

25 May 2021

Enquiries: Jenny Elphinstone
Our Ref: MCUI 2020_3879/1 (Doc ID 1009932)
Your Ref: 20204033

David & Jennifer Moodie
C/- Patrick Clifton, GMA Certification
PO Box 831
PORT DOUGLAS QLD 4877

Email: Patrick.c@gmacert.com.au

Attention Mr Patrick Clifton

Dear Sir

**Development Application for Material Change of Use for a Function Facility
At 5146 Captain Cook Highway Oak Beach
On land described as Lot 1 on RP742791**

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

Please quote Council's application number: MCUI 2020_3879/1 in all subsequent correspondence relating to this development application.

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

Yours faithfully



For
Paul Hoyer
Manager Environment & Planning

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

encl.

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



Decision Notice

Approval (with conditions)

Given under section 63 of the Planning Act 2016

Applicant Details

Name: David & Jennifer Moodie
Postal Address: C/- Patrick Clifton, GMA Certification
PO Box 831
Port Douglas Qld 4877
Email: Patrick.c@gmacer.com.au

Property Details

Street Address: 5146 Captain Cook Highway Oak Beach
Real Property Description: Lot 1 on RP742791
Local Government Area: Douglas Shire Council

Details of Proposed Development

Development Permit for a Material Change of Use for a Function facility.

Decision

Date of Decision: 25 May 2021
Decision Details: Approved (subject to conditions)

Approved Drawing(s) and/or Document(s)

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

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

| Drawing or Document | Reference | Date |
|---------------------|--|------------------|
| Site Plan | Nordon Jago Architects, Job CON00120, Drawing SK.001.A | 25 November 2020 |

Assessment Manager Conditions & Advices

ASSESSMENT MANAGER CONDITIONS & 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.

Approved Use

3. Approval is granted for the purpose of a private functions, that are facilitated by an event company, that is a registered company under Commonwealth law, to the satisfaction of the Chief Executive Officer or the landowner.

Events

4. Where the premises is rented on a limited basis the holding of a wedding, or similar event function, this activity is considered to constitute an event under this Development Permit.

Events Management Plan

5. The applicant must submit a Function Facility Management Plan that outlines how functions will be managed including, but not limited to, matters such as parking, lighting, ablutions, noise, waste, health, service of food and beverages (including a copy of the associated food license held by a provider for the function) and safety (including crocodile management such as temporary fencing as is necessary). The Function Facility Management Plan must be submitted to the satisfaction of the Chief Executive Officer prior to Commencement of Use. The Function Facility Management Plan must be adhered to at all times during events.

Location of the Function facility

6. The location of the Function facility area must be generally in either of the two areas as nominated on the Nordon Jago Architects drawing SK.001A, Revision A dated 26 November 2029, titled Site Plan as "Wedding Area 01" or "Wedding Area 02" (Council document reference 987372).

The approved use of Function facility is only for the premises and does not entitle or permit the use to be undertaken beyond the property boundary. If necessary, temporary fencing is to be provided to the eastern property boundary to ensure attendees remain on the land.

Availability of onsite management

7. When hosting an event, the owner of the property or their representative (which maybe the event company providing for the Function facility) must be present at all times to ensure the Development Permit and the nominated Function Facility Management Plan are complied with.

The owner or their representative as the Function facility on-site manager is responsible for all persons on the premises (including all invited guests, hosts, employees, charter drivers and subcontractors) display an acceptable level of behaviour at all times.

The owner or their representative, who is attending the premises as the Function facility on-site manager, must make their telephone number available to nearby neighbours and Queensland Police (Port Douglas Station).

The owner or their onsite representative must manage any complaints immediately when a function occurs.

Maximum number of persons

8. The maximum number of attendees (excluding Function facility employees) is 80 persons, at any one event. A maximum of 20 employees/sub-contractors associated with the function can attend the site at any one time.

Operations

9. The Function facility can only operate during either of the following times:
 - a. Daytime function – between 10:00 am and ending by 5:30 pm and all persons attending the Function facility (excluding employees) must be transported off the premises by 6:00pm that day;
 - b. After a daytime function all employees associated with the Function facility must depart the premises by 7:00pm and while attending and leaving and leaving must do so in a quiet manner;
 - c. Evening function – between 2:30pm and ending by 10:30pm and all persons attending the Function facility (including employees) must depart the premises by 11:00pm that evening;
 - d. Function facility employees may attend the day prior to, during the day or the day after an evening function to setup and pack away equipment. At all such time the employees must behave in an orderly and quiet manner;
 - e. Only one function (either an evening function or a daytime function) is to be held per day;
 - f. A maximum of 12 events being held in any one calendar year.
 - g. A maximum of two (2) daytime functions and one (1) evening can be held each calendar month between and including the months of April to November; and
 - h. The land owner or their representative must keep a register of events including the date, anticipated and actual start and finish times and name of the event function manager/ operator.
 - i. No persons are permitted to stay on and either reside or camp on the premises other than the accommodation of persons associated with the established land use of House.

Transport of attendees

10. With the exception of disabled persons utilising self-drive or assisted driver transport, all persons attending the function (excluding employees and those who are residing on the premises) must be transported to and from the Function facility by a chartered bus. Attendees are to be transported to and from their place of accommodation.

Onsite parking and access

11. All vehicles associated with events must be parked only onsite in the area identified as the "Carpark" as detailed on the Site Plan. Parking of vehicles associated with the events at the Function facility on the adjacent Captain Cook Highway is not permitted.

For parking areas and internal access driveways a minimum of a solid ground cover must be provided and maintained to a satisfactory standard for the life of the approved use (e.g.- blue stone and gravel products) to the satisfaction of the Chief Executive Officer.

All pedestrian accesses within the premises must have either a sealed surface or a minimum full ground cover must be maintained at all times (e.g. a defined pedestrian walkway of gravel or grass) to the satisfaction of the Chief Executive Officer.

Loading and Unloading

12. All loading and unloading must occur within the property boundaries of the land.

Sound emissions

13. Sound emitting from the site from entertainment, music or related activities must not exceed a maximum noise level of no more than 5dB(A) above background when measured from the following points along the boundary:
 - a. at the vehicle entry off the Captain Cook Highway; and
 - b. at the eastern corner boundary of the property, where the applicant is required to survey and stake this position.

No entertainment, music or related activity is to be emitted after 10:30pm.

Lighting

14. Lighting must not be directed toward nearby properties; and where applicable, shields and baffles must be installed on lighting to prevent spill onto adjoining properties.

Ablution Facilities

15. Sufficient toilets facilities with an adequate supply of toilet paper, potable water and soap must be provided for and maintained during each event.

Waste

16. Waste receptacles must be provided of sufficient number and size capable of containing the volume of waste produced on the premises during each event.

Waste generated during each event must be disposed of at an appropriate waste disposal facility.

Dust

17. Dust emissions or other air pollutants must not extend beyond the boundary of the site. Where dust can be seen extending beyond the boundary of the site, the event manager must immediately provide a directive to cease the activity, or immediately implement corrective actions to prevent activities from causing further dust movements beyond the property boundaries.

ADVICE

1. This approval, granted under the provisions of the *Planning Act 2016*, shall lapse six (6) years from the day the approval takes effect in accordance with the provisions of Section 85 of the *Planning Act 2016*.
2. All building site managers must take all action necessary to ensure building materials and / or machinery on construction sites are secured immediately following the first cyclone watch and that relevant emergency telephone contacts are provided to Council officers, prior to commencement of works.
3. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements. Note, Council's Local Laws currently regulate use of foreshore areas for commercial activities.
4. The food and beverage providers at each event must hold relevant licenses and approvals under the *Queensland Food Act 2006*.
5. Despite condition 12 noise emanating from the site must not cause a noise nuisance in accordance with the *Environmental Protection Act 1994* and the *Environmental Protection Policy (Noise) 2008*.

6. Light emanating from the site must not cause a light nuisance to surrounding properties in accordance with the *Environmental Protection Act 1994*.
7. Ablution facilities are to be provided having regard to the Commonwealth *Premises Standards* and the Building Code of Australia, under the *Building Act 1975*.
8. For information relating to the *Planning Act 2016* log on to www.dsdmip.qld.gov.au . To access the FNQROC Development Manual, Local Laws and other applicable Policies, log on to www.douglas.qld.gov.au .

Further Development Permits

Not applicable

Concurrence Agency Response

| Concurrence Agency | Concurrence Agency Reference | Date | Doc ID |
|---|------------------------------|---------------|-------------|
| State Assessment and Referral Agency (SARA) within the Department of State Development, Manufacturing Infrastructure and Planning | 2012-20341 SRA | 30 March 2021 | Doc 1005593 |

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

Currency Period for the Approval

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

Rights to make Representations & Rights of Appeal

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

A copy of the relevant appeal provisions is attached.

Approved Drawing(s) and/or Document(s)



NORDON · JAGO
ARCHITECTS

Level 1, 1111 St Albans Rd, St Albans, QLD 4010
Tel: 07 5500 1111 Fax: 07 5500 1112
Email: info@nordonjago.com.au Website: www.nordonjago.com.au

| SK | NO | DATE | DESCRIPTION |
|--------|----|------------|------------------------|
| SK.001 | 1 | 10/10/2020 | Issue for Construction |
| SK.001 | 2 | 10/10/2020 | Issue for Construction |
| SK.001 | 3 | 10/10/2020 | Issue for Construction |
| SK.001 | 4 | 10/10/2020 | Issue for Construction |
| SK.001 | 5 | 10/10/2020 | Issue for Construction |
| SK.001 | 6 | 10/10/2020 | Issue for Construction |
| SK.001 | 7 | 10/10/2020 | Issue for Construction |
| SK.001 | 8 | 10/10/2020 | Issue for Construction |
| SK.001 | 9 | 10/10/2020 | Issue for Construction |
| SK.001 | 10 | 10/10/2020 | Issue for Construction |

NOT For Construction



5146R Captain Cook Hwy, Port Douglas QLD 4877

Site Plan

| | |
|-------------|----------------------------|
| Client | Port Douglas Shire Council |
| Project | 5146R Captain Cook Hwy |
| Drawn by | SK.001 A |
| Checked by | |
| Approved by | |

Concurrence Agency Conditions

RA6-N



SARA reference: 2012-20341 SRA
Council reference: MCUI2020_3879/1
Applicant reference: 20204033

30 March 2021

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

Attention: Jenny Elphinstone

Dear Sir/Madam

SARA response— Material Change of Use for Dwelling House and Function Facility at Oak Beach

(Referral agency response given under section 58 of the *Planning Act 2016*)

The development application described below was confirmed as properly referred by the State Assessment and Referral Agency on 21 December 2020.

Response

| | |
|-------------------|---|
| Outcome: | Referral agency response – with conditions. |
| Date of response: | 30 March 2021 |
| 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 a Function Facility (maximum 80 persons) in association with the existing Dwelling House |
| SARA role: | Referral Agency. | |
| SARA trigger: | Schedule 10, Part 9, Division 4, Subdivision 2, Table 4 (Planning | |

Page 1 of 7

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

Regulation 2017)
Material change of use within 25m of a state-controlled road

SARA reference: 2012-20341 SRA

Assessment Manager: Douglas Shire Council

Street address: 5146 Captain Cook Highway, Oak Beach

Real property description: Lot 1 on RP742791

Applicant name: David & Jennifer Moodie

Applicant contact details: C/- GMA Certification
PO Box 831
Port Douglas QLD 4877
patrick.C@gmacert.com.au

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

- Approved
- Reference: TMR20-031834 (500-1543)
- Date: 26 March 2021

If you are seeking further information on the road access permit, please contact the Department of Transport and Main Roads at ron.p.kaden@tmr.qld.gov.au or on (07) 4045 7151.

Representations

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

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

For further information please contact Anthony Westbury, Planning Officer, on 40373215 or via email CairnsSARA@dsdmip.qld.gov.au who will be pleased to assist.

Yours sincerely



Anthony Walsh
Manager Planning

cc David & Jennifer Moodie C/- GMA Certification, patrick.C@gmacert.com.au

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

Attachment 1—Referral agency conditions

(Under section 58(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 | | |
| Schedule 10, Part 9, Division 4, Subdivision 2, Table 4, Item 1 – Material change of use of premises near a State transport corridor—The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of the Department of Transport and Main Roads to be the enforcement authority for the development to which this development approval relates for the administration and enforcement of any matter relating to the following condition(s): | | |
| 1. | <p>(a) The road access location is to be located generally in accordance with TMR Layout Plan (20A – 51.63km), prepared by Queensland Government Transport and Main Roads, dated 23/03/2021, Reference TMR21-31834 (500-1543), Issue A.</p> <p>(b) Road access works comprising of a sealed rural property access must be provided at the road access location.</p> <p>(c) The road access works must be designed and constructed in accordance with TMR Standard Drawing No. 1807, Type C – Rural Property Access, dated 07/2020.</p> | <p>(a): At all times.</p> <p>(b) and (c): Prior to the commencement of use.</p> |
| 2. | <p>(a) Tree trimming works to enable and maintain a safe intersection site distance (SISD), must be provided at the road access location.</p> <p>(b) The tree trimming works must be undertaken along the road frontage to the north of the access (Mossman side) in accordance with TMR Layout Plan (Visibility Triangle), prepared by Queensland Government Transport and Main Roads, dated 26/03/2021, Reference TMR21-31834 (500-1543), Issue A.</p> | Prior to the commencement of use. |

Attachment 2—Advice to the applicant

| General advice | |
|----------------|---|
| 1. | Terms and phrases used in this document are defined in the <i>Planning Act 2016</i> its regulation or the State Development Assessment Provisions (SDAP) v2.6. If a word remains undefined it has its ordinary meaning. |
| 2. | <p>Road access and tree trimming works approval</p> <p>Under section 33 of the <i>Transport Infrastructure Act 1994</i>, written approval is required from the Department of Transport and Main Roads to carry out road works.</p> <p>Please contact the Department of Transport and Main Roads on 4045 7144 to make an application for road works approval.</p> <p>This approval must be obtained prior to commencing any works on the state-controlled road reserve. The approval process may require the approval of engineering designs of the proposed works, certified by a Registered Professional Engineer of Queensland (RPEQ).</p> <p>Please contact the Department of Transport and Main Roads as soon as possible to ensure that gaining approval does not delay construction.</p> |

Attachment 3—Reasons for referral agency response

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

The reasons for the SARA decision are:

- The site has road frontage and an existing unsealed access to Captain Cook Highway, a state-controlled road.
- The proposed function facility is set back a sufficient distance from the Captain Cook Highway carriageway and screened from the highway by mature vegetation.
- Increased traffic volumes generated by the function facility will occur infrequently, and will be limited to organised events, with all guests arriving and departing by bus.
- The road works required to upgrade and seal the existing access to Captain Cook Highway to accommodate increased traffic generation and larger vehicles, will ensure that operating conditions and safety on the state-controlled road network is not compromised.
- Tree trimming works will improve the visibility of the access, and ensure a safe intersection sight distance is provided.
- Stormwater and drainage flows are discharged internally on-site and/or towards the beach esplanade, and are unlikely to impact the state-controlled road.
- The proposed development complies with the relevant provisions of State code 1: Development in a state-controlled road environment.

Material used in the assessment of the application:

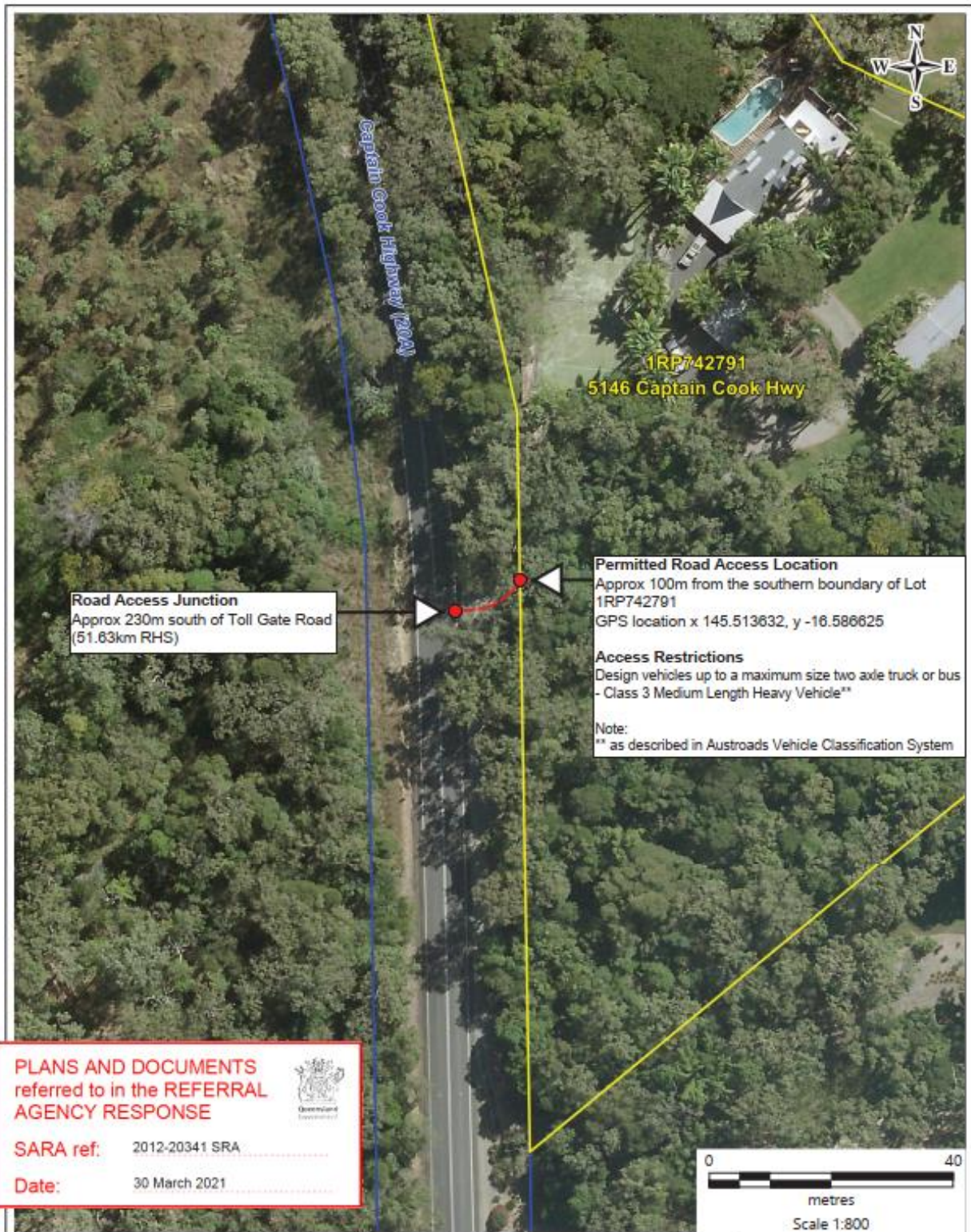
- The development application material and submitted plans
- *Planning Act 2016*
- Planning Regulation 2017
- The *State Development Assessment Provisions* (version 2.6)
- The Development Assessment Rules
- SARA DA Mapping system
- State Planning Policy mapping system

Attachment 4—Change representation provisions

(page left intentionally blank – attached separately)

Attachment 5—Approved plans and specifications

(page left intentionally blank – attached separately)



| | | | | |
|---|--|--|---|----------------------------|
| Branch/Unit: Corridor Management / Far North District | TMR Layout Plan (20A - 51.63km) | | Queensland Government Transport and Main Roads | |
| Projection/Datum: Geocentric Datum of Australia (GDA) 1994 | <div> <div> <div></div> <div>Parcels</div> </div> <div> <div></div> <div>Subject Land</div> </div> <div> <div></div> <div>Road Access Driveway</div> </div> </div> | | Plan: 1 / 1 | Issue: A |
| | | | Drawn by: RPK | Date: 23/03/2021 |
| | | | File ref: TMR20-31834 (500-1543) | |

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

SARA ref: 2012-20341 SRA

Date: 30 March 2021



| | |
|---|--|
| Branch/Unit: | Corridor Management / Far North District |
| Projection/Datum: | Geocentric Datum of Australia (GDA) 1994 |
| <div style="display: flex; align-items: center;"> <div style="width: 15px; height: 15px; border: 1px solid blue; margin-right: 5px;"></div> <div>Parcels</div> </div> <div style="display: flex; align-items: center;"> <div style="width: 15px; height: 15px; border: 1px solid yellow; margin-right: 5px;"></div> <div>Subject Land</div> </div> <div style="display: flex; align-items: center;"> <div style="width: 15px; height: 15px; border: 1px dashed red; margin-right: 5px;"></div> <div>State-controlled road boundary</div> </div> | |

**TMR Layout Plan
(Visibility Triangle)**

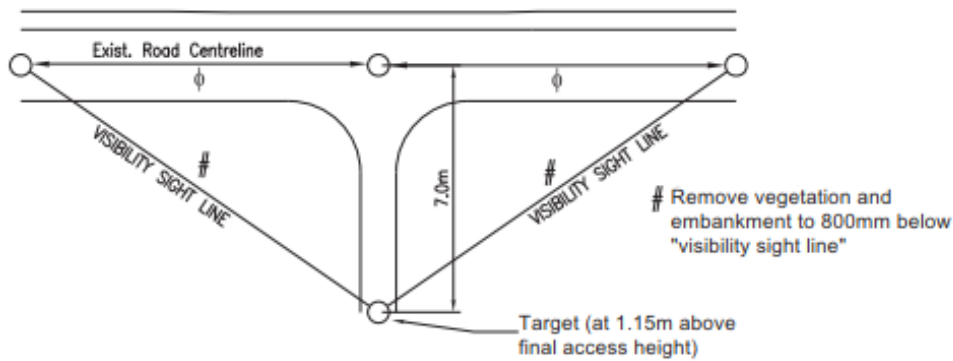
80km/hr speed zone



Queensland Government
Transport and Main Roads

| | | | | | |
|-----------|-------|-----------|------------------------|-------|------------|
| Plan: | 1 / 2 | Sheet: | A | Date: | 26/03/2021 |
| Drawn by: | RPK | File ref: | TMR20-31834 (500-1543) | | |

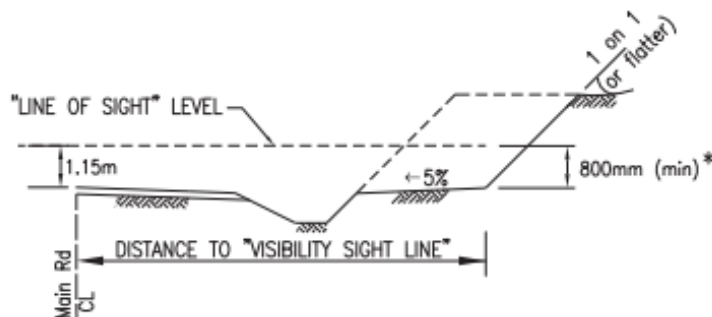
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Visibility triangles - Plan

Visibility along Road Centre Line

- φ Minimum sight distance
 - 250m (100km/hr zone)
 - 175m (80km/hr zone)
 - 125m (60km/hr zone)
 unless otherwise specified in the annexure.



Visibility benching - Section

Visibility benching

Line of sight is to be based on an eye height of 1.15m above the main road Centre Line

- # Physical bench is to be provided 800mm below "line of sight" height to allow for vegetation growth

PLANS AND DOCUMENTS
referred to in the REFERRAL
AGENCY RESPONSE



SARA ref: 2012-20341 SRA

Date: 30 March 2021

Our ref TMR20-031834 (500-1543)
Your ref 20204033
Enquiries Ronald Kaden



Department of
Transport and Main Roads

26 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 road¹

Development application reference number MCUI2020_3879/1, lodged with Douglas Shire Council involves constructing or changing a vehicular access between Lot 1RP742791, 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 David & Jennifer Moodie
C/- GMA Certification
PO Box 831
Port Douglas QLD 4877

Application Details

Address of Property 5146 Captain Cook Highway, Oak Beach QLD 4877
Real Property Description 1RP742791
Aspect/s of Development Development Permit for Material Change of Use for Function Facility

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 100 metres from the southern boundary of Lot 1RP742791, in accordance with: 1. TMR Layout Plan (20A - 51.63km) Issue A 23/03/2021 | At all times. |
| 2 | Direct access is prohibited between Captain Cook Highway and Lot 1RP742791 at any other location other than the permitted road access location described in Condition 1. | At all times. |
| 3 | The use of the permitted road access location is to be restricted to: | At all times. |

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

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

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

| No. | Conditions of Approval | Condition Timing |
|-----|--|--|
| | a) Design vehicles up to a maximum size Two Axle Truck or Bus - Class 3 Medium Length Heavy Vehicle** Note: ** as described in Austroads Vehicle Classification System | |
| 4 | Works at the permitted road access location will require: a) Upgrading the existing property access to a Type C Rural Property Access in accordance with <ul style="list-style-type: none"> ▪ Property Access drawing prepared by Queensland Government dated 07/2020 reference 1807 Issue A (with bitumen seal amendments). b) Modifications to enable and maintain a safe intersection site distance (SISD) at the permitted road access location in accordance with <ul style="list-style-type: none"> ▪ Department of Transport and Main Roads' Road Planning and Design Manual Chapter 13 c) Relocating the existing property gate to be either on, or within, the property boundary. The gate must open inward to prevent queueing within the state-controlled road corridor. | Prior to commencement of use. Construction of road works must not commence until TMR has issued an 'Authority to Commence Works'. |

Reasons for the decision

The reasons for this decision are as follows:

- a) Currently the subject site (Lot 1 on RP742791) has road frontage and vehicle access via Captain Cook Highway, a state-controlled road.
- b) The proposed development for a function facility (12 events) will require a changed access due to increased traffic generation via the existing access.
- c) In accordance with s33 (5) of the Act, where **road works** that are **road access works** (including driveways) are required, approval of the works cannot be given until the Department of Transport and Main Roads has given approval for a **road access location**.
- 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 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 (20A - 51.63km) | Queensland Government Transport and Main Roads | 23 March 2021 | TMR20-31834 (500-1543) | A |

Attachment B
Section 70 of TIA

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

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

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

Maximum penalty—200 penalty units.

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

Attachment C
Appeal Provisions

Transport Infrastructure Act 1994
Chapter 16 General provisions

485 Internal review of decisions

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

485B Appeals against decisions

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

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.

- (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.

(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—

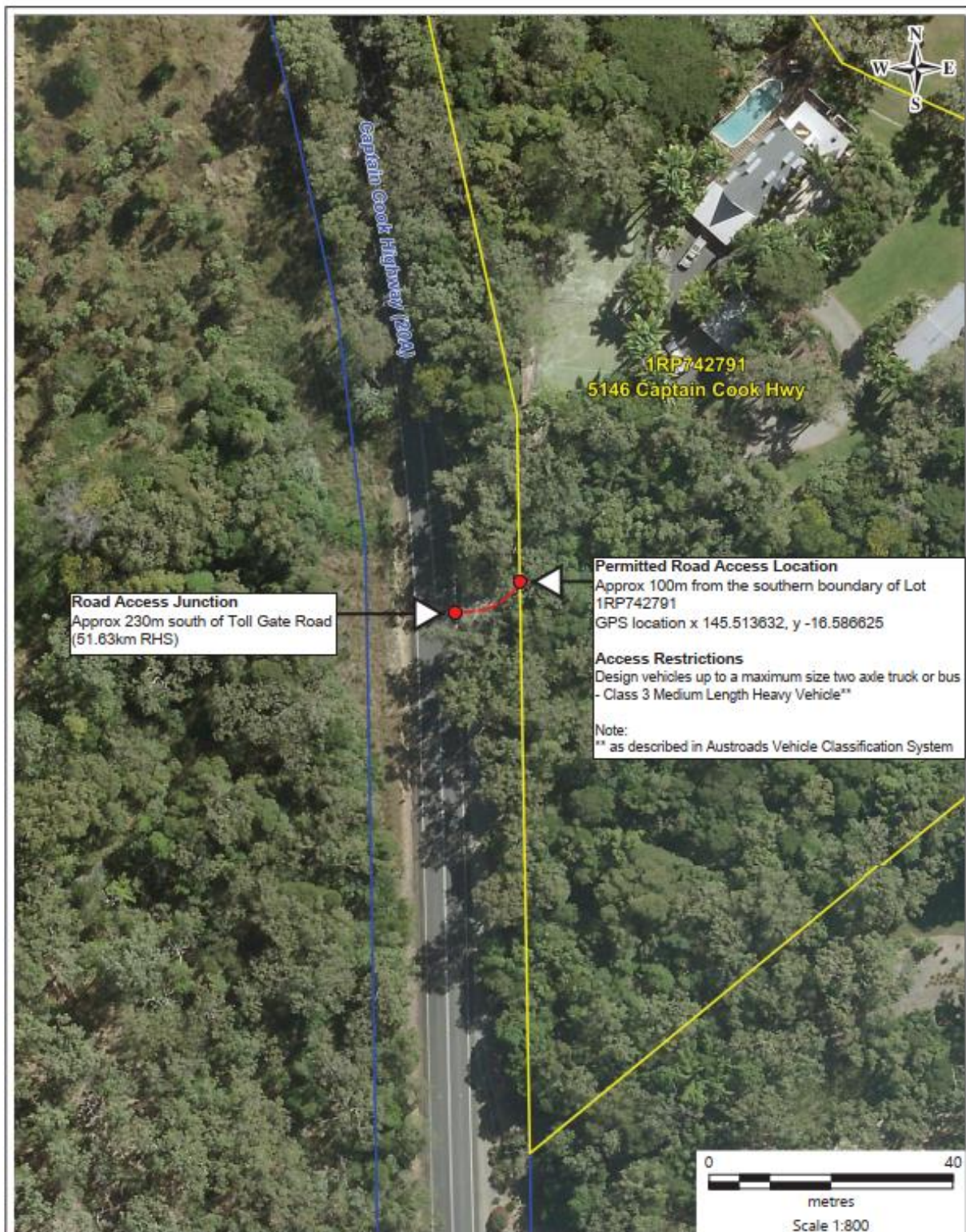
- (a) if a decision notice is given to the person—28 days after the notice was given to the person; or
- (b) if the chief executive is taken to have confirmed the decision under section 34(5)—56 days after the application was made.

(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.



| | | | | | |
|---|----------------------|---|---|---|--------------------|
| Branch/Unit : Corridor Management / Far North District | | TMR Layout Plan (20A - 51.63km) |  | Queensland Government Transport and Main Roads | |
| Projection/Datum : Geocentric Datum of Australia (GDA) 1994 | | | | Plan: 1 / 1 | Issue: A |
|  | Parcels |  | Subject Land | | |
|  | Road Access Driveway | | Drawn by: RPK | File ref: TMR20-31834 (500-1543) | |

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Reasons for Decision

1. The reasons for this decision are:
 - a. Sections 60, 62 and 63 of the *Planning Act 2016*;
 - b. to ensure the development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme Version 1.0; and
 - c. to ensure compliance with the *Planning Act 2016*.
2. Findings on material questions of fact:
 - a. the development application was properly lodged to the Douglas Shire Council 15 December 2020 under section 51 of the *Planning Act 2016* and Part 1 of the Development Assessment Rules;
 - b. the development application contained information from the applicant which Council reviewed together with Council's own assessment against the 2017 State Planning Policy and the 2018 Douglas Shire Planning Scheme Version 1.0 in making its assessment manager decision.
 - c. One properly made submissions were received.
 - i. Submitters:
Phil and Charmaine Matthews
5134 Captain Cook Hwy
Pebbly Beach
Port Douglas Q 4877
E: phill@austarthomes.com.au
 - ii. Consideration of Submissions

Grounds of Submissions

Planning Considerations

Non-Compliance with Assessment Benchmarks

| DOUGLAS SHIRE COUNCIL | | 2018 Douglas Shire Planning Scheme version 1.0 Applications | |
|---|---------------------|---|-----------------------------|
| ADOPTED INFRASTRUCTURE CHARGES NOTICE | | | |
| David & Jennifer Moodie DEVELOPERS NAME | | N/A ESTATE NAME | 0 STAGE |
| 5146 Captain Cook Highway STREET No. & NAME | Oak Beach SUBURB | L1 RP742791 LOT & RP No.s | 4608 PARCEL No. |
| MCU Limited Function facility DEVELOPMENT TYPE | | MCUI 2020_3879/1 COUNCIL FILE NO. | 6 VALIDITY PERIOD (year) |
| 1008303 DSC Reference Doc. No. | 1 VERSION No. | Payment before the change occurs | |

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

| | Charge per Use | rate | Floor area/No. | Amount | Amount Paid | Receipt Code & GL Code |
|---|-----------------------|-------|----------------|------------------|-------------|---------------------------------------|
| 0 | | | | | | |
| 0 | | | | | | |
| Proposed Demand | | | | | | |
| Places of assembly Function facility | \$ per m ² | 64.38 | 600 | 38,625.14 | | |
| Total Demand | | | | 38,625.14 | | |
| Existing Credit | | | | | | |
| Non-sewer & non-water area discount | -65% | 0.00 | 0 | 0.00 | | |
| Total Credit | | | | 25,106.34 | | Code 895 GL 7470.0135.0825 |

Required Payment or Credit **TOTAL \$13,518.80**

| | | | | |
|--------------|--------------------------------|-----------|-------------|--|
| Prepared by | Jenny Elphinstone | 28-Apr-21 | Amount Paid | |
| Checked by | Daniel Lamond | 7-May-21 | Date Paid | |
| Date Payable | MCU - Before the change occurs | | Receipt No. | |
| Amendments | | Date | Cashier | |

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

Charge rates under the Policy are subject to indexing.
Any Infrastructure Agreement for trunk works must be determined and agreed to prior to issue of Development Permit for Operational Work.

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

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

Extracts from the Planning Act 2016 - Making Representations During Applicant's Appeal Period

Planning Act 2016
Chapter 3 Development assessment

[s 74]

Division 2 Changing development approvals

Subdivision 1 Changes during appeal period

74 What this subdivision is about

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

75 Making change representations

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

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

76 Deciding change representations

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

must be considered when assessing a development application, to the extent those matters are relevant.

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

Extracts from the Planning Act 2016 – Appeal Rights

Planning Act 2016
Chapter 6 Dispute resolution

[s 229]

- (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

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Current as at 1 October 2020

Authorised by the Parliamentary Counsel

- (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.

Part 2 Development tribunal

Division 1 General

233 Appointment of referees

- (1) The Minister, or chief executive, (the *appointer*) may appoint a person to be a referee, by an appointment notice, if the appointer considers the person—
 - (a) has the qualifications or experience prescribed by regulation; and
 - (b) has demonstrated an ability—
 - (i) to negotiate and mediate outcomes between parties to a proceeding; and
 - (ii) to apply the principles of natural justice; and
 - (iii) to analyse complex technical issues; and
 - (iv) to communicate effectively, including, for example, to write informed succinct and well-organised decisions, reports, submissions or other documents.

25 May 2021

Enquiries: Jenny Elphinstone
Our Ref: MCUI 2020_3879 (Doc ID 1009932)
Your Ref: 20204033

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

David & Jennifer Moodie
C/- Patrick Clifton, GMA Certification
PO Box 831
PORT DOUGLAS QLD 4877

Email: Patrick.c@gmacert.com.au

Attention Mr Patrick Clifton

Dear Sir

**Adopted Infrastructure Charge Notice
For Development Application for a Material Change of Use for a Limited Function facility
At 5146 Captain Cook Highway Oak Beach
On Land Described as Lot 1 on RP742791**

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

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

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

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

Please quote Council's application number: MCUI 2020_3879 in all subsequent correspondence relating to this matter.

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

Yours faithfully



For
Paul Hoyer
Manager Environment & Planning

encl.

- Adopted Infrastructure Charges Notice

- Rights to Make Representations and Appeals Regarding Infrastructure Charges

Subdivision 5 Changing charges during relevant appeal period

124 Application of this subdivision

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

125 Representations about infrastructure charges notice

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

126 Suspending relevant appeal period

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

Division 3 Development approval conditions about trunk infrastructure

Subdivision 1 Conditions for necessary trunk infrastructure

127 Application and operation of subdivision

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

Extracts from the Planning Act 2016 –Appeal Rights

Planning Act 2016
Chapter 6 Dispute resolution
[s 229]

- (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

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- (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.

Part 2 Development tribunal

Division 1 General

233 Appointment of referees

- (1) The Minister, or chief executive, (the *appointer*) may appoint a person to be a referee, by an appointment notice, if the appointer considers the person—
- (a) has the qualifications or experience prescribed by regulation; and
- (b) has demonstrated an ability—
- (i) to negotiate and mediate outcomes between parties to a proceeding; and
- (ii) to apply the principles of natural justice; and
- (iii) to analyse complex technical issues; and
- (iv) to communicate effectively, including, for example, to write informed succinct and well-organised decisions, reports, submissions or other documents.