance with TMR Layout Plan (20A – 59.83km), prepared by Queensland Government Transport and Main Roads, dated 11/08/2023, Reference TMR23-39839 (500-1640), Issue B.</p> <p>(b) Road access works comprising of a left in / left out vehicular property access, including any required signage, must be provided at the road access location.</p> <p>(c) The road access works must be designed and constructed in accordance with TMR Standard Rural Property Access Drawing, Sheets 1 & 2, Drawing No. 1807, Type B – Rural Property Access, dated 11/2021, and Revision B, as amended in red by SARA.</p>	<p>(a) At all times.</p> <p>(b) and (c): Prior to the commencement of use.</p>

enc Attachment 1 - Referral agency conditions
Attachment 2 - Advice to the applicant
Attachment 3 - Reasons for referral agency response
Attachment 4 - Change representation provisions
Attachment 5 - Approved plans and specifications

SARA triggers: Schedule 10, Part 9, Division 4, Subdivision 2, Table 4 (Planning Regulation 2017) – Material change of use of premises near a state transport corridor

SARA reference: 2307-35665 SRA

Assessment Manager: Douglas Shire Council

Street address: 5967 Captain Cook Highway, Craiglie

Real property description: Lot 11 on C22510

Applicant name: Peace World Pty Ltd

Applicant contact details: C/- RPS AAP Consulting Pty Ltd
PO Box 1949
CAIRNS QLD 4870
Patrick.Clifton@rpsgroup.com.au

State-controlled road access permit: This referral included an application for a road access location, under section 62A(2) of *Transport Infrastructure Act 1994*. Below are the details of the decision:

- Approved
- Reference: TMR23-039839 (500-1640)
- Date: 14 August 2023

If you are seeking further information on the road access permit, please contact the Department of Transport and Main Roads at Far.North.Queensland.IDAS@tmr.qld.gov.au.

Human Rights Act 2019 considerations: A consideration of the 23 fundamental human rights protected under the *Human Rights Act 2019* has been undertaken as part of this decision. It has been determined that this decision does not limit human rights.

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 Charlton Best, Senior Planning Officer, on 07 4037 3200 or via email CairnsSARA@dsdilgp.qld.gov.au who will be pleased to assist.

Yours sincerely



Leanne Simpson
Acting Manager (Planning)

cc Peace World Pty Ltd C/- Patrick Clifton, patrick.clifton@rpsgroup.com.au

Our ref TMR23-039839 (500-1640)
Your ref AU008658
Enquiries Ronald Kaden



14 August 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 road¹

Development application reference number CA 2023_5398/1, lodged with Douglas Shire Council involves constructing or changing a vehicular access between Lot 11C22510, 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
Peace World Pty Ltd
C/- RPS AAP Consulting Pty Ltd
PO Box 1949
Cairns QLD 4870

Application Details

Address of Property 5967 Captain Cook Highway, Craiglie QLD 4877
Real Property Description 11C22510
Aspect/s of Development Development Permit for Material Change of Use for Food and Drink Outlet

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 approximately 15 metres from the northern boundary of Lot 11C22510, in accordance with: 1. TMR Layout Plan (20A - 59.83km) Issue B 11/08/2023	At all times.
2	Direct access is prohibited between Captain Cook Highway and Lot 11C22510 at any other location other than the Permitted Road Access Location described in Condition 1.	At all times.
3	The use of the permitted road access location is to be restricted to:	At all times.

¹ Please refer to the further approvals required under the heading 'Further approvals'

Program Delivery and Operations
Far North Region
Cairns Corporate Tower, 15 Lake Street Cairns QLD 4870
PO Box 6185 Cairns QLD 4870

Telephone +61 7 (07) 4045 7151
Website www.tmr.qld.gov.au
Email Far.North.Queensland.IDAS@tmr.qld.gov.au
ABN: 39 407 690 291

No.	Conditions of Approval	Condition Timing
	a) Left-In, Left-Out vehicle movements only b) Design vehicles up to a maximum size Two Axle Truck (6.5m) - Class 3 Medium Length Heavy Vehicle** Note: ** as described in Austroads Vehicle Classification System	
4	Road Access Works comprising a rural property access must be provided at the permitted access location, generally in accordance with: a) Type B Property Access drawing prepared by Queensland Government dated 11/2021 reference 1807 (with additional notes).	Prior to the commencement of the use of the Road Access Works and to be maintained at all times.

Reasons for the decision

The reasons for this decision are as follows:

- a) Currently the subject site (Lot 11 on C22510) has road frontage and vehicle access via Captain Cook Highway, a state-controlled road.
- b) The proposed development is for a food and drink outlet with a drive-through facility.
- c) The proposed development is seeking a changed vehicular access to accommodate increased vehicle movements and changed vehicle types.
- d) The proposed development is seeking an 8m wide vehicular access at its narrowest point at the current vehicular access location.
- e) The existing vehicular access is located within the functional area of an intersection, approximately 50m from the Old Port Road intersection and situated at the commencement of the channelised right-turn (CHR) lane into Old Port Road.
- f) To ensure through traffic movements are not impacted and no new conflicts are introduced within CHR lane and the functional area of the Old Port Road intersection, the access is required to be restricted to left-in / left-out vehicular movements.
- g) The proposed development will require a changed access as there will be increased vehicle movements to the subject land.

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

1. There is no guarantee of the continuation of road access arrangements, as this depends on future traffic safety and efficiency circumstances.
2. 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.

3. 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 ron.p.kaden@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 A
Decision Evidence and Findings

Evidence or other material on which findings were based:

Title of Evidence / Material	Prepared by	Date	Reference no.	Version / Issue
TMR Layout Plan (20A - 59.83)	Queensland Government Transport and Main Roads	11 August 2023	TMR23-039839 (500-1640)	B
Rural Property Access (with additional notes)	Queensland Government	November 2021	1807	B
Turn Path Assessment	NEON Consulting	05 May 2023	021-2301-01-SK-0001	A
Vehicle Access to state-controlled roads policy	Queensland Government Transport and Main Roads	2019	-	-
5967 Captain Cook Highway, Craiglie - Material Change of Use (Food and Drink Outlet)	RPS	10 July 2023	AU008659	C

Attachment B
Section 70 of TIA

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

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

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.

Page 7 of 10

(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.

Properly Made Submissions

None.

Reasons for Decision

1. The reasons for this decision are:
 - a. Sections 60, 62 and 63 of the *Planning Act 2016*;
 - b. to ensure the development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme Version 1.0; and
 - c. 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 27 June 2023 under section 51 of the *Planning Act 2016* and Part 1 of the *Development Assessment Rules*;
 - b. the development application contained information from the applicant which Council reviewed together with Council's own assessment against the 2017 State Planning Policy and the 2018 Douglas Shire Planning Scheme Version 1.0 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 Industry 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 benchmarks.

Non-Compliance with Assessment Benchmarks

None. Through the conditions of the approval the development complies with the planning scheme and no concerns are raised.

Planning Act 2016
Chapter 3 Development assessment

[s 74]

Division 2 Changing development approvals

Subdivision 1 Changes during appeal period

74 What this subdivision is about

- (1) This subdivision is about changing a development approval before the applicant's appeal period for the approval ends.
- (2) This subdivision also applies to an approval of a change application, other than a change application for a minor change to a development approval.
- (3) For subsection (2), sections 75 and 76 apply—
 - (a) as if a reference in section 75 to a development approval were a reference to an approval of a change application; and
 - (b) as if a reference in the sections to the assessment manager were a reference to the responsible entity; and
 - (c) as if a reference in section 76 to a development application were a reference to a change application; and
 - (d) as if the reference in section 76(3)(b) to section 63(2) and (3) were a reference to section 83(4); and
 - (e) with any other necessary changes.

75 Making change representations

- (1) The applicant may make representations (*change representations*) to the assessment manager, during the applicant's appeal period for the development approval, about changing—
 - (a) a matter in the development approval, other than—
 - (i) a matter stated because of a referral agency's response; or

-
- (ii) a development condition imposed under a direction made by the Minister under chapter 3, part 6, division 2; or
 - (b) if the development approval is a deemed approval—the standard conditions taken to be included in the deemed approval under section 64(8)(c).
- (2) If the applicant needs more time to make the change representations, the applicant may, during the applicant's appeal period for the approval, suspend the appeal period by a notice given to the assessment manager.
- (3) Only 1 notice may be given.
- (4) If a notice is given, the appeal period is suspended—
- (a) if the change representations are not made within a period of 20 business days after the notice is given to the assessment manager—until the end of that period; or
 - (b) if the change representations are made within 20 business days after the notice is given to the assessment manager, until—
 - (i) the applicant withdraws the notice, by giving another notice to the assessment manager; or
 - (ii) the applicant receives notice that the assessment manager does not agree with the change representations; or
 - (iii) the end of 20 business days after the change representations are made, or a longer period agreed in writing between the applicant and the assessment manager.
- (5) However, if the assessment manager gives the applicant a negotiated decision notice, the appeal period starts again on the day after the negotiated decision notice is given.

76 Deciding change representations

- (1) The assessment manager must assess the change representations against and having regard to the matters that

- must be considered when assessing a development application, to the extent those matters are relevant.
- (2) The assessment manager must, within 5 business days after deciding the change representations, give a decision notice to—
- (a) the applicant; and
 - (b) if the assessment manager agrees with any of the change representations—
 - (i) each principal submitter; and
 - (ii) each referral agency; and
 - (iii) if the assessment manager is not a local government and the development is in a local government area—the relevant local government; and
 - (iv) if the assessment manager is a chosen assessment manager—the prescribed assessment manager; and
 - (v) another person prescribed by regulation.
- (3) A decision notice (a *negotiated decision notice*) that states the assessment manager agrees with a change representation must—
- (a) state the nature of the change agreed to; and
 - (b) comply with section 63(2) and (3).
- (4) A negotiated decision notice replaces the decision notice for the development application.
- (5) Only 1 negotiated decision notice may be given.
- (6) If a negotiated decision notice is given to an applicant, a local government may give a replacement infrastructure charges notice to the applicant.

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.

7 November 2023

Enquiries: Jenny Elphinstone
Our Ref: CA 2023_5398 (Doc ID 1192883)
Your Ref: AU008658

Administration Office
64 - 66 Front St Mossman
P 07 4099 9444
F 07 4098 2902

Peace World Pty Ltd
C/- RPS AAP Consulting Pty Ltd
PO Box 1949
CAIRNS QLD 4870

Email: Patrick.clifton@rpsgroup.com.au

Attention Mr Patrick Clifton

Dear Sir

**Adopted Infrastructure Charge Notice
For Development Application Material Change of Use for Food and drink outlet and
Operational work for an advertising device
At 5967 Captain Cook Highway Craiglie
On Land Described as Lot 11 on C22510**

Please find attached the Adopted Infrastructure Charges Notice issued in accordance with section 119 of the *Planning Act 2016*.

The amount in the Adopted Infrastructure Charges Notice has been calculated according to Council's Adopted Infrastructure Charges Resolution. While the calculation is normally limited to GFA. However, the Resolution also considers the application of the charge to outdoor, uncovered dining areas. The calculation is therefore based on the total dining / food preparation & storage area. The areas for the calculation are as follows:

Use Description	Area
Food Preparation Area	31.88m ²
Storage Area and corridor	28.57m ² .
Covered seating area	19.76m ²
Total GFA (without amenities)	80.21m²
Open Seating area	60.32m ²
Total dining / food preparation & storage area	140.53m²

Please also find attached extracts from the Act regarding the following:

- your right to make representations to Council about the Adopted Infrastructure Charges Notice; and
- your Appeal rights with respect to the Adopted Infrastructure Charges Notice.

Please quote Council's application number: CA 2023_5398 in all subsequent correspondence relating to this matter.

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

Yours faithfully

A handwritten signature in black ink, appearing to be 'P. Hoyer', with a small dot at the end.

For
Paul Hoyer
Manager Environment & Planning

encl.

- Adopted Infrastructure Charges Notice
- Rights to Make Representations and Appeals Regarding Infrastructure Charges

Adopted Infrastructure Charges Notice



2018 Douglas Shire Planning Scheme version 1.0 Applications

ADOPTED INFRASTRUCTURE CHARGES NOTICE

Peace World Pty Ltd DEVELOPERS NAME		N/A ESTATE NAME	0 STAGE
5967 Captain Cook Highway STREET No. & NAME		Craiglie SUBURB	Lot 11 on C22510 LOT & RP No.s
MCU Food and Drink Outlet and OW Advertising Device DEVELOPMENT TYPE		CA 2023_5398/1 COUNCIL FILE NO.	124 PARCEL No.
1192636 DSC Reference Doc. No.		1 VERSION No.	6 VALIDITY PERIOD (year)

Payment before commencement of use for MCU; and
Prior to signing and sealing of survey form for ROL

Infrastructure Charges as resolved by Council at the Ordinary Meeting held on 23 February 2021 (Came into effect on 1 March 2021)

	Charge per Use	\$ Rate	Floor area/No.	Amount	Amount Paid	Receipt Code & GL Code
Proposed Demand						
Commercial_retail	Food_and_drink_outlet_fast_food	\$_per_m2_GFA	173.57	140.53	\$24,391.79	
Residential	Dwelling_house	\$_per_3_or_more_bedroom_dwelling	25,314.98	1	\$25,314.98	
	Total Demand				\$49,706.77	
Credit						
<u>Existing land use</u>						
3 or more bedroom dwelling	1 lot	\$_per_3_or_more_bedroom_dwelling	25,314.98	1	\$25,314.98	
	Total Credit				\$25,314.98	

Prior arrangement for
online payment via
invoicing - see below.

Code 895
GL GL7500.135.825

Required Payment or Credit **TOTAL** **\$24,391.79**

Prepared by	J Elphinstone	31-Oct-23	Amount Paid
Checked by	R Taranto	31-Oct-23	Date Paid
Date Payable	MCU - prior to the commencement of use		
Amendments		Date	Receipt No.
			Cashier

Note:

The Infrastructure Charges in this Notice are payable in accordance with Sections 119 and 120 of the *Planning Act 2016* as from Council's resolution from the Ordinary Meeting held on 23 February 2021.

Charge rates under the Policy are subject to indexing.

Any Infrastructure Agreement for trunk works must be determined and agreed to prior to issue of Development Permit for Operational Work.

Charges are payable to: Douglas Shire Council. You can make payment at any of Council's Business Offices or by mail with your cheque or money order to Douglas Shire Council, PO Box 723, Mossman QLD 4873. Cheques must be made payable to Douglas Shire Council and marked 'Not Negotiable.' Acceptance of a cheque is subject to collection of the proceeds. Post dated cheques will not be accepted.

If you seek to pay online, please request an invoice to be issued via enquiries@douglas.qld.gov.au

Any enquiries regarding Infrastructure Charges can be directed to the Development & Environment, Douglas Shire Council on 07 4099 9444 or by email on enquiries@douglas.qld.gov.au

Subdivision 5 Changing charges during relevant appeal period

124 Application of this subdivision

This subdivision applies to the recipient of an infrastructure charges notice given by a local government.

125 Representations about infrastructure charges notice

- (1) During the appeal period for the infrastructure charges notice, the recipient may make representations to the local government about the infrastructure charges notice.
- (2) The local government must consider the representations.
- (3) If the local government—
 - (a) agrees with a representation; and
 - (b) decides to change the infrastructure charges notice;the local government must, within 10 business days after making the decision, give a new infrastructure charges notice (a *negotiated notice*) to the recipient.
- (4) The local government may give only 1 negotiated notice.
- (5) A negotiated notice—
 - (a) must be in the same form as the infrastructure charges notice; and
 - (b) must state the nature of the changes; and
 - (c) replaces the infrastructure charges notice.
- (6) If the local government does not agree with any of the representations, the local government must, within 10 business days after making the decision, give a decision notice about the decision to the recipient.
- (7) The appeal period for the infrastructure charges notice starts again when the local government gives the decision notice to the recipient.

126 Suspending relevant appeal period

- (1) If the recipient needs more time to make representations, the recipient may give a notice suspending the relevant appeal period to the local government.
- (2) The recipient may give only 1 notice.
- (3) If the representations are not made within 20 business days after the notice is given, the balance of the relevant appeal period restarts.
- (4) If representations are made within the 20 business days and the recipient gives the local government a notice withdrawing the notice of suspension, the balance of the relevant appeal period restarts the day after the local government receives the notice of withdrawal.

Division 3 Development approval conditions about trunk infrastructure

Subdivision 1 Conditions for necessary trunk infrastructure

127 Application and operation of subdivision

- (1) This subdivision applies if—
 - (a) trunk infrastructure—
 - (i) has not been provided; or
 - (ii) has been provided but is not adequate; and
 - (b) the trunk infrastructure is or will be located on—
 - (i) premises (the *subject premises*) that are the subject of a development application, whether or not the infrastructure is necessary to service the subject premises; or
 - (ii) other premises, but is necessary to service the subject premises.

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.