

SARA reference:2307-35665 SRACouncil 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	

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 <i>Transport Infrastructure Act 1994</i>. 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.
<i>Human Rights Act 2019</i> considerations:	A consideration of the 23 fundamental human rights protected under the <i>Human Rights Act 2019</i> 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

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

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				
<i>Plani</i> be th	edule 10, Part 9, Division 4, Subdivision 2, Table 4 — The chief executive ad ning Act 2016 nominates the Director-General of the Department of Transport e enforcement authority for the development to which this development app nistration and enforcement of any matter relating to the following conditions	ort and Main Roads to roval relates for the		
Road	d works on a state-controlled road			
1.	(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.	(a) and (b): Prior to the commencement of use.		
	(b) The road works must be designed and constructed in accordance with Department of Transport and Main Roads', Road Planning and Design Manual, 2 nd Edition, November 2021, Volume 3 – Guide to Road Design.			
Vehi	cular access to a state-controlled road			
2.	 (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. 	(a) At all times.		
	(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.	(b) and (c): Prior to the commencement of use.		
	(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.			

Attachment 2—Advice to the applicant

Gen	eral 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.
Adv	ertising device
2.	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.
	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.
Furt	her development permits required
3.	Road Works Approval
	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.
	Please contact the Department of Transport and Main Roads on 4045 7144 to make an application for road works approval.
	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).
	Please contact the Department of Transport and Main Roads as soon as possible to ensure that gaining approval does not delay construction.

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 4 — Change representation provisions

(page left intentionally blank - attached separately)

Attachment 5 — Approved plans and specifications

(page left intentionally blank – attached separately)

Our ref TMR23-039839 (500-1640) Your ref AU008658 Enguiries Ronald Kaden Queensland Government

Department of **Transport and Main Roads**

14 August 2023

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'

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.
- 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:

 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 <u>ron.p.kaden@tmr.qld.gov.au</u> 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:

Title of Evidence / Material	Prepared by	Date	Reference no.	Version / Issue
TMR Layout Plan (20A - 59.83)	Queensland Government Transport	11 August 2023	TMR23-039839 (500-1640)	В
	and Main Roads			
Rural Property Access (with additional notes)	Queensland Government	November 2021	1807	В
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	С

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

- 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.

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 Rules¹ regarding **representations about a referral agency response**

Part 6: Changes to the application and referral agency responses

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.²
- 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.

¹ Pursuant to Section 68 of the *Planning Act 2016*

² 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

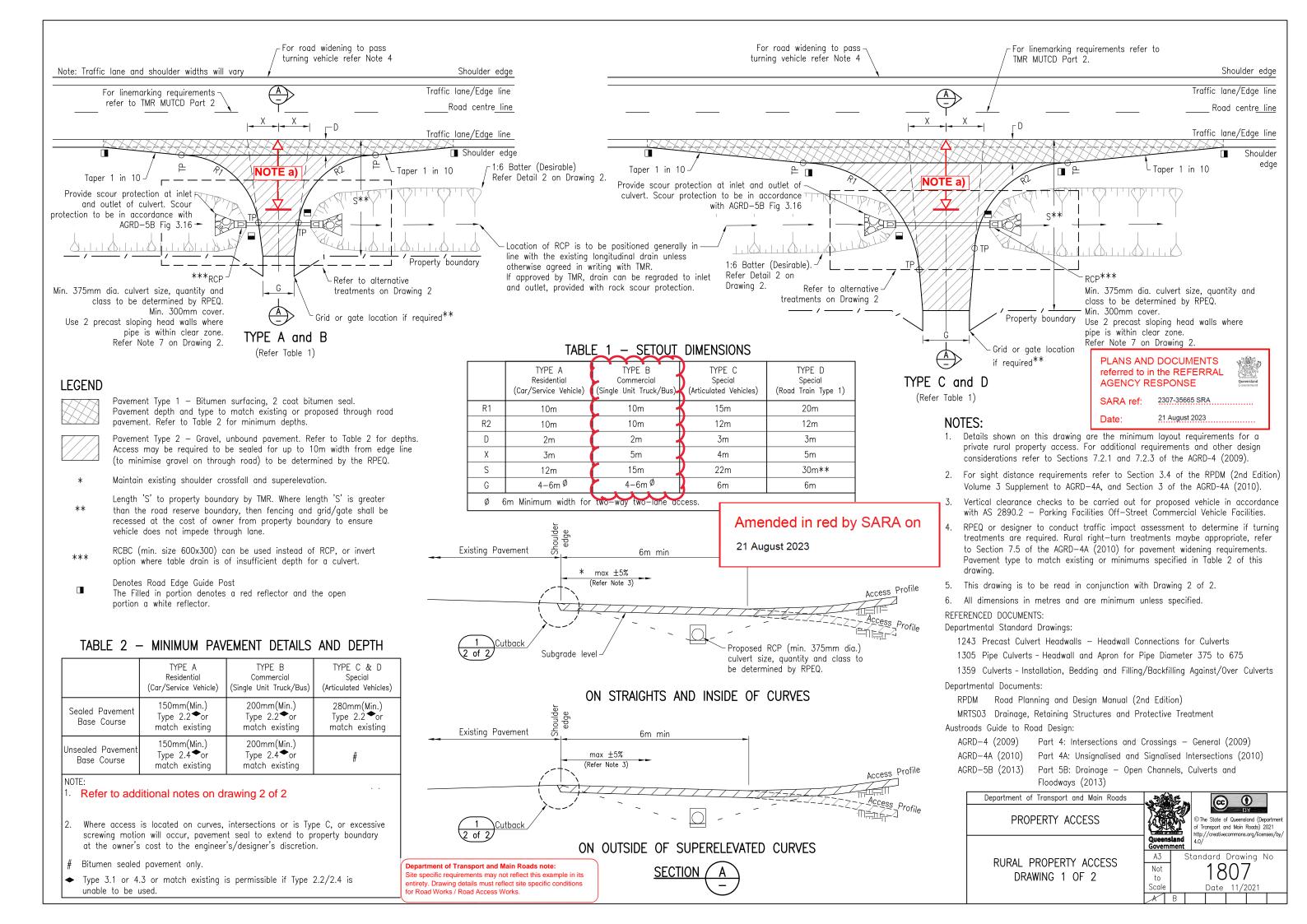
30 Representations about a referral agency response

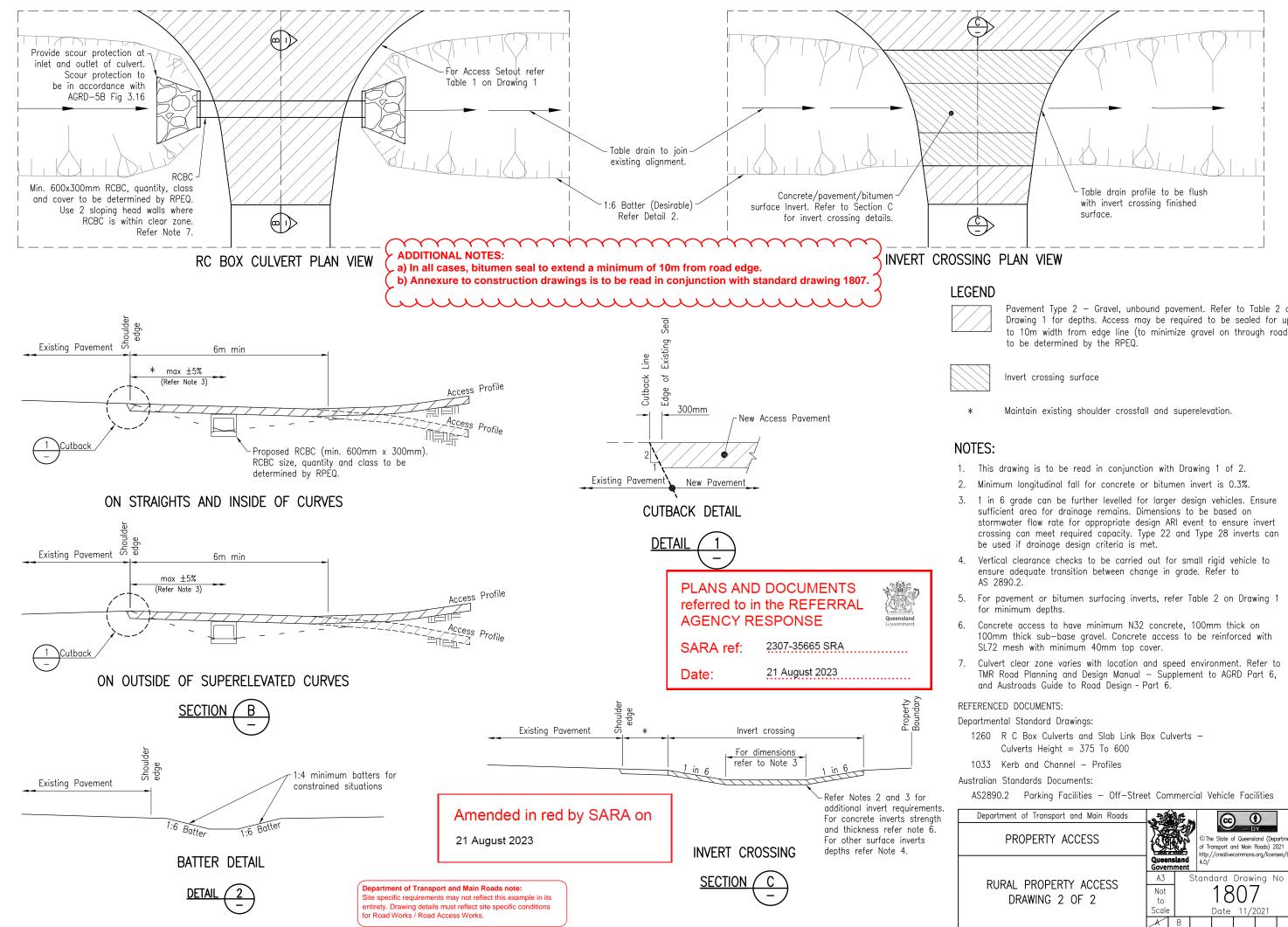
30.1. An applicant may make representations to a concurrence agency at any time before the application is decided, about changing a matter in the referral agency response.³

³ 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.

Pickson BioKson		referred to in AGENCY RE	DOCUMENTS the REFERRAL SPONSE
	14 1 14 14 14 14 14 14 14 14 14 14 14 14		21 August 2023
Permitted Road Access Location Approx 15m from the northern boundary of Lot 11C22510 GPS location x 145.467649, y -16.535872 Access Restrictions (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	Rada Access Junction Approx 50m south of Dickson St Tipts 59.83km		
0 30 metres Scale 1:600		ê ta S	tate of Cuerreland, 2010 Petrey Boxes Software Py Lita, 2011 © CR Limited, 2011
Branch/Unit : Corridor Management / Far North District Land parcels Subject land	TMR Layout Plan	Plan: 1 / 1	Queensland Government Transport and Main Roads
File ref: TMR23-039839 (500-1640)	(20A - 59.83km)	Issue: B Drawn by: RPK	Date: 11/08/2023

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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)

epartment of Transport and Main Roads		G.	
PROPERTY ACCESS			© The State of Queensland (Department of Transport and Main Roads) 2021 http://creativecommons.org/licenses/by/
	Queens Governm		4.0/
RURAL PROPERTY ACCESS	A3	S	tandard Drawing No
	Not		1807
DRAWING 2 OF 2	to		
	Scale		Date 11/2021
	A	В	