

24 July 2018

Enquiries: Jenny Elphinstone Tel: 07 4099 9482  
Our Ref: 43/ 2592/2018 (Doc ID 863779)  
Your Ref: 59 Front St – Dance School

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

V Petruszewski & R R Petruszewski  
PO Box 329  
MOSSMAN QLD 4873

Dear Sir/Madam

**DEVELOPMENT APPLICATION FOR MATERIAL CHANGE OF USE FOR COMMUNITY  
FACILITIES ACTIVITY (EDUCATIONAL ESTABLISHMENT - DANCE SCHOOL)  
AT 59 FRONT STREET MOSSMAN  
ON LAND DESCRIBED AS LOT 9 ON RP707030**

Council refers to the above Development Application with Council on the 12 April 2018.

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

Please quote Council's application number: MCUC 2592/2018 in all subsequent correspondence relating to this development application. Should you require any clarification regarding this, please contact Jenny Elphinstone on telephone 07 4099 9482.

Yours faithfully

  
**PAUL HOYE**  
Manager Sustainable Communities

cc. Cairns SARA

encl.

- Decision Notice
- Schedule 1 – Concurrence Agency Conditions
- Schedule 2 - Approved drawing(s) and/or document(s)
- Schedule 3 – Applicant's right to make representations and rights of appeal.

**DOUGLAS SHIRE COUNCIL**  
**DECISION NOTICE — APPROVAL (WITH CONDITIONS)**  
**(GIVEN UNDER SECTION 63 OF *THE PLANNING ACT 2016*)**

Council refers to your development application detailed below which was properly made on the 12 April 2018. Please be aware that Douglas Shire Council has assessed your application and decided it as follows:

**1. Applicant's details**

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Name: V Petruszewski & R R Petruszewski  
Postal Address: PO Box 329  
MOSSMAN QLD 4873

**2. Location details**

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Street Address: 59 Front Street MOSSMAN  
Real Property Description: LOT: 9 RP: 707030  
Assessment Manager: Douglas Shire Council

**3. Details of proposed development**

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Material change of use for Community Facilities Activity (Educational Establishment – Dance School).

**4. Decision**

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Date of decision: 24 July 2018  
Decision details: Approved in full with conditions..

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

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

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

**B. ASSESSMENT MANAGER CONDITIONS AND ADVICES**

The approval is subject to the following conditions and advices

### **Assessment Manager Conditions**

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

Except where modified by these conditions of approval

### **Timing of Effect**

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

### **Availability of Parking Areas**

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

### **Line Marking of Car Parking Area**

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

### **Damage to Council Infrastructure**

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

### **Protection of Landscaped Areas from Parking**

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

### **Bicycle Parking**

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

### **Lighting**

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

### **Storage of Machinery and Plant**

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

### **Landscaping Areas**

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

### **Lawful Point of Discharge**

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

### **Advertising Signage**

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

### **Crime Prevention Through Environmental Design**

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

### **Advices**

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

### **LAND USE DEFINITIONS\***

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

Column 1 Use	Column 2 Definition	Column 3 Examples	Column 4 Does not include the include following examples
Educational establishment	<p>Premises used for training and instruction designed to impart knowledge and develop skills.</p> <p>The use may include outside hours school care for students or on-site student accommodation.</p>	Pre-preparatory, preparatory and primary school, secondary school, special education, college, university, technical institute, outdoor education centres.	Child care centre, home based child care, family day care.

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

### **Referral Agency Conditions**

The Queensland Department of State Development, Manufacturing, Infrastructure and Planning, a referral agency, has issued a Decision (DSDMIP Reference 1805-5146 SRA, Council electronic reference document ID: 857741) requiring conditions to be applied to the approval. Refer to Schedule 1.

### **C. Further Permits**

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

### **D. Currency period for the approval**

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

### **E. Reasons for Decision**

The reasons for this decision are:

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

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

## **5. Properly made submissions**

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Not applicable — No part of the application required public notification.

## **6. Rights to make representations and 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*.

Schedule 3 includes extracts from the Development Assessment Rules and the *Planning Act 2016* that sets down these rights.

## SCHEDULE 1 —CONCURRENCE AGENCY CONDITIONS

RAM: N



Department of  
State Development,  
Manufacturing,  
Infrastructure and Planning

Our reference: 1605-5146 SRA  
Your reference: MCUC 2592/2018

29 May 2018

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

Attention: Jenny Elphinstone

Dear Sir/Madam

**Referral agency response—with conditions**  
(Given under section 55 of the *Planning Act 2016*)

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

### Applicant details

Applicant name:	V Petruszewski and RR Petruszewski
Applicant contact details:	PO Box 329 Mossman QLD 4873 <a href="mailto:vrpetrus@bigpond.com">vrpetrus@bigpond.com</a>

### Location details

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

### Application details

Development permit	Material change of use for Community Facilities (Educational Establishment - Dance School)
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Page 1 of 6

Far North Queensland regional office  
Ground floor, Cnr Graham and Harley  
Street, Cairns  
PO Box 2359, Cairns QLD 4870

**Referral triggers**

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

- 10.9.4.2.4.1 State transport corridors and future State transport corridors

**Conditions**

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

**Reasons for decision to impose conditions**

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

**Advice to the assessment manager**

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

**Approved plans and specifications**

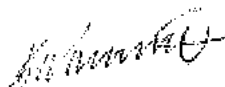
The department requires that the plans and specifications set out below and enclosed must be attached to any development approval.

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

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

For further information please contact Tony Croke, Principal Planner, on 40373205 or via email [CaïmsGARA@dsdmip.qld.gov.au](mailto:CaïmsGARA@dsdmip.qld.gov.au) who will be pleased to assist.

Yours sincerely



Brett Nancarrow  
Manager (Planning)

cc V Petruszewski and RR Petruszewski, [vpetrus@bgpono.com](mailto:vpetrus@bgpono.com)

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



## Attachment 1—Conditions to be imposed

No.	Conditions	Condition timing
<b>Material change of use</b>		
<p><b>Schedule 10, Part 9, Division 4, Subdivision 2, Table 4, Item 1: State transport corridors and future State transport corridors</b>—The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of the <b>Department of Transport and Main Roads</b> 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):</p>		
1.	The road access location, is to be located is approximately 10 metres from the northern boundary of Lot 9 on RP707030, and approximately 70m south of Johnston Road in accordance with TMR Layout Plan (20A-74.33km), prepared by Queensland Government Transport and Main Roads, dated 18/05/2018, reference TMR18-24557 (500-1262) and issue A.	At all times
2.	Direct access is not permitted between Captain Cook Highway (Front Street) and the subject site at any location other than the permitted road access location described in condition 1.	At all times

**Attachment 2—Reasons for decision to impose conditions**

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The reasons for this decision are:

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

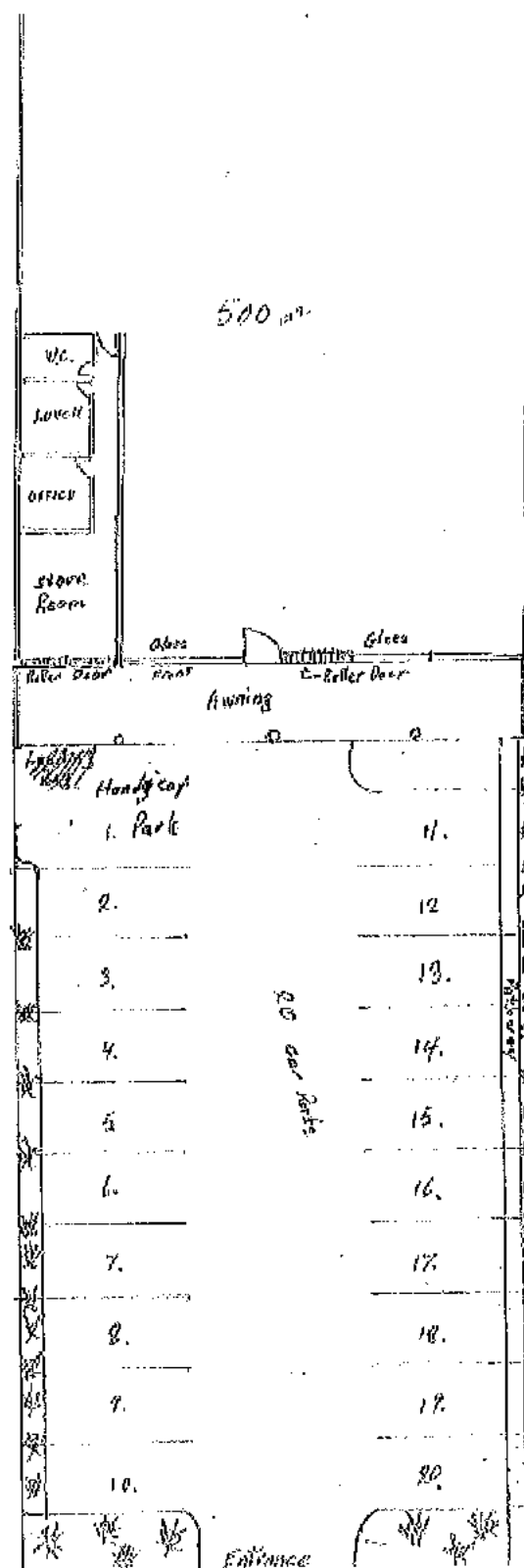
## Attachment 3—Advice to the assessment manager

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

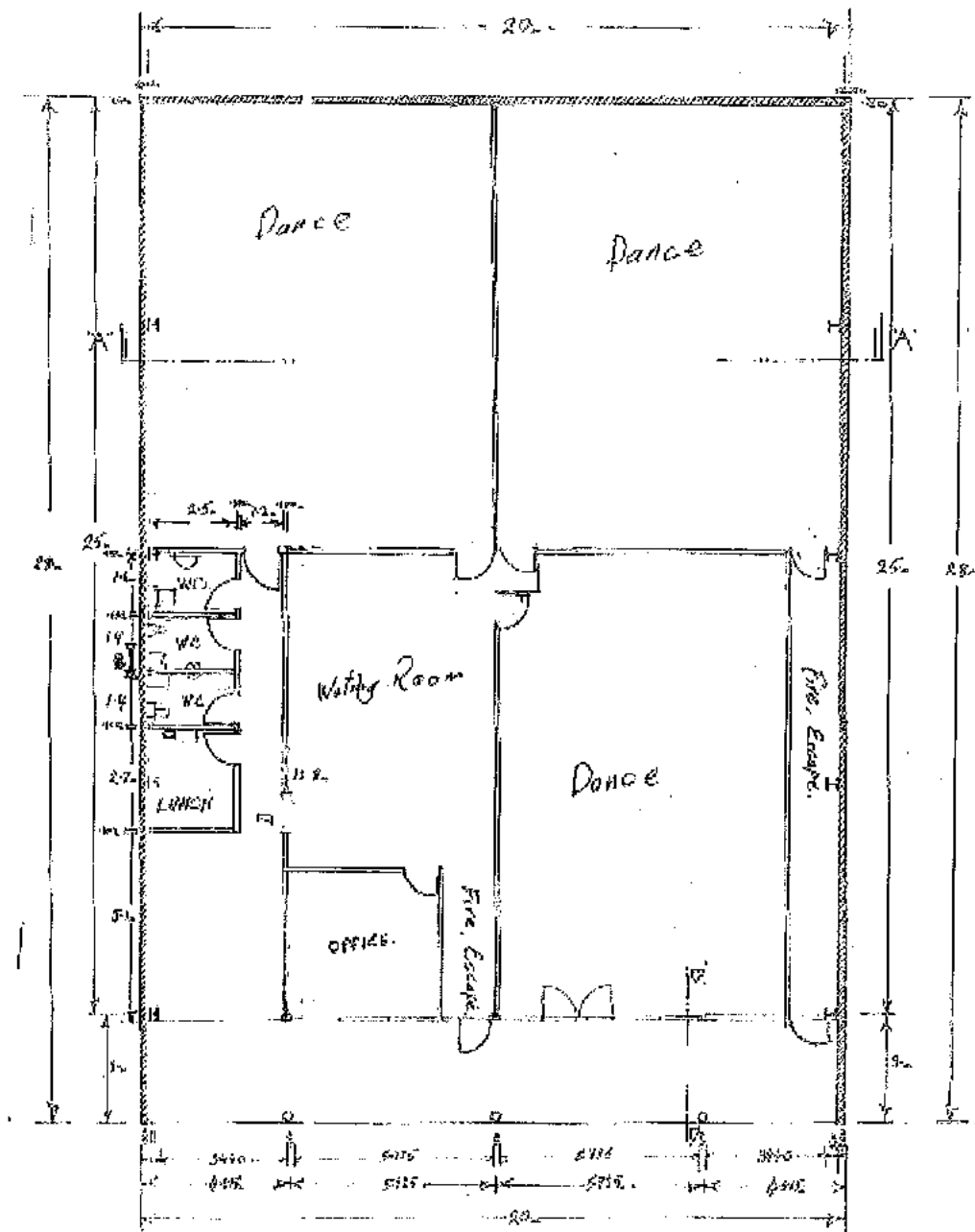
Approved plans and



**SCHEDULE 2 –APPROVED DRAWING(S) AND/OR DOCUMENT(S)**



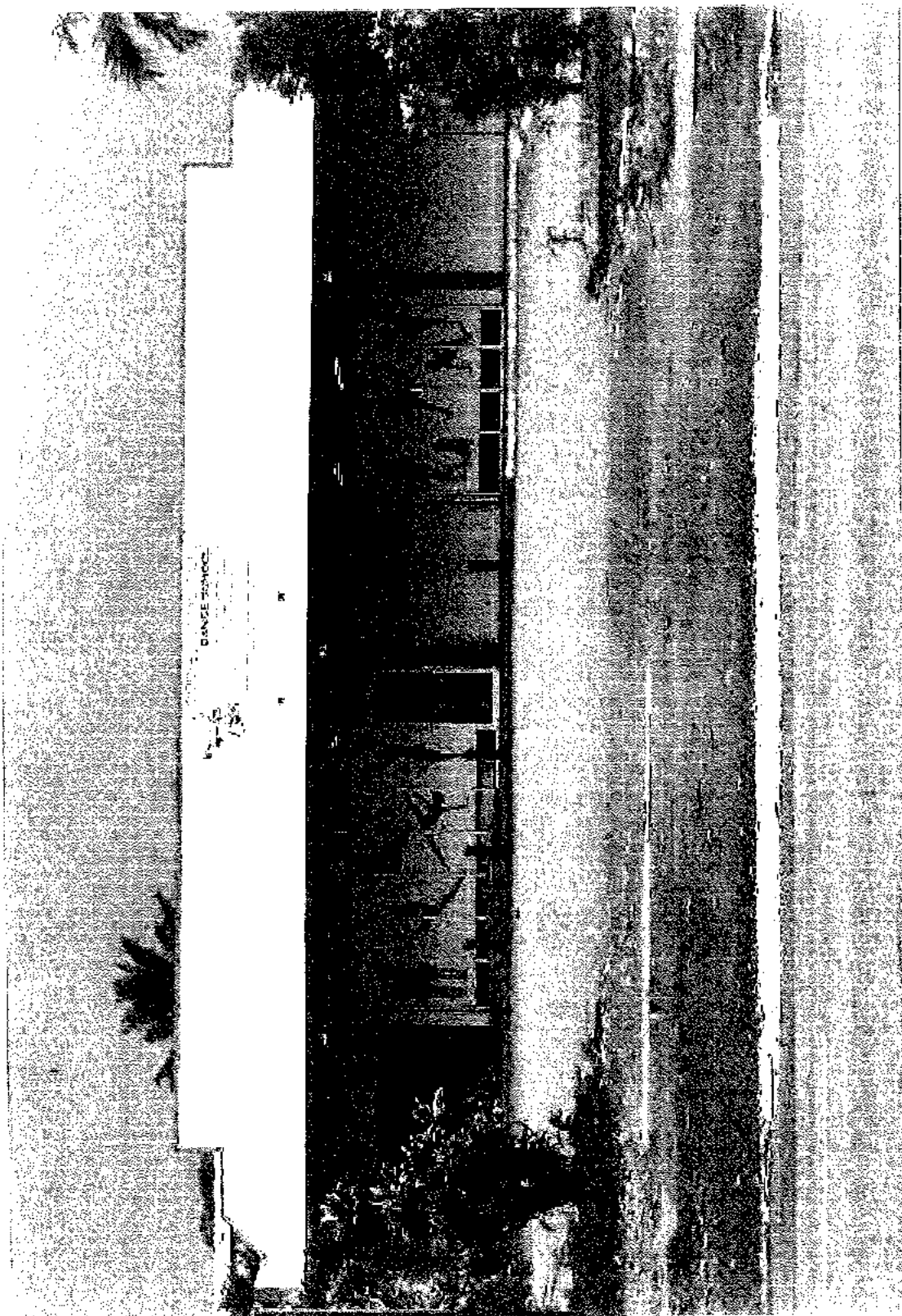
59. Front St.  
Massman.



FLOOR PLAN.

1-10

58. Front St.



## SCHEDULE 3 – APPLICANT'S RIGHTS TO MAKE REPRESENTATIONS AND APPLICANT'S APPEAL RIGHTS

### Extract for Development Assessment Rules – Rights to make representations

#### Part 7: Miscellaneous

##### 29. Missed referral agency

- 29.1. This section applies if, at any time before the application is decided, an applicant has not referred the application to a referral agency referred to in section 55 (1) of the Act or to another referral agency for all referral requirements under section 55(2) of the Act in the time provided to refer the application (a *missed referral agency*).<sup>19</sup>
- 29.2. A party to the application may, by notice given to each other party to the application, advise the parties that the applicant has not referred the application in accordance with section 54(1) of the Act.
- 29.3. Despite section 31.1(a) and subject to section 31.4 where notice has been given under section 29.2, the application does not lapse as a result of a missed referral agency.<sup>20</sup>
- 29.4. The applicant must refer the application in accordance with section 5.1, as if 'the day after part 1 has ended' is 'after the day the applicant gave or received notice about a missed referral agency'.
- 29.5. Part 2 and part 3 apply to the missed referral agency once action is taken under section 29.4.
- 29.6. Despite section 11.1, any referral agency referred the development application as a result of this section may make an information request.
- 29.7. If a notice about a missed referral agency is given before part 5 starts, then part 5 cannot start before part 2 has ended in relation to the missed referral agency.<sup>21</sup>
- 29.8. If part 4 applies to the application, the giving of a notice under this section has no effect on any actions already undertaken under part 4.

##### 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>22</sup>

##### 31. Lapsing of the application

- 31.1. An application lapses if the applicant does not carry out the following actions in the prescribed period, including any further agreed period under the relevant section—
- (a) give the referral agency material to each referral agency that is party to the application and advise the assessment manager when the referral agency material was given under section 5, section 27 or section 29, as relevant to the application;<sup>23</sup> or

<sup>19</sup> As provided for under section 5.

<sup>20</sup> As set out in section 31.4, this section has no effect where a missed referral notice has already been given about the missed referral agency.

<sup>21</sup> Section 23.2 describes the effect on the decision period if part 5 had already commenced before notice about the missed referral had been given.

<sup>22</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.

<sup>23</sup> This provision is subject to section 29.3.



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- (2) The person is taken to have engaged in the representative's conduct, unless the person proves the person could not have prevented the conduct by exercising reasonable diligence.
- (3) In this section—
- conduct* means an act or omission.
- representative* means—
- (a) of a corporation—an executive officer, employee or agent of the corporation; or
  - (b) of an individual—an employee or agent of the individual.
- state of mind*, of a person, includes the person's—
- (a) knowledge, intention, opinion, belief or purpose; and
  - (b) reasons for the intention, opinion, belief or purpose.

## 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 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, table 1, item 1—each principal submitter for the development application; and
  - (d) for an appeal about a change application under schedule 1, table 1, item 2—each principal submitter for the change application; and
  - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); 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 by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.
- (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 Other appeals

- (1) Subject to this chapter, 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.

### SCHEDULE 3 – RIGHT OF APPEAL WAIVER

Mail To: Douglas Shire Council  
Email Address: enquiries@douglas.qld.gov.au  
Attention: Development Assessment

**RE:**

**Council reference:** MCUC 2592/2018

**Property Address:** 59 Front Street, Mossman, land described as Lot 9 on RP707030,

This advice is to confirm that I/We have received the above approval and agree to the conditions contained therein. I/We hereby waive My/Our appeal rights available under the *Planning Act 2016*.

Applicants Name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date : \_\_\_\_\_