From: No Reply <mydas-notifications-prod2@qld.gov.au>

Sent: Tuesday, 27 September 2022 4:30 PM

To: info@planztp.com

Cc:anthony.westbury@dsdmip.qld.gov.au; EnquiriesSubject:2208-30664 SPD application correspondence

**Attachments:** 2208-30664 SPD TIA s62 Decision Notice - Permitted Road Access Location.pdf;

2208-30664 SPD Attachment 6 - Approved plans and specifications.pdf; 2208-30664 SPD Attachment 4 - Representations about a referral agency

response.docx; 2208-30664 SPD Attachment 5 - Appeal provisions.pdf; 2208-30664 SPD Changed referral agency response minor change to development approval.pdf;

2208-30664 SPD Decision notice change to a development approval.pdf

Please find attached a notice regarding application 2208-30664 SPD.

If you require any further information in relation to the application, please contact the State Assessment and Referral Agency on the details provided in the notice.

This is a system-generated message. Do not respond to this email.



Email Id: RFLG-0922-0015-3033

Our ref Your ref TMR17-022871 (500-1184)

Enquiries Ronald Kaden



Department of **Transport and Main Roads** 

15 September 2022

# **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 CA2275/2017, lodged with Douglas Shire Council involves constructing or changing a vehicular access between Lot 410PTD2091, the land the subject of the application, and Port Douglas Road (Macrossan Street) (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 W & L Petrie

C/- Planz Town Planning

PO Box 181

Edge Hill QLD 4870

**Application Details** 

Address of Property 49 Macrossan Street, Port Douglas QLD 4877

Real Property Description 410PTD2091

Development Permit for Material Change of Use for Shopping Aspect/s of Development

Facilities, Restaurant, Multi-unit Housing and Holiday

Accommodation

### 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 to be near the north western boundary of Lot 410PTD2091 and approx 50m west of Owen Street, in accordance with:  1. TMR Layout Plan (6504 - 5.49km) Issue B 14/09/2022 | At all times.                |
| 2   | Road access works comprising a Commercial / Industrial Vehicle Crossing must be provided at the permitted access location, generally in accordance with FNQROC Standard Drawing S1015                        | Prior to commencement of use |

<sup>&</sup>lt;sup>1</sup> Please refer to the further approvals required under the heading 'Further approvals'

Telephone +61 7 (07) 4045 7151 Website www.tmr.qld.gov.au

Far.North.Queensland.IDAS@tmr.qld.gov.au Email

ABN: 39 407 690 291

| No. | Conditions of Approval   | Condition Timing             |
|-----|--|------------------------------|
| 3   | The existing road access works situated between Macrossan Street and Lot 410PTD2091 (approximately 5m from the north western boundary) must be removed and all kerb and channel / table drain / concrete footpath reinstated between the pavement edge and the property boundary in accordance with FNQROC standards.  | Prior to commencement of use |
| 4   | Direct access is prohibited between Macrossan Street and Lot 410PTD2091 at any other location other than the permitted road access location described in Condition 1.  | At all times.                |
| 5   | The use of the permitted road access location is to be restricted to Design vehicles up to a maximum size short sedan - Class 1 Short Length Light Vehicle** for urban allotment.  Note: ** as described in Austroads Vehicle Classification System  | At all times.                |
| 6   | The location of any property gate must be positioned wholly within the boundaries of Lot 410PTD2091 such that:  a) No other gate infrastructure is to encroach into the state-controlled road corridor,  b) The gate must open away from, or parallel to, Macrossan Street,  c) It is controlled remotely, and There is no requirement for traffic to queue on Macrossan Street. | At all times.                |

### Reasons for the decision

The reasons for this decision are as follows:

- a) Lot 410 on PTD2091 (the subject site) has direct access via Port Douglas Road (Macrossan Street), a state-controlled road,
- b) The planning report prepared by Planz Town Planning indicates that the existing access is to be relocated to the western side of the property,
- c) The relocated access is considered a new access,
- d) An assessment of the new access by TMR indicates that the access will be required to comply with FNQROC standards,
- e) A minor change, including a changed site plan was submitted to Council on 01 September 2022.
- f) The section 62A approval dated 09 January 2018makes reference to the original site plan and turn paths.
- g) Therefore, the proposed development requires a new section 62A approval from TMR. Please refer to **Attachment A** for the findings on material questions of fact and the evidence or other material on which those findings were based.

Information about the Decision required to be given under section 67(2) of TIA

- 1. There is no guarantee of the continuation of road access arrangements, as this depends on future traffic safety and efficiency circumstances.
- 2. This decision has been based on the current land use and the historic nature of the access subject to this decision. Please be advised that in the event that the land is further developed and/or intensified, the department will reassess the access requirements in accordance with the department's policies at that time to ensure that the road safety and transport efficiency outcomes for the state-controlled road network are maximised.
- 3. In accordance with section 70 of the TIA, the applicant for the planning application is bound by this decision. A copy of section 70 is attached as **Attachment B**, as required, for information.

### Further information about the decision

- 1. In accordance with section 67(7) of TIA, this decision notice:
  - a) starts to have effect when the development approval has effect; and
  - b) stops having effect if the development approval lapses or is cancelled; and
  - c) replaces any earlier decision made under section 62(1) in relation to the land.
- 2. In accordance with section 485 of the TIA and section 31 of the *Transport Planning and Coordination Act 1994* (TPCA), a person whose interests are affected by this decision may apply for a review of this decision only within 28 days after notice of the decision was given under the TIA. A copy of the review provisions under TIA and TPCA are attached in **Attachment C** for information.
- 3. In accordance with section 485B of the TIA and section 35 of TPCA a person may appeal against a reviewed decision. The person must have applied to have the decision reviewed before an appeal about the decision can be lodged in the Planning and Environment Court. A copy of the Appeal Provisions under TIA and TPCA is attached in **Attachment C** for information.

### **Further approvals**

The Department of Transport and Main Roads also provides the following information in relation to this approval:

1. Road Access Works Approval Required – Written approval is required from the department to carry out road works that are road access works (including driveways) on a state-controlled road in accordance with section 33 of the TIA. This approval must be obtained prior to commencing any works on the state-controlled road. The approval process may require the approval of engineering designs of the proposed works, certified by a Registered Professional Engineer of Queensland (RPEQ). Please contact the department to make an application.

If further information about this approval or any other related query is required, 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\_1 - Permitted Road Access Location Plan

# Attachment A

# **Decision Evidence and Findings**

Evidence or other material on which findings were based:

| Title of Evidence /<br>Material    | Prepared by   | Date              | Reference no.                       | Version/Issue |
|------------------------------------|---|-------------------|-------------------------------------|---------------|
| Proposed Site Plan                 | TPG Architects  | July 2022         | JSB-01<br>49 Macrossan St.<br>DA.02 | -             |
| TMR Layout Plan<br>(6504 - 5.49km) | Queensland<br>Government<br>Transport and Main<br>Roads | 14 September 2022 | TMR17-22871<br>(500-1184)           | В             |
| Access Crossovers                  | FNQROC  | 27 August 2020    | S1015                               | E             |

### **Attachment B**

### Section 70 of TIA

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

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

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

Maximum penalty—200 penalty units.

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

### **Attachment C**

### **Appeal Provisions**

Transport Infrastructure Act 1994 Chapter 16 General provisions

### 485 Internal review of decisions

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

### 485B Appeals against decisions

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

- (b) a person appeals to the Planning and Environment Court against a decision under the Planning Act on the planning application.
- (5) The court may order—
  - (a) the appeals to be heard together or 1 immediately after the other; or
  - (b) 1 appeal to be stayed until the other is decided.
- (6) Subsection (5) applies even if all or any of the parties to the appeals are not the same.
- (7) In this section—

original decision means a decision described in schedule 3.

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

## 31 Applying for review

- (1) A person may apply for a review of an original decision only within 28 days after notice of the original decision was given to the person under the transport Act.
- (2) However, if-
  - (a) the notice did not state the reasons for the original decision; and
  - (b) the person asked for a statement of the reasons within the 28 days mentioned in subsection (1)

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

- (3) In addition, the chief executive may extend the period for applying.
- (4) An application must be written and state in detail the grounds on which the person wants the original decision to be reviewed.

# 32 Stay of operation of original decision

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

- (8) The making of an application does not affect the original decision, or the carrying out of the original decision, unless it is stayed.
- (9) In this section—

relevant entity means—

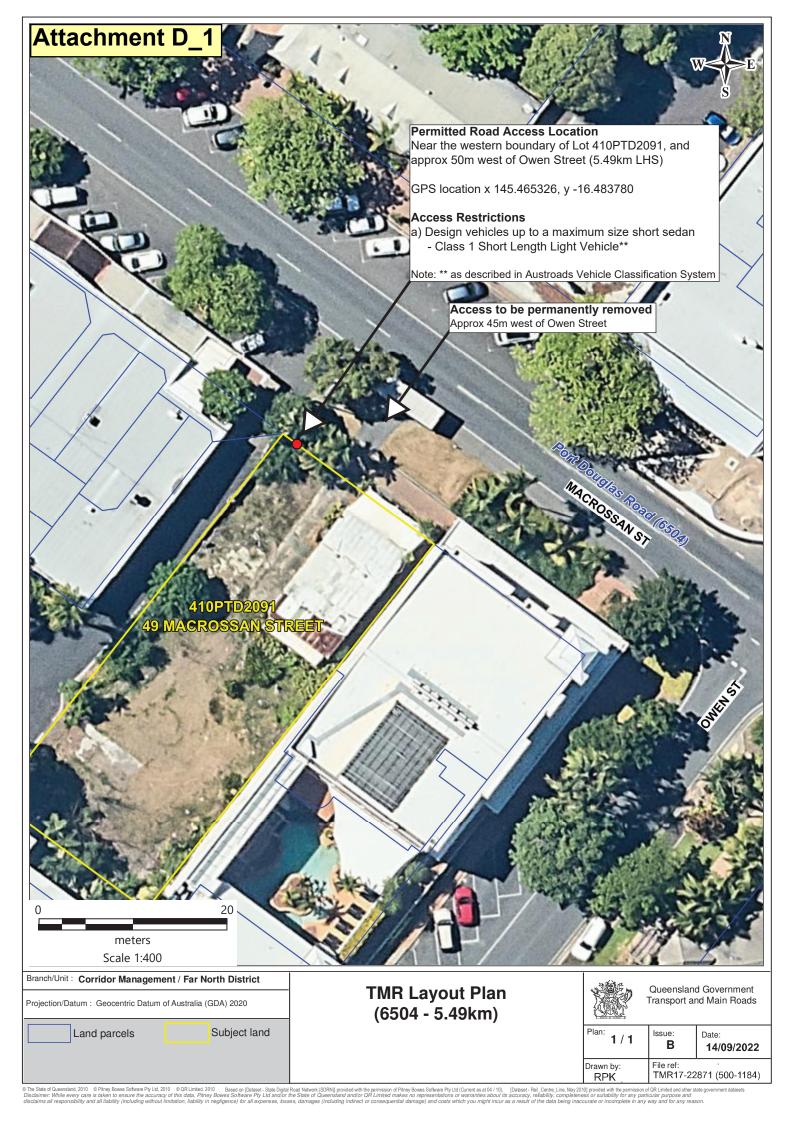
- (a) if the reviewed decision may be reviewed by QCAT—QCAT; or
- (b) if the reviewed decision may be appealed to the appeal court—the appeal court.

## 35 Time for making appeals

- (1) A person may appeal against a reviewed decision only within—
  - (a) if a decision notice is given to the person—28 days after the notice was given to the person; or
  - (b) if the chief executive is taken to have confirmed the decision under section 34(5)—56 days after the application was made.
- (2) However, if-
  - (a) the decision notice did not state the reasons for the decision; and
  - (b) the person asked for a statement of the reasons within the 28 days mentioned in subsection (1)(a);

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

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





Our reference: 2208-30664 SPD

Your reference: 81728 Council reference: 2017/2275

27 September 2022

Jasbe Port Douglas C/- Planz Town Planning PO Box 181 EDGE HILL QLD 4870 info@planztp.com

Attention: Nikki Huddy

Dear Sir/Madam

### Decision notice—change application

(Given under section 83 of the Planning Act 2016)

Your change application under section 78 of the *Planning Act 2016* for the development approval dated 12 January 2018 was made to the State Assessment and Referral Agency (SARA) on 31 August 2022.

### **Decision for change application**

Date of decision: 27 September 2022

Decision details: Make the change and amend existing conditions.

Reasons for the decision are set out in Attachment 1.

The changes agreed to are:

- 1. Amend Condition 1 to reference the Proposed Site Plan and remove the Vehicle Swept Paths
- 2. Amend Condition 2 to reference the updated TMR Layout Plan.

For further information please contact Anthony Westbury, Planning Officer, on 40373214 or via email CairnsSARA@dsdilgp.qld.gov.au who will be pleased to assist.

Yours sincerely

Javier Samanes

A/Manager (Planning)

cc Douglas Shire Council, enquiries@douglas.qld.gov.au

enc Attachment 1—Referral agency response showing the change



### Changed referral agency response

Our reference: 2208-30664 SPD

### Referral agency response—with conditions

(Given under section 56 of the Planning Act 2016)

Date of original response: 12 January 2018 Original reference: 1710-2156 SRA

The development application described below was properly referred by the State Assessment and Referral Agency (SARA) on 23 October 2017.

### **Applicant details**

Applicant name: W & L Petrie c/- Planz Town Planning Pty Ltd

Applicant contact details: PO Box 181

Edge Hill QLD 4870 info@planztp.com

#### **Location details**

Street address: 49 Macrossan Street (Port Douglas Road), Port Douglas

Real property description: Lot 410 on PTD2091 Local government area Douglas Shire Council

### **Application details**

Development permit Material change of use for shopping facilities, restaurant, multi-unit

housing and holiday accommodation

### Referral triggers

The development application was referred to SARA 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.

### **Advice**

Advice to the applicant is in Attachment 2

### Reasons for decision to impose conditions

SARA must set out the reasons for the decision to impose conditions. These reasons are set out in **Attachment 3**.

#### Rights of appeal

The rights of applicants 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*. For particular applications, there may also be a right to make an application for a declaration from a tribunal (see chapter 6, part 2 of the *Planning Act 2016*).

Copies of the relevant appeal provisions are in Attachment 5.

enc Attachment 1—Changed referral agency conditions

Attachment 2—Advice to the applicant

Attachment 3—Reasons for minor change decision

Attachment 4—Representations about a referral agency response

Attachment 5—Appeal provisions

Attachment 6—Approved plans and specifications

# **Attachment 1—Changed Referral agency conditions**

(Under section 56(1)(b)(i) of the *Planning Act 2016* the following conditions must be attached to any development approval relating to this application) (Copies of the plans and specifications referenced below are found at **Attachment 6**)

| No.             | Conditions  | Condition timing   |  |  |  |  |
|-----------------|---|--|--|--|--|--|
| Mater           | Material Change of Use  |  |  |  |  |  |
| nomin<br>author | 10.9.4.2.4.1 State transport infrastructure—The chief executive administering the Planning Act 2016 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.              | The car parking and access arrangements must be carried out generally in accordance with the following plans:  • Floor Plans Proposed Site Plan prepared by TPG Architects, dated July 2022 December 2017, Reference DA.01, DA-100H Revision A.  • Vehicle Swept Paths, prepared by C.M.G Consulting Engineers Pty Ltd, dated 4 December 2017, sheet 1 of 2.  | Prior to the commencement of use and to be maintained at all times |  |  |  |  |
| 2.              | <ul> <li>(a) The road access location is to be located generally in accordance with TMR Layout Plan (6504-5.49km), prepared by Queensland Government Transport and Main Roads, Reference TMR17-22871(500-1184), dated 08/01/2018 14/09/2022, issue A B,</li> <li>(b) Road access works comprising a Commercial/Industrial Vehicle Crossing must be designed and constructed in accordance with FNQROC Standard Drawing S1015.</li> </ul>  | (a) At all times (b) Prior to commencement of use                  |  |  |  |  |
| 3.              | (a) The existing vehicle property access located between Macrossan Street and Lot 410 on PTD2091 must be permanently closed and removed.  (b) The kerb and channel, table drain and concrete footpath must be reinstated in accordance with FNQROC standards.   |  |  |  |  |  |
| 4.              | The location of the property gate must be positioned wholly within the boundaries of Lot 410 on PTD2091 such that:  i. No other gate infrastructure is to encroach into the state-controlled road corridor,  ii. The gate must open away from, or parallel to, Macrossan Street,  iii. It is controlled remotely, and  iv. There is no requirement for traffic to queue on Macrossan Street.  | At all times   |  |  |  |  |
| 5.              | <ul> <li>(a) Stormwater management of the development must ensure no worsening or actionable nuisance to the state-controlled road.</li> <li>(b) Any works on the land must not: <ol> <li>create any new discharge points for stormwater runoff onto the state-controlled road;</li> <li>ii. interfere with and/or cause damage to the existing stormwater drainage on the state-controlled road;</li> <li>surcharge any existing culvert or drain on the state-controlled road;</li> <li>reduce the quality of stormwater discharge onto state-controlled road.</li> </ol> </li> </ul> | (a) and (b) At all times   |  |  |  |  |

| 6. | Any excavation, filling/backfilling/compaction, retaining structures   | At all times |
|----|--|--------------|
|    | and other works involving ground disturbance must not encroach or de-stabilise the state-controlled road or the land supporting this |              |
|    | infrastructure, or cause similar adverse impacts.  |              |

# Attachment 2—Advice to the applicant

#### General advice

### Advertising advice

1. A local government <u>The applicant</u> 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 <u>to ensure that any</u> advertising device that would be visible from a state-controlled road, and beyond the boundaries of the state-controlled road, <u>and reasonably is unlikely</u> to create a traffic hazard for the state-controlled road.

Note: DTMR has powers under section 139 of the Transport Operations (Road Use Management - Accreditation and Other Provisions) Regulation 2015 to require removal or modification of an advertising sign and/for a device which is deemed that it creates a danger to traffic.

## Transport noise corridor

2. Mandatory Part (MP) 4.4 of the Queensland Development Code (QDC) commenced on 1 September 2010 and applies to building work for the construction or renovation of a residential building in a designated transport noise corridor. MP4.4 seeks to ensure that the habitable rooms of Class 1, 2, 3 and 4 buildings located in a transport noise corridor are designed and constructed to reduce transport noise. Transport noise corridor means land designated under Chapter 8B of the Building Act 1975 as a transport noise corridor. Information about transport noise corridors is available at state and local government offices. A free online search tool can be used to find out whether a property is located in a designated transport noise corridor. This tool is available at the Department of Local Government and Planning State Planning Policy Interactive Mapping System website: <a href="http://www.dilgp.qld.gov.au/planning/state-planning-instruments/spp-interactive-mapping-system.html">http://www.dilgp.qld.gov.au/planning/state-planning-instruments/spp-interactive-mapping-system.html</a>

https://spp.dsdip.esriaustraliaonline.com.au/geoviewer/map/planmaking and allows searches on a registered lot number and/or property address to determine whether and how the QDC applies to the land. Transport Noise Corridors (NAPMAP) are located under Administrative Layers within the State Planning Policy (SPP) mapping system.

### Further development permits required

### Road works approval

3. In accordance with section 33 of the *Transport Infrastructure Act 1994 (TIA)*, an applicant must obtain written approval from Department of Transport and Main Roads (DTMR) to carry out road works, including road access works on a state-controlled road. Please contact DTMR on 4045 7144 to make an application under section 33 of the TIA to carry out road works. This approval must be obtained prior to commencing any works on the state-controlled road reserve. The approval process may require the approval of engineering designs of the proposed works, certified by a Registered Professional Engineer of Queensland (RPEQ).

The road works approval process takes time – please contact Transport and Main Roads as soon as possible to ensure that gaining approval does not delay construction.

#### Road corridor permit

4. An application for a Road Corridor Permit is required for any ancillary works and encroachments on the state-controlled road under section 50(2) and Schedule 6 of the *Transport Infrastructure Act 1994* and Part 5 and Schedule 1 of the *Transport Infrastructure (State-Controlled Roads) Regulation 2006.* Please contact the Department of Transport and Main Roads on 4045 7144 at the Cairns district office to make an application for a Road Corridor Permit.

Ancillary works and encroachments include but are not limited to advertising signs or other

advertising devices, paths or bikeways, buildings/shelters, vegetation clearing, landscaping and planting.

# Attachment 3—Reasons for minor change decision

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

### The reasons for SARA's decision are:

 The proposed change to the development approval will not compromise the safety, function, and efficiency of Port Douglas Road and 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 3.0)
- The Development Assessment Rules
- SARA DA Mapping system
- Human Rights Act 2019

# Attachment 4— Representations about a referral agency response

(page left intentionally blank – attached separately)

# **Attachment 5— Appeal provisions**

(page left intentionally blank – attached separately)

# Attachment 6—Approved plans and specifications

(page left intentionally blank – attached separately)

# Development Assessment Rules—Representations about a referral agency response

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

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

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

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

Pursuant to Section 68 of the *Planning Act 2016* 

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

# Part 7: Miscellaneous

# 30 Representations about a referral agency response

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

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

# Planning Act 2016 – Appeal provisions

The following provisions are the **appeal rights** as defined in the Planning Act 2016, schedule 2.

# **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.

Page 1 of 10 GE11-N

- (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.

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- (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, a tribunal or another entity; and
- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a 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 1 Appeals

### 1 Appeal rights and parties to appeals

- (1) Table 1 states the matters that may be appealed to—
  - (a) the P&E court; or
  - (b) a tribunal.
- (2) However, table 1 applies to a tribunal only if the matter involves—
  - (a) the refusal, or deemed refusal of a development application, for
    - i a material change of use for a classified building; or
    - ii operational work associated with building work, a retaining wall, or a tennis court; or
  - (b) a provision of a development approval for
    - i a material change of use for a classified building; or
    - ii operational work associated with building work, a retaining wall, or a tennis court; or
  - (c) if a development permit was applied for—the decision to give a preliminary approval for
    - i a material change of use for a classified building; or
    - ii operational work associated with building work, a retaining wall, or a tennis court; or

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- (d) development condition if
  - the development approval is only for a material change of use that involves the use of a building classified under the Building Code as a class 2 building; and
  - ii the building is, or is proposed to be, not more than 3 storeys; and
  - iii the proposed development is for not more than 60 sole-occupancy units; or
- (e) a decision for, or a deemed refusal of, an extension application for a development approval that is only for a material change of use of a classified building; or
- (f) a decision for, or a deemed refusal of, a change application for a development approval that is only for a material change of use of a classified building; or
- (g) a matter under this Act, to the extent the matter relates to the Building Act, other than a matter under that Act that may or must decided by the Queensland Building and Construction Commission; or
- (h) a decision to give an enforcement notice
  - i in relation to a matter under paragraphs (a) to (g); or
  - ii under the Plumbing and Drainage Act; or
- (i) an infrastructure charges notice; or
- (j) the refusal, or deemed refusal, of a conversion application; or
- (k) a matter prescribed by regulation.
- (3) Also, table 1 does not apply to a tribunal if the matter involves—
  - (a) for a matter in subsection (2)(a) to (d)
    - i a development approval for which the development application required impact assessment; and
    - ii a development approval in relation to which the assessment manager received a properly made submission for the development application; or
  - (b) a provision of a development approval about the identification or inclusion, under a variation approval, of a matter for the development.
- (4) Table 2 states the matters that may be appealed only to the P&E Court.
- (5) Table 3 states the matters that may be appealed only to the tribunal.
- (6) In each table—
  - (a) column 1 states the appellant in the appeal; and
  - (b) column 2 states the respondent in the appeal; and
  - (c) column 3 states the co-respondent (if any) in the appeal; and
  - (d) column 4 states the co-respondents by election (if any) in the appeal.
- (7) If the chief executive receives a notice of appeal under section 230(3)(f), the chief executive may elect to be a co-respondent in the appeal.
- (8) In this section—

storey see the Building Code, part A1.1.

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# Table 1 Appeals to the P&E Court and, for certain matters, to a tribunal

### 1. Development applications

For a development application other than a development application called in by the minister, an appeal may be made against—

- (a) the refusal of all or part of the development application; or
- (b) the deemed refusal of the development application; or
- (c) a provision of the development approval; or
- (d) if a development permit was applied for—the decision to give a preliminary approval.

| Column 2<br>Respondent | Column 3<br>Co-respondent<br>(if any)   | Column 4 Co-respondent<br>by election (if<br>any)   |
|------------------------|---|---|
| The assessment manager | If the appeal is about a concurrence agency's referral response—the concurrence | A concurrence     agency that is not a co- respondent   |
|                        | agency  | If a chosen assessment<br>manager is the<br>respondent—the<br>prescribed<br>assessment manager                                |
|                        |   | 3. Any eligible advice agency for the application   |
|                        |   | 4. Any eligible submitter for the application   |
|                        | Respondent  | Respondent  (if any)  The assessment manager  If the appeal is about a concurrence agency's referral response—the concurrence |

### 2. Change applications

For a change application other than a change application made to the P&E Court or called in by the Minister, an appeal may be made against—

- (a) the responsible entity's decision on the change application; or
- (b) a deemed refusal of a change application.

| Column 1<br>Appellant |   | Column 2<br>Respondent | Column 3<br>Co-respondent<br>(if any)                 | 1  | mn 4 Co-respondent<br>lection (if   |
|-----------------------|---|------------------------|---|--|---|
| 1. 2.                 | The applicant  If the responsible entity is the assessment manager—an affected entity that gave a pre-request notice or response notice | The responsible entity | If an affected entity starts the appeal—the applicant | <ol> <li>3.</li> <li>4.</li> <li>5.</li> </ol> | A concurrence agency for the development application If a chosen assessment manager is the respondent—the prescribed assessment manager A private certifier for the development application Any eligible advice agency for the change application Any eligible submitter for the change application |

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### 3. Extension applications

For an extension application other than an extension application called in by the Minister, an appeal may be made against—

- (a) The assessment manager's decision on the extension application; or
- (b) A deemed refusal of the extension application.

| Column 1<br>Appellant |   | Column 2<br>Respondent | Column 3<br>Co-respondent<br>(if any)                   | Column 4 Co-respondent<br>by election (if<br>any)                                  |
|-----------------------|---|------------------------|---|--|
| 1.                    | The applicant  For a matter other than a deemed refusal of an extension application—a concurrence agency, other than the chief executive, for the application | The assessment manager | If a concurrence agency starts the appeal—the applicant | If a chosen assessment manager is the respondent—the prescribed assessment manager |

### 4. Infrastructure charges notices

An appeal may be made against an infrastructure charges notice on 1 or more of the following grounds—

- (a) the notice involved an error relating to-
  - (i) the application of the relevant adopted charge; or

Examples of errors in applying an adopted charge:

- the incorrect application of gross floor area for a non-residential development
- applying an incorrect 'use category', under a regulation, to the development
- (ii) the working out of extra demand, for section 120; or
- (iii) an offset or refund; or
- (b) there was no decision about an offset or refund; or
- (c) if the infrastructure charges notice states a refund will be given—the timing for giving the refund; or
- (d) the amount of the charge is so unreasonable that no reasonable relevant local government could have imposed the amount.

| Column 1<br>Appellant                              | Respondent   | Column 3<br>Co-respondent<br>(if any) | Column 4 Co-respondent<br>by election (if<br>any) |
|--|--|---------------------------------------|---|
| The person given the infrastructure charges notice | The local government that gave the infrastructure charges notice |                                       | _   |

### 5. Conversion applications

An appeal may be made against—

- (a) the refusal of a conversion application; or
- (b) a deemed refusal of a conversion application.

| Column 1<br>Appellant | Column 2<br>Respondent  | Column 3<br>Co-respondent<br>(if any) | Column 4 Co-respondent<br>by election (if<br>any) |
|-----------------------|---|---------------------------------------|---|
| The applicant         | The local government to which the conversion application was made | _                                     | _   |

### 6. Enforcement notices

An appeal may be made against the decision to give an enforcement notice.

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| Column 1<br>Appellant                   | Column 2<br>Respondent    | Column 3<br>Co-respondent<br>(if any) | Column 4 Co-respondent<br>by election (if<br>any)   |
|---|---------------------------|---------------------------------------|---|
| The person given the enforcement notice | The enforcement authority | _                                     | If the enforcement authority is not the local government for the premises in relation to which the offence is alleged to have happened—the local government |

### Table 2 Appeals to the P&E Court only

#### 1. Appeals from tribunal

An appeal may be made against a decision of a tribunal, other than a decision under section 252, on the ground of—

- (a) an error or mistake in law on the part of the tribunal; or
- (b) jurisdictional error.

| Column 1<br>Appellant                       | Respondent  | Column 3<br>Co-respondent<br>(if any) | Column 4 Co-respondent<br>by election (if<br>any) |
|---|---|---------------------------------------|---|
| A party to the proceedings for the decision | The other party to the proceedings for the decision | _                                     | _   |

## 2. Eligible submitter appeals

For a development application or change application other than an application decided by the P&E Court or called in by the Minister, an appeal may be made against the decision to approve the application, to the extent the decision relates to-

- (a) any part of the development application or change application that required impact assessment; or
- (b) a variation request

|    | umn 1<br>eellant   |    | umn 2<br>spondent  |    | umn 3<br>-respondent<br>any)   | Column 4 Co-<br>respondent by election<br>(if<br>any) |
|----|--|----|--|----|--|---|
| 2. | For a development application—an eligible submitter for the development application  For a change application—an eligible submitter for the change application | 1. | For a development application—the assessment manager For a change application—the responsible entity | 1. | The applicant If the appeal is about a concurrence agency's referral response—the concurrence agency | Another eligible submitter for the application        |

### 3. Eligible submitter and eligible advice agency appeals

For a development application or change application other than an application decided by the P&E Court or called in by the Minister, an appeal may be made against a provision of the development approval, or a failure to include a provision in the development approval, to the extent the matter relates to-

(a) any part of the development application or the change application, that required impact assessment; or(b) a variation request.

| Column 1  | Column 2   | Column 3      | Column 4 Co-respondent |
|-----------|------------|---------------|------------------------|
| Appellant | Respondent | Co-respondent | by election (if        |
|           |            | (if any)      | any)                   |
|           |            |               |                        |

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| 1. | For a development application—an eligible submitter for the development application  For a change application— | 1. | For a development application—the assessment manager For a change application—the responsible entity | 1.<br>2. | The applicant  If the appeal is about a concurrence agency's referral response—the concurrence agency | Another eligible submitter for the application |
|----|--|----|--|----------|---|--|
|    | an eligible submitter for the change application   |    |  |          |   |  |
| 3. | An eligible advice agency<br>for the development<br>application or change<br>application                       |    |  |          |   |  |

#### 4. Compensation claims

An appeal may be made against—

- (a) a decision under section 32 about a compensation claim; or
  (b) a decision under section 265 about a claim for compensation; or
  (c) a deemed refusal of a claim under paragraph (a) or (b).

| Column 1<br>Appellant                   | Respondent                                       | Column 3<br>Co-respondent<br>(if any) | Column 4 Co-respondent<br>by election (if<br>any) |
|---|--|---------------------------------------|---|
| A person dissatisfied with the decision | The local government to which the claim was made | _                                     | _   |

### 5. Registered premises

An appeal may be made against a decision of the Minister under chapter 7, part 4.

|    | umn 1<br>pellant   | Column 2<br>Respondent | Column 3<br>Co-respondent<br>(if any) | Column 4 Co-respondent<br>by election (if<br>any)                              |
|----|--|------------------------|---------------------------------------|--|
| 1. | A person given a decision notice about the decision  | The Minister           | _                                     | If an owner or occupier starts the appeal—the owner of the registered premises |
| 2. | If the decision is to register premises or renew the registration of premises— an owner or occupier of premises in the affected area for the registered premises who is dissatisfied with the decision |                        |                                       |  |

### 6. Local laws

An appeal may be made against a decision of a local government, or conditions applied, under a local law about—

- (a) the use of premises, other than a use that is the natural and ordinary consequence of prohibited development; or
- (b) the erection of a building or other structure.

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| Column 1<br>Appellant  | Column 2<br>Respondent | Column 3<br>Co-respondent<br>(if any) | Column 4 Co-respondent<br>by election (if<br>any) |
|--|------------------------|---------------------------------------|---|
| A person who—  (a) applied for the decision; and  (b) is dissatisfied with the decision or conditions. | The local government   | _                                     | _   |

# Table 3 Appeals and tribunal only

#### 1. Building advisory agency appeals

An appeal may be made against giving a development approval for building work to the extent the building work required code assessment against the building assessment provisions.

| Column 1<br>Appellant  | Column 2<br>Respondent | Column 3<br>Co-respondent<br>(if any) | Column 4 Co-respondent<br>by election (if<br>any)  |
|--|------------------------|---------------------------------------|--|
| A building advisory agency for the development application related to the approval | The assessment manager | The applicant                         | A concurrence     agency for the     development application     related to the approval |
|  |                        |                                       | A private     certifier for the     development application     related to the approval  |

### 2. Inspection of building work

An appeal may be made against a decision of a building certifier or referral agency about the inspection of building work that is the subject of a building development approval under the Building Act.

| Column 1<br>Appellant                      | Column 2<br>Respondent           |   | Column 4 Co-respondent<br>by election (if<br>any) |
|--|----------------------------------|---|---|
| The applicant for the development approval | The person who made the decision | _ | _   |

#### 3. Certain decisions under the Building Act and the Plumbing and Drainage Act

An appeal may be made against—

- (a) a decision under the Building Act, other than a decision made by the Queensland Building and Construction Commission, if an information notice about the decision was given or required to be given under that Act; or
- (b) a decision under the Plumbing and Drainage Act, part 4 or 5, if an information notice about the decision ws given or required to be given under that Act.

| Column 1<br>Appellant   | Column 2<br>Respondent           | Column 3<br>Co-respondent<br>(if any) | Column 4 Co-respondent<br>by election (if<br>any) |
|---|----------------------------------|---------------------------------------|---|
| A person who received, or was entitled to receive, an information notice about the decision | The person who made the decision | _                                     | _   |

### 4. Local government failure to decide application under the Building Act

An appeal may be made against a local government's failure to decide an application under the Building Act within the period required under that Act.

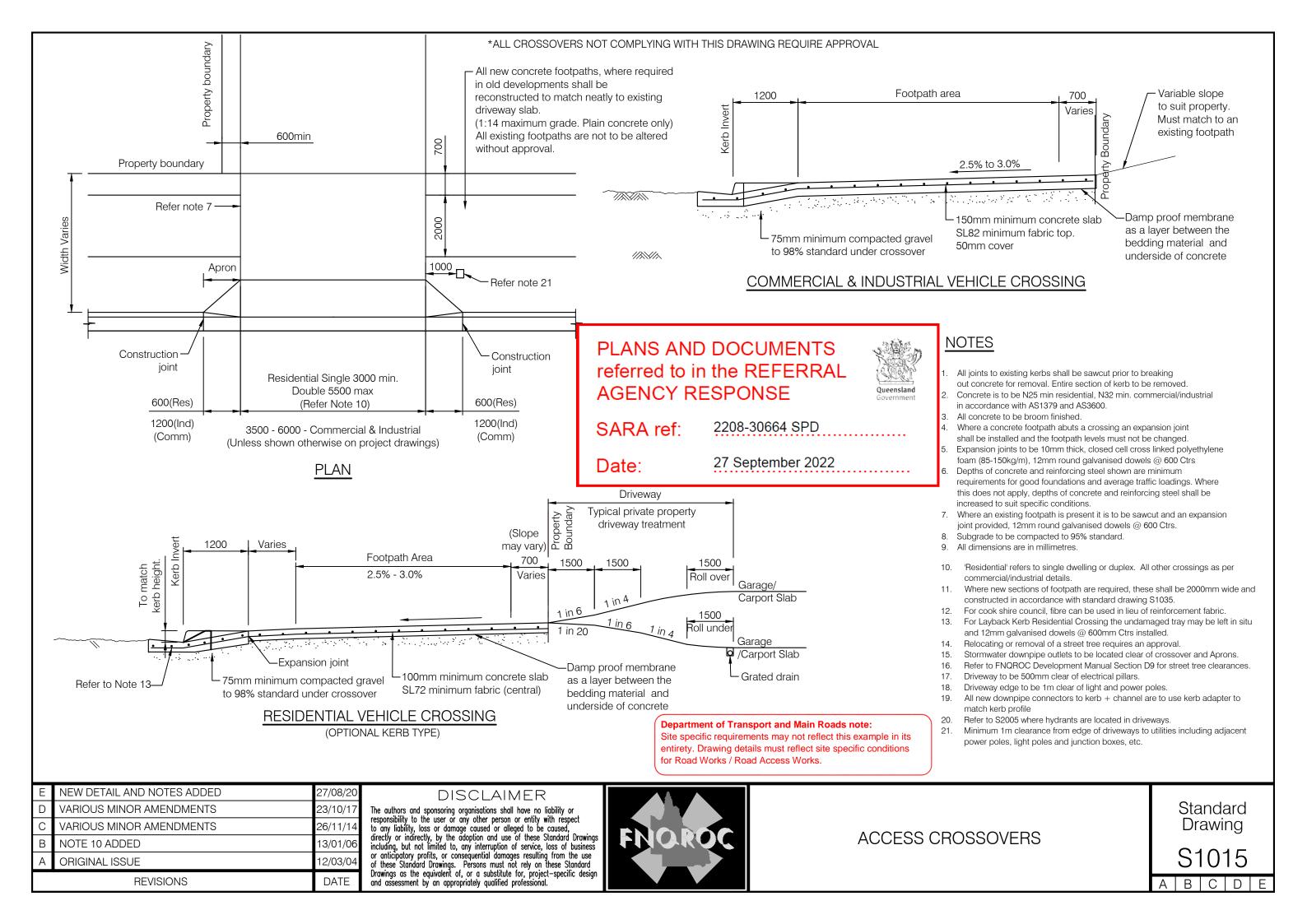
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| Column 1<br>Appellant                                       | Respondent   | Column 3<br>Co-respondent<br>(if any) | Column 4 Co-respondent<br>by election (if<br>any) |
|---|--|---------------------------------------|---|
| A person who was entitled to receive notice of the decision | The local government to which the application was made | _                                     | _   |

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# 49 Macrossan Street

