

SARA reference: 2401-38891 SRA Council reference: MCUC 2024 5568/1

Applicant reference: P72322

23 May 2024

Douglas Shire Council PO Box 723 MOSSMAN QLD 4873 enquiries@douglas.qld.gov.au

Attention: Jenny Elphinstone

Dear Ms Elphinstone

SARA referral agency response—8 Davidson Street, Port Douglas

(Referral agency response given under section 56 of the Planning Act 2016)

The development application described below was confirmed as properly referred by the State Assessment and Referral Agency (SARA) on 31 January 2024.

Response

Outcome: Referral agency response – with conditions

Date of response: 23 May 2024

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 Multiple

dwellings and Short-term accommodation.

(3 units)

SARA role: Referral agency

SARA trigger: Schedule 10, Part 9, Division 4, Subdivision 2, Table 4, Item 1

Far North Queensland regional office Ground Floor, Cnr Grafton and Hartley Street, Cairns PO Box 2358, Cairns QLD 4870 (Planning Regulation 2017) - Material change of use near a State

transport corridor

SARA reference: 2401-38891 SRA

Assessment manager: Douglas Shire Council

Street address: 8 Davidson Street, Port Douglas

Real property description: Lot 704 on PTD2092

Applicant name: KTJ 3 Pty Ltd (Tte) & BTLT Port Douglas Pty Ltd

c/- Planz Town Planning

Applicant contact details: PO Box 181

Edge Hill QLD 4870 info@planztp.com

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: TMR24-041680

Date: 22 May 2024

If you are seeking further information on the road access permit, please contact the Department of Transport and Main Roads at

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

Human Rights Act 2019

considerations:

A consideration of the 23 fundamental human rights protected under the *Human Rights Act 2019* has been undertaken as part of this decision. It has been determined that this decision does not limit

human rights.

Representations

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

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

For further information please contact Leanne Simpson, Principal Planning Officer, on 5352 9707 or via email CairnsSARA@dsdilgp.qld.gov.au who will be pleased to assist.

Yours sincerely

Brett Nancarrow Manager (Planning)

Kuhmin

cc KTJ 3 Pty Ltd (Tte) & BTLT Port Douglas Pty Ltd c/- Planz Town Planning, info@planztp.com

enc Attachment 1 - Referral agency conditions

Attachment 2 - Advice to the applicant

Attachment 3 - Reasons for referral agency response

Attachment 4 - Representations about a referral agency response provisions

Attachment 5 - Documents referenced in conditions

Attachment 1—Referral agency conditions

(Under section 56(1)(b)(i) of the *Planning Act 2016* the following conditions must be attached to any development approval relating to this application) (Copies of the documents referenced below are found at Attachment 5)

No. **Conditions Condition timing** Material change of use (Multiple dwelling and Short-term accommodation) 10.9.4.2.4.1 – Material change of use near a state transport corridor—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 conditions: Managing noise impacts The first floor balcony and roof terrace of Unit 1 facing Port Douglas Prior to the Road (Davidson Street) as shown on the Elevation & Section, commencement of use prepared by TPG Architects, dated April 2024, reference SKD07 and and to be maintained at revision H, as amended in red by SARA must include: all times. balustrades that are solid, gap-free and continuous for their complete length other than gaps required for drainage purposes in accordance with the Building Code of Australia; and highly acoustically absorbent material treatment for the total area of the soffit above the balcony and roof terrace. Stormwater management 2. Stormwater management of the development must not cause a At all times. worsening to the operating performance of the state-controlled road network, such that any works on the land must not: create any new discharge points for stormwater runoff onto the state-controlled road; (ii) concentrate or increase the velocity of flows to the statecontrolled road: (iii) interfere with and/or cause damage to the existing stormwater drainage on the state-controlled road; and (iv) surcharge any existing culvert or drain on the statecontrolled road. Vehicular access to a state-controlled road 3. The road access location is to be located generally in accordance with TMR Layout Plan (6504 - 5.23km), prepared At all times. by Queensland Government Transport and Main Roads, dated 21/05/2024, reference TMR24-41680 (500-1586) and Issue B. Road access works comprising of a sealed commercial (b) and (c): vehicular crossover and driveway must be provided at the road Prior to the access location. commencement of use The road access works must be designed and constructed in accordance with: (i) Standard Drawing - Access Crossovers, prepared by FNROC, dated 27/08/20, reference S1015 and revision E. (ii) Standard Drawing - Concrete Driveway for Allotment Access, prepared by FNQROC, dated 27/08/20, reference

S1110 and revision F.	

Attachment 2—Advice to the applicant

General advice

1. Terms and phrases used in this document are defined in the *Planning Act 2016*, its regulation or the State Development Assessment Provisions (SDAP) (version 3.0). If a word remains undefined it has its ordinary meaning.

On-street carparking within a state-controlled road

The development proposes to establish and utilise on-street car parking spaces within the state-controlled road corridor (Port Douglas Road / Davidson Street) to service the development. DTMR is not obligated or required to retain car parking within the state-controlled road corridor. On-street carparking may be removed at any time to facilitate road widening works or transport infrastructure works.

Transport noise corridor

3. 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 State Planning Policy Interactive Mapping System website: 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 are located under Information Purposes within Transport Infrastructure of the State Planning Policy (SPP) mapping system

Road works approval

4. Under section 33 of the *Transport Infrastructure Act 1994*, written approval is required from the Department of Transport and Main Roads to carry out road works. Please contact the Department of Transport and Main Roads on 4045 7144 to make an application for road works approval.

This approval must be obtained prior to commencing any works on the state-controlled road reserve. The approval process may require the approval of engineering designs of the proposed works, certified by a Registered Professional Engineer of Queensland (RPEQ).

Please contact the Department of Transport and Main Roads as soon as possible to ensure that gaining approval does not delay construction.

Attachment 3—Reasons for referral agency response

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

The reasons for the SARA's decision are:

The proposed development complies with the relevant provisions of State code 1: Development in a state-controlled road environment, as it:

- does not increase the likelihood or frequency of accidents, fatalities or serious injury for users of Davidson Street:
- does not adversely impact the structural integrity or physical condition of Davidson Street, other road transport infrastructure, public passenger transport infrastructure or active transport infrastructure;
- does not adversely impact the function and efficiency of Davidson Street or future state-controlled roads:
- does not adversely impact the state's ability to plan, construct, maintain, upgrade or operate statecontrolled roads, future state-controlled roads or road transport infrastructure;
- does not significantly increase the cost to the state to plan, construct, upgrade or maintain statecontrolled roads, future state-controlled roads or road transport infrastructure;
- maintains access to public passenger transport infrastructure or active transport infrastructure;
- does not adversely impact the state's ability to operate public passenger services on state-controlled roads;
- adequately protects community amenity from significant adverse impacts of environmental emissions
 generated by road transport infrastructure or vehicles using Davidson Street through a combination
 of part solid / part open fence design coupled with adequate separation of buildings and private open
 space from the road.

Material used in the assessment of the application:

- the development application material and submitted plans
- Planning Act 2016
- Planning Regulation 2017
- the SDAP (version 3.0), as published by SARA
- the Development Assessment Rules
- SARA DA Mapping system
- State Planning Policy mapping system
- section 58 of the Human Rights Act 2019

Attachment 4—Representations about a referral agency response provisions

(page left intentionally blank)

Attachment 5—Documents referenced in conditions

(page left intentionally blank)

Our ref TMR24-041680 (500/1586)

Your ref 72322 Enquiries Ron Kaden



Department of **Transport and Main Roads**

22 May 2024

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 MCUC2024_5568/1, lodged with Douglas Shire Council involves constructing or changing a vehicular access between Lot 704PTD2092, the land the subject of the application, and Port Douglas Road (a state-controlled road).

In accordance with section 62A(2) of the *Transport Infrastructure Act 1994* (TIA), this development application is also taken to be an application for a decision under section 62(1) of TIA.

Applicant Details

Name and address KTJ 3 PTY LTD (TTE) BTLT PORT DOUGLAS PTY LTD c-/

Planz Town Planning Pty Ltd

PO Box 181

Edge Hill QLD 4870

Application Details

Address of Property 8 Davidson Street, Port Douglas QLD 4877

Real Property Description 704PTD2092

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

Dwellings and Short-term Accommodation (3 units)

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 near the southern boundary of Lot 704PTD2092, in accordance with: a) TMR Layout Plan (6504 - 5.23km) Issue B 21/05/2024.	At all times.
2.	Direct access is prohibited between Port Douglas Road (Davidson Street) and 704PTD2092 at any other location other than the permitted road access location described in Condition 1.	At all times.

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

Telephone +61 7 (07) 4045 7063 **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
3.	The use of the permitted road access location is to be restricted to: a) Design vehicles up to a maximum size short sedan - Class 1 Short Length Light Vehicle ** Note: ** as described in Austroads Vehicle Classification System	At all times.
4.	Road access works to a commercial / industrial standard including a sealed driveway must be constructed, generally in accordance with: a) FNQROC Standard Drawing S1015 - Access Crossovers dated 27/08/20, Revision E. b) FNQROC Standard Drawing S1110 - Concrete Driveway for Allotment Access, dated 27/08/20, Revision F.	Prior to the commencement of use.

Reasons for the decision

The reasons for this decision are as follows:

- a) The subject site (Lot 704 on PTD2092) has road frontage to Port Douglas Road (Davidson Street), a state-controlled road.
- b) The subject site currently has no direct access to the state-controlled road.
- c) No alternative arrangements (e.g. local government-controlled road or via easement) are available or practical.
- d) The proposed development will require construction of a new commercial access via Port Douglas Road.
- e) As the proposed development is seeking a new access and increasing generation, a new section 62 approval is required to be issued by 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. 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, Ron Kaden Technical Officer (Corridor Management) should be contacted via email at ron.p.kaden@tmr.qld.gov.au or phone 07 4045 7151.

Yours sincerely

Liliya Yates

A/Principal Engineer (Civil)

Attachments: Attachment A – Decision evidence and findings

Attachment B - Section 70 of TIA Attachment C - Appeal Provisions

Attachment D - Permitted Road Access Location Plan

Attachment A

Decision Evidence and Findings

Evidence or other material on which findings were based:

Title of Evidence / Material	Prepared by	Date	Reference no.	Version / Issue
TMR Layout Plan (6504 - 5.23km)	Queensland Government Transport and Main Roads	21 May 2024	TMR24-41680 (500-1586)	В
Site Plan	TPD Architects	April 2024	SKD02	J
Access Crossovers	FNQROC	27 August 2020	S1015	Ш
Concrete Driveway for Allotment Access	FNQROC	27 August 2020	S1110	F

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.



Development Assessment Rules—Representations about a referral agency response

The following provisions are those set out in sections 28 and 30 of the Development Assessment Rules¹ regarding **representations about a referral agency response**

Part 6: Changes to the application and referral agency responses

28 Concurrence agency changes its response or gives a late response

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

Pursuant to Section 68 of the *Planning Act 2016*

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

Part 7: Miscellaneous

30 Representations about a referral agency response

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

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.







