



Town Planning and Project Services

26 August 2026

Chief Executive Officer
Douglas Shire Council
64-66 Front Street
MOSSMAN QLD 4873

Attn: Kieren Nyko (Assessing Officer)

Via email: enquiries@douglas.qld.gov.au
kieren.nyko@douglas.qld.gov.au

RE: CHANGE REPRESENTATIONS – NEGOTIATED DECISION NOTICE – DEVELOPMENT PERMIT FOR THE MATERIAL CHANGE OF USE (MULTIPLE DWELLINGS AND SHORT TERM ACCOMMODATION), RECONFIGURATION OF A LOT (2 LOTS INTO 4 LOTS AND COMMON PROPERTY AND SERVICES EASEMENT) OVER LAND AT 9, 11 AND 13 DAVIDSON STREET, PORT DOUGLAS, MORE FORMALLY DESCRIBED AS LOTS 612 AND 613 ON PTD2092 AND LOT 1 ON RP738379

COUNCIL REF: CA 2026_5907/I

Aspire Town Planning and Project Services acts for Montawood Pty Ltd, the applicant for the above development approval. This letter constitutes change representations under section 75 of the Planning Act 2016 in relation to the Decision Notice dated 26 August 2026. The representations are made within the applicant's appeal period.

The representations are confined to Part A, Condition 17(a). The applicant seeks a negotiated decision notice deleting the requirement for bitumen widening and new kerb and channel across the full Davidson Street frontage of 9, 11 and 13 Davidson Street. The applicant otherwise seeks to preserve the approval and expressly reserves all appeal rights.

Proposed negotiated wording

The applicant proposes that Condition 17 be replaced with the following wording. The drafting preserves the substantive requirements presently contained in Conditions 17(b), 17(c) and 17(d), while removing the disputed frontage upgrade.

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Part A — Condition 17: External Works

Undertake the following works external to the land at no cost to Council:

- a. Provision of a single shared concrete crossover in accordance with FNQROC Development Manual Standard Drawing S1105, as shown on Drawing No. 2.1, titled 'Master Plan – Ground Level', prepared by Hunt Design and dated 11 February 2026.
- b. Planting of a 600 mm wide garden bed with appropriate species along the exterior edge of the perimeter fence on the Davidson Street road reserve. Additional landscape beds are to be planted between the road pavement and the footpath to prevent vehicle access and parking.
- c. Repair of any damage to the existing roadway, including removal of concrete slurry from footways, roads, kerb and channel, stormwater gullies and drain lines, that may occur during works carried out in association with construction of the approved development.

All works in the road reserve must be properly separated from pedestrians and vehicles, with any diversions adequately signed and guarded. Particular attention must be given to maintaining safe passage for people with disabilities.

The access works in paragraph (a) must obtain all required approvals and be completed prior to commencement of use.

The advice note permitting an offset or non-standard kerb alignment around the existing light pole should be deleted because it would no longer serve a purpose. The operational works advice should be confined to the retained access works. Part B, Condition 3(c) should be read, or if necessary amended, so that 'all external works' means the works required by Condition 17 as negotiated.

Why Condition 17(a) should be deleted

The statutory condition test is not satisfied

Section 65(1) of the *Planning Act 2016* provides two alternative bases for a development condition. A condition must either be relevant to the development or use but not impose an unreasonable burden, or be reasonably required in relation to the development or use as a consequence of it. Condition 17(a) does not satisfy either limb when its full scope is considered.

The condition requires a current standard urban road treatment across three separate frontages, including the operating motel at 9 Davidson Street. Council's correspondence identifies the principal rationale as completion of a 'missing piece' of Davidson Street and an alleged outstanding obligation under a 1992 approval. Those matters may describe a broader public infrastructure objective, but they do not establish that the full work is caused by, or reasonably required because of, the development now approved.

In *Trask and Traspunt No. 4 Pty Ltd v Moreton Bay Regional Council (No 2)* [2021] QPEC 7, the Court explained that a condition said to be reasonably required must respond to the development and the changes it is likely to

produce. A condition may serve proper standards of development and still fail if the burden imposed is unreasonable. The present condition goes beyond a response to the actual changes produced by this approval.

The Reasons for Decision included with the decision notice state only that the application satisfies the relevant assessment benchmarks subject to conditions. They do not identify a particular benchmark, engineering deficiency or development generated impact that requires kerb and channel across the three frontages. Council's earlier email correspondence supplies context, but it does not cure the absence of a demonstrated relationship between the full work and the development's actual effects.

The approval already controls the development's actual external impacts

The decision notice contains a complete suite of conditions directed to the effects that the approved development will generate. Those controls materially reduce the claimed justification for a separate full frontage urbanisation requirement.

Conditions 10 and 11 require a site specific stormwater strategy and a private drainage easement through 9 Davidson Street. The proposal does not rely on kerb and channel along Davidson Street to discharge the development's stormwater. The drainage function of Lot 1 is addressed directly by those conditions.

Condition 17(b), together with the Department of Transport and Main Roads decision TMR26-049519 dated 24 April 2026, controls the location, form, width, sealing, construction and ongoing maintenance of the single shared road access. That is the direct transport consequence of the proposal.

Condition 17(c) requires a 600 mm landscaped garden bed on the Davidson Street road reserve. It provides the streetscape and verge treatment the applicant consistently offered during assessment.

Condition 17(d) requires repair of construction damage, while Condition 18 protects the existing footpath and kerb ramp. Council has not required formal on street parking as part of the approval.

Against that framework, the additional requirement for bitumen widening and kerb and channel along every frontage does not remedy an unaddressed development impact. It instead secures a broader upgrade to the public road corridor at the applicant's expense.

The requirement is particularly disconnected from 9 Davidson Street

The operating motel at 9 Davidson Street is included in the application land only so that a one metre wide private stormwater easement can burden the lot for the benefit of the upstream development. There is no new building, additional accommodation, intensified motel use, new parking demand or new Davidson Street access approved on that site. The Department of Transport and Main Roads expressly recorded in its reasons that Lot 1 is included only for the drainage easement.

Requiring the entire motel frontage to be widened and kerbed is therefore not proportionate to the limited legal and physical effect of the approval on that land. The work does not serve the easement, is not needed to convey the approved stormwater outcome, and is not generated by a change in traffic or use at the motel. Whatever view is taken about the developing lots at 11 and 13 Davidson Street, the statutory nexus is weakest, and in the applicant's submission absent, for 9 Davidson Street.

Section 145 does not support a general streetscape completion project

Council's own advice describes the works as non-trunk infrastructure under section 145 of the *Planning Act 2016*. A non-trunk infrastructure condition under that section is confined to infrastructure for the internal network, connecting the premises to an external network, or protecting or maintaining the safety or efficiency of the network of which the infrastructure is a component.

The shared access directly connects the premises to Davidson Street and is regulated by the SARA Decision Notice. By contrast, Council has not identified engineering evidence showing why kerb and channel over all three frontages is required to make that connection or to protect the safety or efficiency of the State controlled road. The stated desire to fill a visual or physical 'missing piece' is a network completion objective. It is not, without more, one of the limited development related purposes for which the full non-trunk work may be conditioned.

TPC 699 does not establish an outstanding kerb-and-channel obligation

Council has relied on Condition 7 of Town Planning Consent TPC 699, issued on 20 October 1992 for 9 Davidson Street. The condition stated:

TPC 699 — Condition 7

'Davidson Street is to be upgraded, for the full frontage of the site, to a design standard and on an alignment as specified by the Shire Engineer.'

That condition does not itself specify kerb and channel, road widening, a pavement width, levels, drainage works or an urban cross section. Its content depended on a separate standard and alignment to be specified by the Shire Engineer at the time. Council has not provided the applicant with the contemporaneous engineering specification, an approved civil drawing, an inspection record identifying a shortfall, or a decision establishing non-compliance with the condition.

The present absence of kerb and channel cannot, by itself, prove that a 1992 condition required it. The landowner recalls that kerb and channel did not exist more broadly in this section of Davidson Street when the motel work was undertaken. That recollection is consistent with the wording of Condition 7, which left the actual standard to the Shire Engineer rather than prescribing the current urban treatment now sought.

The applicant acknowledges that section 73 of the Planning Act provides for a development approval to attach to premises and bind successors while it remains in effect. Section 73 does not, however, supply the missing historical engineering specification or convert the general wording of TPC 699 into a particular 2026 kerb and channel standard. Nor does the absence of a final certificate, without the underlying building and engineering records, establish the precise road work said to remain outstanding.

The motel has operated for more than three decades and Council has not identified compliance or enforcement action about this frontage during that period. That history is not advanced as conclusive proof of compliance. It does mean that a present allegation of breach should rest on the original specification and reliable evidence, rather than an inference drawn solely from today's streetscape.

If Council maintains that TPC 699 has been contravened, that is a separate compliance question which should be investigated and addressed on its evidence, with procedural fairness to the affected owner. Condition 17(a) is not merely an implementation of TPC 699. It creates a new, detailed and current standard obligation across 9, 11 and 13 Davidson Street and ties it to the new development. A new approval should not be used as a substitute means of resolving an unparticularised historical compliance allegation.

The SARA Decision Notice points to a targeted access response

Davidson Street forms part of a State controlled road corridor. The Department of Transport and Main Roads has issued decision TMR26-049519 under the *Transport Infrastructure Act 1994*. It permits one access, approximately 20 metres from the nominated boundary, limits that access to short sedan class vehicles, prohibits other direct access and requires a sealed rural property access at least 5.5 metres wide, generally in accordance with FNQROC Standard Drawing SI 105.

The State decision does not require kerb and channel or full frontage road widening. This does not prevent Council from addressing a legitimate local planning impact. It is nevertheless important evidence of the road authority's targeted response to the development and the existing corridor. Council's retained crossover condition adopts the same SI 105 standard.

By comparison, Condition 17(a) requires an urban kerb and channel treatment while the binding State access decision retains a rural property access standard. Council's correspondence recognised that a change to the State approval or a different standard might need to be pursued. The condition therefore introduces further design, approval and coordination risk without demonstrating why the SARA approved access and the existing verge treatment are inadequate.

Contemporary decisions show that kerb and channel is not an invariable frontage standard

The applicant has referred throughout the assessment to the recent approval at 12 Davidson Street. Council confirmed in correspondence that kerb and channel was not required there because neither adjoining property had kerb and channel or a stormwater inlet, although a footpath upgrade was required. Council also referred to 8 Davidson Street, where more extensive frontage works were imposed.

The applicant does not contend that every development application must receive identical conditions. The relevant point is that Council's own recent decisions demonstrate that kerb and channel is not an automatic or universally necessary response along Davidson Street. The distinction Council has drawn for 12 Davidson Street turns on the opportunity to connect to adjoining infrastructure, rather than an impact produced by the approved use itself. That reinforces the concern that Condition 17(a) is being imposed because the present land happens to occupy a perceived gap, rather than because the development creates a need for the full work.

The fragmented pattern of frontage treatments also supports the applicant's longstanding submission that any comprehensive upgrade should be based on a coordinated corridor design, consistent levels and a defined delivery strategy. Isolated, development-by-development construction risks perpetuating mismatched alignments and standards.

A piecemeal treatment risks abortive work

The applicant understands that the Department of Transport and Main Roads has undertaken planning for the Mowbray Street and Davidson Street intersection, with potential road works extending toward Macrossan Street. No funded delivery timetable has been identified to the applicant. The absence of a settled timetable does not justify

assuming that no State project will occur; equally, it means the ultimate corridor levels, drainage interfaces and alignment have not been demonstrated through this condition.

Council's advice that a non-standard or offset kerb may be used to avoid the existing light pole illustrates the problem. A displaced kerb constructed around existing infrastructure is a site specific workaround, not evidence of a coherent long-term road cross-section. If the State intersection or corridor project later establishes different levels or geometry, the privately funded work may require modification or removal. That material risk of abortive expenditure weighs against imposing the full frontage work now.

The burden is disproportionate to the planning benefit

Condition 17(a) transfers to one landowner the survey, civil design, operational works approval, State road coordination, service investigation, traffic and pedestrian management and construction costs of urbanising three frontages. The scope expressly extends to street lighting, drainage, underground utilities, pavement, footpath, trees, root zones, islands and crossovers. It is therefore not a minor frontage reinstatement condition.

The claimed benefit is principally completion of a missing streetscape link. That benefit is limited by the discontinuous treatments elsewhere in the street, the absence of a demonstrated drainage need, the existing footpath and street lighting, the State-approved S1105 access outcome and the availability of the landscaped verge treatment already conditioned. In *Bridgeman Enterprises Pty Ltd v Sunshine Coast Regional Council* [2021] QPEC 25, the Court removed external infrastructure conditions where the connection with the development was slight and the cost and disruption outweighed the theoretical benefit. While the infrastructure here is different, the proportionality principle is directly relevant.

The landscaped treatment proposed by the applicant and retained in Condition 17(c) is a practical and visually coherent response to the verge. Together with the approved access and repair obligations, it addresses the development's genuine interface with the road reserve without forcing a costly and potentially short-lived hard-infrastructure solution.

The present drafting is open-ended

Condition 17(a) requires works 'consistent with' the properties at 7 and 15–17 Davidson Street, while the advice note permits a non-standard alignment or offset around the light pole. It does not nominate a design level, pavement width, kerb alignment or drainage outlet. At the same time, it requires the operational works drawings to address a broad list of services and public-realm elements across all three sites.

Some detail may properly be resolved through a later operational works application. However, the combination of a broad mandatory outcome, an undefined standard, the State-controlled road interface and an expressly contemplated non-standard alignment leaves the applicant unable to determine the true extent and cost of the obligation. That uncertainty compounds the lack of nexus and proportionality.

Planning purpose and reasonable alternative

A development condition must serve a proper planning purpose derived from the statutory and assessment framework. The applicant accepts the proper purposes of safe access, effective drainage, an attractive verge and protection of public assets. The negotiated wording above secures each of those purposes through targeted conditions already supported by the application material and the SARA Decision Notice.

Deleting Condition 17(a) would not leave the development without frontage controls. It would remove only the component that seeks to complete a broader section of public road infrastructure without demonstrated necessity arising from the approval. The resulting condition set would remain clear, enforceable and directly connected to the development.

Conclusion

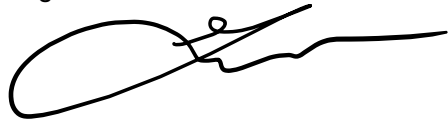
For the reasons above, Condition 17(a) is not a reasonable or proportionate response to the development approved under CA 2026_5907/1. It requires the applicant to fund a broader public road upgrade which is not needed for stormwater drainage, is not required by the SARA Decision Notice, does not respond to any intensification at 9 Davidson Street and is supported in part by an historical allegation that has not been substantiated by the original engineering specification.

The applicant respectfully requests that Council agree to the change representations and issue a negotiated decision notice containing the proposed revised Condition 17. If Council is minded not to accept the primary request, the applicant asks that Council first provide condition-specific engineering and statutory reasons and offer a short meeting with the applicant and Council's planning and engineering officers so that the scope can be resolved during the representations process.

These representations are made without prejudice to the applicant's right to appeal the condition and any related matter.

If you have any further questions or issues, please do not hesitate to contact the undersigned.

Regards,

A handwritten signature in black ink, appearing to read 'Daniel Favier', with a large, stylized loop at the beginning and a long horizontal stroke extending to the right.

Daniel Favier

Senior Town Planner

ASPIRE Town Planning and Project Services