

5 October 2021

**Enquiries:** Daniel Lamond  
**Our Ref:** MCUI 2020\_3711/1 (1039662)  
**Your Ref:** 12526901-55512-2

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

Chiodo Corporation  
C/- GHD  
PO Box 930  
TOWNSVILLE QLD 4810

Dear Sir/Madam

**Development Application for Material Change of Use (Resort Complex)  
At 71-85 Port Douglas Road PORT DOUGLAS  
On Land Described as LOT: 1 SP: 150468**

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

Please quote Council's application number: MCUI 2020\_3711/1 in all subsequent correspondence relating to this development application.

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

Yours faithfully



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

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

- Decision Notice
  - Reasons for refusal
  - Submissions
  - Concurrence agency response
- Advice for making representations and appeals (Decision Notice)



## Decision Notice Refusal

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*Given under section 63 of the Planning Act 2016*

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### Applicant Details

Name:	Chiodo Corporation
Postal Address:	C/- GHD PO Box 930 TOWNSVILLE QLD 4810
Email:	Erin.Campbell@ghd.com

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### Property Details

Street Address:	71-85 Port Douglas Road PORT DOUGLAS
Real Property Description:	LOT: 1 SP: 150468
Local Government Area:	Douglas Shire Council

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### Details of Proposed Development

Development permit- Material Change of Use (Resort complex)

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### Decision

Date of Decision:	28 September 2021
Decision Details:	Refused

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### Reasons for Refusal

1. The proposal conflicts with Strategic Intent 3.2.2.2 Reinforcing Douglas Shire's Sense of Place and Identity as the Development represents an over-scaled and over development of the site that has little local context or character.
2. The proposal conflicts with Theme 4- Strong Communities and Identity from the Strategic Framework, in particular the proposal does not maintain the distinctive character and unique sense of place that represents Port Douglas.

3. The proposal conflicts with the Overall Outcomes of the Tourist Accommodation Zone Code;
  - a. The proposal is not of an appropriate scale; and
  - b. Does not achieve an attractive built form which incorporates the character of the site and surrounding area.
4. The proposal Conflicts with Performance Criteria P01 (Height) of the Tourist Accommodation Zone;
  - a. The height of the building and structures is not in keeping with the residential character of the area.
5. The proposal conflicts with the Performance Criteria P01 (Setbacks) of the Tourist Accommodation Zone;
  - a. The setbacks of the proposal do not maintain the character and amenity of the area;
6. The proposal conflicts with the Performance Criteria P02 (Site Coverage) of the Tourist Accommodation Zone;
  - a. The proportions and scale of the development are not in character with the area and local streetscape.
7. The proposal conflicts with the Performance Criteria P03 (Building proportions and scale) of the Tourist Accommodation Zone;
  - a. The proportions and scale of the development are not in character with the area and local streetscape.
8. The proposal conflicts with the Performance Criteria P07 of the Tourist Accommodation Zone;
  - a. The proposal adversely affects the tropical, tourist and residential character and amenity of the area in terms of traffic.
9. The proposal conflicts with the Performance Criteria P09 of the Tourist Accommodation Zone;
  - a. The tourist development does not include adequate ancillary services and facilities for the enjoyment of guests in terms of on-site car parking provision.
10. The proposal conflicts with the overall outcomes of the Landscape Values Overlay Code;
  - a. The development is not consistent with the prevailing landscape character of its setting as it is visually dominant and visually intrusive.
11. The proposal conflicts with the Performance Criteria P03 of the Landscape Values Overlay Code;
  - a. The proposal within a scenic route buffer and view corridor area does not minimise visual impacts on the setting and views in terms of the scale, height and setback of buildings.

12. The proposal conflicts with the overall outcomes of the Access, Parking and Service Code;
- The proposal provides insufficient car parking onsite.
  - The proposal conflicts with the preferred ultimate streetscape character and local character of the area.
13. The proposal conflicts with Performance Criteria PO1 of the Vehicle Parking and Access Code;
- The proposal provides insufficient car parking onsite.
14. The proposal conflicts with PO4 of the Transport Network Overlay Code;
- The application does not demonstrate that the development does not compromise the intended role and function or safety and efficiency of major transport corridors.
15. The proposal conflicts with the Performance Criteria P03 of the Multiple Dwelling, Short Term Accommodation and Retirement Facility Code;
- The proposal is not in keeping with the intended form and character of the local area and immediate streetscape and does not contribute to the modulation of built form.
16. The proposal conflicts with the Performance Criteria P014 of the Multiple Dwelling, Short Term Accommodation and Retirement Facility Code;
- The retaining wall does not facilitate casual surveillance to the street and public space enabling use of private open space and does not provide a positive interface to the streetscape.
17. The proposal conflicts with the overall outcomes of the Multiple Dwelling, Short Term Accommodation and Retirement Facility Code;
- The development is not compatible with and complementary to surrounding development, with regard to scale, bulk and streetscape patterns.
18. The development cannot be appropriately conditioned to overcome the non-compliance with the Strategic Framework or assessment benchmarks of the applicable codes.

### Concurrence Agency Response

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Concurrence Response	Reference	Date
SARA Response- Fairmont Resort Complex, Port Douglas	2101-20652 SRA	21 May 2021

**Note** – Concurrence Agency Response is attached.

## **Rights to make Representations & Rights of Appeal**

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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 are attached.

## Submissions

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There was 3 submissions made for this development application. No submissions received were properly made submissions.

Submitter	Residential or Business Address	Electronic Address
Douglas Shire Sustainability Group Inc  President – Didge McDonald	Not provided	<a href="mailto:sustainabilitydouglas@gmail.com">sustainabilitydouglas@gmail.com</a>
Steven DS King	Not provided	<a href="mailto:hayman_and_king@hotmail.com">hayman_and_king@hotmail.com</a>
Lyndon Ferry	Not provided	<a href="mailto:dorlynf@gmail.com">dorlynf@gmail.com</a>

The submissions received were all not properly made due to non-compliance with the statutory requirements for making a submission, however, the grounds for submission are summarised below.

Building height was the primary theme of concern across the submissions with the acceptable outcome of 13.5 metres and three (3) storeys being the main issue. The acceptable outcome itself does not represent the code requirement in its entirety, however it is considered that the proposal is non-compliant with the higher order code requirements such as the relevant performance outcomes and overall outcomes detailed in the report to Council for the 28 September 2021 Ordinary Council Meeting where the application was decided.

Concerns were also raised regarding the demand on Council's water and sewer network that the proposal will create. A development of this size is not unserviceable and an approval would include infrastructure charges levied to facilitate ongoing serviceability. Further, there was a particular concern raised with the amount of water needed to maintain the large scale landscaping component of the development. The development includes large stormwater retention tanks which store roof water for re-use in this application.

Greenhouse gas emissions associated with the construction processes for the development were raised as a concern, however, these are not planning considerations as planning schemes do not regulate construction materials to that end. There are components of the design which contribute to sustainable outcomes such as increased greenspace on the building to limit the need for mechanical cooling and the retention of stormwater falling on the site for re-use in gardens.

A concern with the oversupply of tourism development was also raised. The site is within the Tourist accommodation zone and the planning intent for the site and Port Douglas in general is for tourism development reflected within the strategic framework of the planning scheme and in the zone code.

# Concurrence Agency Response

RA6-N



SARA reference: 2101-20652 SRA  
Council reference: MCUI2020\_3711/1

21 May 2021

Chief Executive Officer  
Douglas Shire Council  
PO Box 723  
Mossman Qld 4873  
[enquiries@douglas.qld.gov.au](mailto:enquiries@douglas.qld.gov.au)

Attention: Mr Daniel Lamond

Dear Mr Lamond

## SARA response—Fairmont Resort Complex, Port Douglas

(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 on 20 January 2021.

### Response

Outcome:	Referral agency response – with conditions.
Date of response:	21 May 2021
Conditions:	The conditions in <b>Attachment 1</b> must be attached to any development approval.
Advice:	Advice to the applicant is in <b>Attachment 2</b> .
Reasons:	The reasons for the referral agency response are in <b>Attachment 3</b> .

### Development details

Description:	Development permit	Material Change of Use for a Resort Complex
SARA role:	Referral Agency	
SARA trigger:	Schedule 10, Part 9, Division 4, Subdivision 1, Table 1. Item .1 - Infrastructure - State transport infrastructure (Planning Regulation 2017)	
	Schedule 10, Part 9, Division 4, Subdivision 2, Table 4, Item 1 - State	

transport corridors and future state transport corridors

SARA reference: 2101-20652 SRA

Assessment Manager: Douglas Shire Council

Street address: 71-85 Port Douglas Road, Port Douglas

Real property description: Lot 1 on 1SP150468

Applicant name: Chiodo Corporation

Applicant contact details: PO Box 930  
Townsville QLD 4810  
[Erin.Campbell@ghd.com](mailto:Erin.Campbell@ghd.com)

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

- Approved
- Reference: TMR21-032012 (500-1509)
- Date: 31 March 2021

Further information on the road access permit can be obtained by contacting the Department of Transport and Main Roads at [Far.North.Queensland.IDAS@tmr.qld.gov.au](mailto:Far.North.Queensland.IDAS@tmr.qld.gov.au).

## Representations

An applicant may make representations to a referral 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 Danielle Harris, Principal Planner, on 3452 7654 or via email [DAAT@dsdmip.qld.gov.au](mailto:DAAT@dsdmip.qld.gov.au) who will be pleased to assist.

Yours sincerely



Steve Conner  
Executive Director

cc Chiodo Corporation, [Erin.Campbell@ghd.com](mailto:Erin.Campbell@ghd.com)

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
<b>Material change of use</b>		
The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of Department of Transport and Main Roads to be the enforcement authority for the development to which this development approval relates for the administration and enforcement of any matter relating to the following condition(s):		
1.	<p>(a) The development must provide at least one parking bay that is capable of accommodating a vehicle that is suitable for use by people with disabilities.</p> <p>(b) The parking bay required in part (a) of this condition must be in accordance with the following:</p> <ul style="list-style-type: none"> <li>Disability Standards for Accessible Public Transport 2002 - subsection 31(1) of the <i>Disability Discrimination Act 1992</i>;</li> <li>AS1428.1 – Design for Access and Mobility; and</li> <li>AS2890.6 – Parking Facilities, Part 6: Off-street parking for people with disabilities</li> <li>be sign posted with a passenger loading zone signs - R5-23 (passengers – 15 minute).</li> </ul>	(a) and (b) Prior to the commencement of use and to be maintained at all times
2.	<p>(a) The development must provide a private 'bus set down' facility and 'bus park' and be able to provide forward gear manoeuvring on site for a single unit ridged bus of 14.5m in length.</p> <p>(b) The private 'bus set down' required in part (a) of this condition must be in accordance with the <i>Disability Standards for Accessible Public Transport 2002</i> made under subsection 31(1) of the <i>Disability Discrimination Act 1992</i> and must include the following:</p> <ul style="list-style-type: none"> <li>capacity for 1 x single unit rigid bus of 14.5m in length with a bus bay length of 27m, width of 3m and departure length of 10m</li> <li>two (2) bus zone signs R5-20, one at either end of the private bus zone, in accordance with AS1742.11 – Manual of uniform traffic control devices, Part 11: Parking controls</li> <li>access and hardstand for waiting and boarding/alighting passengers.</li> </ul> <p>(c) The private 'bus park' required in part (a) of this condition must include the following:</p> <ul style="list-style-type: none"> <li>1 bus parking bay for a single minibus of 7m in length bus zone signs R5-20 in accordance with AS1742.11 – Manual of uniform traffic control devices, Part 11: Parking controls.</li> </ul>	(a) – (c) Prior to the commencement of use and to be maintained at all times
3.	(a) The development must be carried in accordance with Section	(a) At all times.

	<p>5.2 and 5.2.1 – Stormwater Management of the CIVIL ENGINEERING REPORT prepared by Northrop, DATE: 31.08.20, Ref: SY200372-CR01, Rev: 1.</p> <p>(b) Provide certification from a Registered Professional Engineer of Queensland certification, with supporting documentation, to <a href="mailto:far.north.queensland.idas@tmr.qld.gov.au">far.north.queensland.idas@tmr.qld.gov.au</a> within the Department of Transport and Main Roads, confirming that the development has been designed and constructed in accordance with part (a) of this condition.</p>	(b) Prior to the commencement of use.
4.	<p>(a) The existing vehicular property access located between Lot 1 on SP150468 and Port Douglas Road must be permanently closed and removed.</p> <p>(b) The table drain between the pavement edge and the property boundary must be reinstated in accordance with TMR's Road Planning and Design Manual and standard drawing at no cost to the Department of Transport and Main Roads'.</p>	Prior to the commencement of use
5.	<p>(a) The road access locations are to be located generally in accordance with TMR Layout Plan (6504 – 2.65km), prepared by Queensland Government Transport and Main Roads, DATE: 31/03/2021, File Ref: TMR21-32012 (500-1509), Issue: A.</p> <p>(b) Road access works comprising of the following must be provided at the road access locations:</p> <ul style="list-style-type: none"> <li>• a channelised right-turn treatment with a short turn slot (CHR(S)) and rural AUL(S) treatment with a short left-turn lane at the changed access; and</li> <li>• a sealed Type C - Rural Property Access at the new left-in / left-out access.</li> </ul> <p>(c) The road access works must be designed and constructed in accordance with Queensland Government Property Access Drawing and Austroads Guide to Road Design Part 4: Intersections and Crossings – General and Part 4A: Unsignalised and Signalised intersections, specifically:</p> <ul style="list-style-type: none"> <li>• Figure 8.3: Rural AUL(S) treatment with a short left-turn lane;</li> <li>• Figure A 29: Channelised right-turn treatment with a short turn slot (CHR(S)) on a two-lane rural road; and</li> <li>• Standard Drawing No1807, Type C - Rural Property Access, Date 07/2020.</li> </ul>	<p>(a) At all times.</p> <p>(b) and (c) Prior to the commencement of use.</p>

## Attachment 2—Advice to the applicant

General advice	
1.	Terms and phrases used in this document are defined in the Planning Act 2016 its regulation or the State Development Assessment Provisions (SDAP) [v2.6]. If a word remains undefined it has its ordinary meaning.
Advertising devices	
2.	<p>Advertising advice should be obtained from the Department of Transport and Main Roads (DTMR) if the development intends to include the erection, alteration or operation of an advertising sign or another advertising device that would be visible from a state-controlled road, and beyond the boundaries of the state-controlled road, and reasonably likely to create a traffic hazard for the state-controlled road.</p> <p>Note: DTMR has powers under section 139 of the 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 that it creates a danger to traffic.</p>
Transport noise corridor	
3.	<p>Mandatory Part (MP) 4.4 of the Queensland Development Code (QDC) commenced on 1 September 2010 and applies to building work for the construction or renovation of a residential building in a designated transport noise corridor. MP4.4 seeks to ensure that the habitable rooms of Class 1, 2, 3 and 4 buildings located in a transport noise corridor are designed and constructed to reduce transport noise. Transport noise corridor means land designated under Chapter 8B of the Building Act 1975 as a transport noise corridor. Information about transport noise corridors is available at state and local government offices.</p> <p>A free online search tool can be used to find out whether a property is located in a designated transport noise corridor. This tool is available at the State Planning Policy Interactive Mapping System website: <a href="https://spp.dsdip.esriaustraliaonline.com.au/geoviewer/map/planmaking">https://spp.dsdip.esriaustraliaonline.com.au/geoviewer/map/planmaking</a> and allows searches on a registered lot number and/or property address to determine whether and how the QDC applies to the land. Transport Noise Corridors are located under Information Purposes within Transport Infrastructure of the State Planning Policy (SPP) mapping system.</p>
Road works approval	
	<p>In accordance with section 33 of the <i>Transport Infrastructure Act 1994</i> (TIA), an applicant must obtain written approval from Department of Transport and Main Roads (DTMR) to carry out road works, including road access works on a state-controlled road. Please contact DTMR on 4045 7144 to make an application under section 33 of the TIA to carry out road works. 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>The road works approval process takes time – please contact Transport and Main Roads as soon as possible to ensure that gaining approval does not delay construction.</p>

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

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

**The reasons for the department's decision are:**

- The proposed development will not impact upon safety and efficiency of the state-controlled road
- The proposed development has been conditioned to ensure the construction of the development will not impact the state-controlled road
- The proposed development complies with State Development Assessment Provisions (SDAP) Version 2.6 – State code 1: Development in a state-controlled road environment and State code 6: Protection of State transport networks.

**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 2.6), as published by the department
- The Development Assessment Rules
- SARA DA Mapping system.

## **Attachment 4—Change representation provisions**

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## **Attachment 5—Approved plans and specifications**

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Our ref TMR21-032012 (500-1509)  
Your ref  
Enquiries Ronald Kaden



Department of  
**Transport and Main Roads**

31 March 2021

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

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

Development application reference number MCUI2020\_3711/1, lodged with Douglas Shire Council involves constructing or changing a vehicular access between Lot 1SP150468, the land the subject of the application, and Port Douglas Road (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 Chiodo Corporation Operations Pty Ltd  
C/- GHD  
PO Box 930  
Townsville QLD 4810

### **Application Details**

Address of Property 71-85 Port Douglas Road, Port Douglas QLD 4877  
Real Property Description 1SP150468  
Aspect/s of Development Material Change of Use for Development Permit for Tourist Resort

### **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	<b>Resort Access</b> The permitted road access location is approximately 80 metres from the southern boundary of Lot 1SP150468, in accordance with: 1. TMR Layout Plan (6504 - 2.65km) Issue A 31/03/2021	At all times.
2	The use of the permitted road access location is to be restricted to: a) Design vehicles up to a maximum size Three axle truck or bus - Class 4 Medium Length (up to 14.5m) Heavy Vehicle**	At all times.

<sup>1</sup> 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](http://www.tmr.qld.gov.au)  
Email [Far.North.Queensland.IDAS@tmr.qld.gov.au](mailto:Far.North.Queensland.IDAS@tmr.qld.gov.au)  
ABN: 39 407 690 291



No.	Conditions of Approval	Condition Timing
	Note: ** as described in Austroads Vehicle Classification System	
3	Road access works comprising a Channelised right-turn treatment (short) and auxiliary left-turn lane treatment (short) must be provided at the permitted access location, generally in accordance with: <ul style="list-style-type: none"> <li>Austroads Guide to Road Design Part 4, Figure A 29: CHR(S), and</li> <li>Austroads Guide to Road Design Part 4A, Figure 8.3, (AUL)S</li> </ul>	Prior to commencement of use
4	<b>Service Vehicle Access</b> The permitted road access location is approximately 10 metres from the northern boundary of Lot 1SP150468, in accordance with: 1. TMR Layout Plan (6504 - 2.65km) Issue A 31/03/2021	At all times.
5	The use of the permitted road access location is to be restricted to: <ol style="list-style-type: none"> <li>Left-In, Left-Out vehicle movements only,</li> <li>Design vehicles up to a maximum size Four axle articulated or rigid vehicle &amp; trailer - Class 7 Long (up to 19.0m) Heavy Vehicle**</li> </ol> <p>Note: ** as described in Austroads Vehicle Classification System</p>	At all times.
6	Road Access Works comprising a rural property access must be provided at the permitted road access location, generally in accordance with; <ol style="list-style-type: none"> <li>Type C Property Access drawing prepared by Queensland Government dated 07/2020 reference 1807 Issue A (with bitumen seal amendments).</li> </ol>	Prior to commencement of use
7	<b>No additional access</b> Direct access is prohibited between Port Douglas Road and Lot 1SP150468 at any other location other than the permitted road access location described in Conditions 1 and 4.	At all times.
8	<b>Removal of existing works</b> The existing road access works situated approximately 50 metres from the northern boundary of Lot 1SP150468 (approximately 170m south of Mirage Roundabout) must be removed and all kerb and channel/ table drain/ footpath reinstated between the pavement edge and the property boundary in accordance with TMR's Road Planning and Design Manual and standard drawings.	Prior to commencement of use

#### Reasons for the decision

The reasons for this decision are as follows:

- Currently the subject site (Lot 1 on SP150468) has road frontage and vehicle access via Port Douglas Road, a state-controlled road.

- b) The applicant intends to remove the existing access and create two independent access locations, one for resort guests and the other for service vehicles.
- c) The proposed development will be increasing traffic generation and will require a changed vehicle access between Lot 1 on SP150468 (the subject site) and Port Douglas Road.
- d) Therefore, a decision under section 62 of the Act is required as no prior approval for road access location is evidenced.

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. 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, Mr Ronald Kaden, Technical Officer (Development Control) should be contacted by email at [ron.p.kaden@tmr.qld.gov.au](mailto:ron.p.kaden@tmr.qld.gov.au) or on (07) 4045 7151.

Yours sincerely



Peter McNamara  
**Principal 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 (6504 - 2.65km)	Queensland Government Transport and Main Roads	31 March 2021	TMR21-32012 (500-1509)	A

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

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

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

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

Maximum penalty—200 penalty units.

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

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

*Transport Infrastructure Act 1994*  
Chapter 16 General provisions

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**485 Internal review of decisions**

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

**485B Appeals against decisions**

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

(b) a person appeals to the Planning and Environment Court against a decision under the Planning Act on the planning application.

(5) The court may order—

(a) the appeals to be heard together or 1 immediately after the other; or

(b) 1 appeal to be stayed until the other is decided.

(6) Subsection (5) applies even if all or any of the parties to the appeals are not the same.

(7) In this section—

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

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



### **31 Applying for review**

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

### **32 Stay of operation of original decision**

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



(8) The making of an application does not affect the original decision, or the carrying out of the original decision, unless it is stayed.

(9) In this section—

*relevant entity* means—

(a) if the reviewed decision may be reviewed by QCAT—QCAT; or

(b) if the reviewed decision may be appealed to the appeal court—the appeal court.

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

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

(a) if a decision notice is given to the person—28 days after the notice was given to the person; or

(b) if the chief executive is taken to have confirmed the decision under section 34(5)—56 days after the application was made.

(2) However, if—

(a) the decision notice did not state the reasons for the decision; and

(b) the person asked for a statement of the reasons within the 28 days mentioned in subsection (1)(a);

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

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

# Development Assessment Rules—Representations about a referral agency response

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

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

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

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

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

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

## Part 7: Miscellaneous

### 30 Representations about a referral agency response

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

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

Planning Act 2016  
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[s 74]

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## **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) 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.