



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

30 March 2021

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

Attention: Jenny Elphinstone

Dear Sir/Madam

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

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

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

Response

| | |
|-------------------|---|
| Outcome: | Referral agency response – with conditions. |
| Date of response: | 30 March 2021 |
| Conditions: | The conditions in Attachment 1 must be attached to any development approval. |
| Advice: | Advice to the applicant is in Attachment 2 . |
| Reasons: | The reasons for the referral agency response are in Attachment 3 . |

Development details

| | | |
|---------------|--|---|
| Description: | Development permit | Material Change of Use for a Function Facility (maximum 80 persons) in association with the existing Dwelling House |
| SARA role: | Referral Agency. | |
| SARA trigger: | Schedule 10, Part 9, Division 4, Subdivision 2, Table 4 (Planning | |

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

SARA reference: 2012-20341 SRA

Assessment Manager: Douglas Shire Council

Street address: 5146 Captain Cook Highway, Oak Beach

Real property description: Lot 1 on RP742791

Applicant name: David & Jennifer Moodie

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

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

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

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

Representations

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

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

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

Yours sincerely



Anthony Walsh
Manager Planning

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

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

Attachment 1—Referral agency conditions

(Under section 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 5**)

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

Attachment 2—Advice to the applicant

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

Attachment 3—Reasons for referral agency response

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

The reasons for the SARA decision are:

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

Material used in the assessment of the application:

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

Attachment 4—Change representation provisions

(page left intentionally blank – attached separately)

Attachment 5—Approved plans and specifications

(page left intentionally blank – attached separately)

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



Department of
Transport and Main Roads

26 March 2021

Decision Notice – Permitted Road Access Location **(s62(1) Transport Infrastructure Act 1994)**

This is not an authorisation to commence work on a state-controlled road¹

Development application reference number MCUI2020_3879/1, lodged with Douglas Shire Council involves constructing or changing a vehicular access between Lot 1RP742791, the land the subject of the application, and Captain Cook Highway (a state-controlled road).

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

Applicant Details

Name and address David & Jennifer Moodie
C/- GMA Certification
PO Box 831
Port Douglas QLD 4877

Application Details

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

Decision (given under section 67 of TIA)

It has been decided to approve the application, subject to the following conditions:

| No. | Conditions of Approval | Condition Timing |
|-----|--|------------------|
| 1 | The permitted road access location is approximately 100 metres from the southern boundary of Lot 1RP742791, in accordance with: 1. TMR Layout Plan (20A - 51.63km) Issue A 23/03/2021 | At all times. |
| 2 | Direct access is prohibited between Captain Cook Highway and Lot 1RP742791 at any other location other than the permitted road access location described in Condition 1. | At all times. |
| 3 | The use of the permitted road access location is to be restricted to: | At all times. |

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

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

Reasons for the decision

The reasons for this decision are as follows:

- a) Currently the subject site (Lot 1 on RP742791) has road frontage and vehicle access via Captain Cook Highway, a state-controlled road.
- b) The proposed development for a function facility (12 events) will require a changed access due to increased traffic generation via the existing access.
- c) In accordance with s33 (5) of the Act, where **road works** that are **road access works** (including driveways) are required, approval of the works cannot be given until the Department of Transport and Main Roads has given approval for a **road access location**.
- d) Therefore, a decision under section 62 of the Act is required as no prior approval for road access location is evidenced.

Please refer to **Attachment A** for the findings on material questions of fact and the evidence or other material on which those findings were based.

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

1. There is no guarantee of the continuation of road access arrangements, as this depends on future traffic safety and efficiency circumstances.
2. In accordance with section 70 of the TIA, the applicant for the planning application is bound by this decision. A copy of section 70 is attached as **Attachment B**, as required, for information.

Further information about the decision

1. In accordance with section 67(7) of TIA, this decision notice:
 - a) starts to have effect when the development approval has effect; and

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

Further approvals

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

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

If further information about this approval or any other related query is required, Mr Ronald Kaden, Technical Officer (Development Control) should be contacted by email at ron.p.kaden@tmr.qld.gov.au or on (07) 4045 7151.

Yours sincerely



Peter McNamara
Principal Engineer (Civil)

Attachments: Attachment A – Decision evidence and findings
Attachment B - Section 70 of TIA
Attachment C - Appeal Provisions
Attachment D - Permitted Road Access Location Plan

Attachment A

Decision Evidence and Findings

Evidence or other material on which findings were based:

| Title of Evidence / Material | Prepared by | Date | Reference no. | Version / Issue |
|-------------------------------------|--|---------------|---------------------------|------------------------|
| TMR Layout Plan (20A - 51.63km) | Queensland Government Transport and Main Roads | 23 March 2021 | TMR20-31834 (500-1543) | A |

Attachment B

Section 70 of TIA

Transport Infrastructure Act 1994

Chapter 6 Road transport infrastructure

Part 5 Management of State-controlled roads

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

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

Maximum penalty—200 penalty units.

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

Attachment C
Appeal Provisions

Transport Infrastructure Act 1994
Chapter 16 General provisions

485 Internal review of decisions

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

485B Appeals against decisions

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

(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.

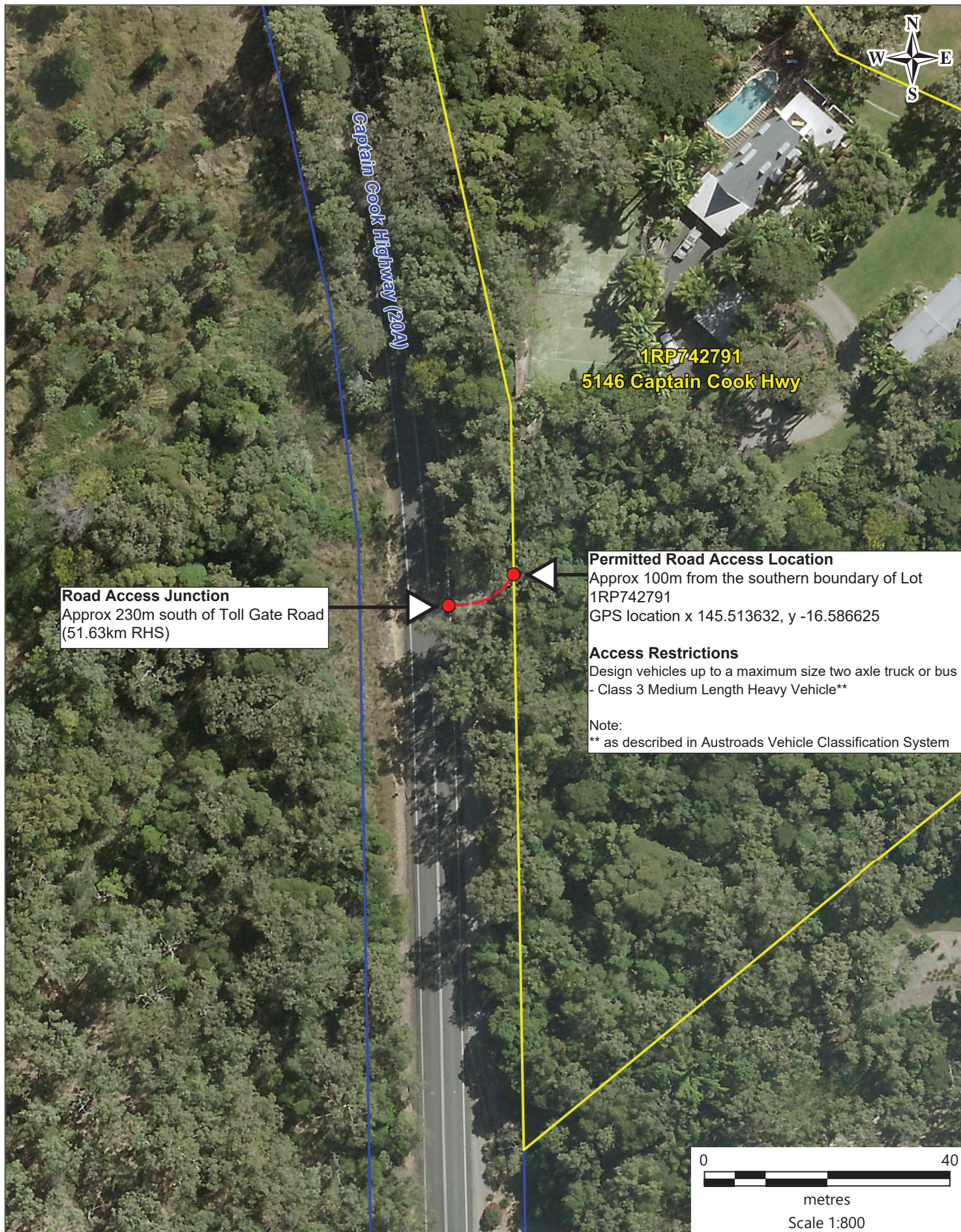
(2) However, if—

(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.






Road Access Junction
Approx 230m south of Toll Gate Road
(51.63km RHS)


Permitted Road Access Location
Approx 100m from the southern boundary of Lot
1RP742791
GPS location x 145.513632, y -16.586625

Access Restrictions
Design vehicles up to a maximum size two axle truck or bus
- Class 3 Medium Length Heavy Vehicle**

Note:
** as described in Austroads Vehicle Classification System

| | |
|---|--|
| Branch/Unit : Corridor Management / Far North District | |
| Projection/Datum : Geocentric Datum of Australia (GDA) 1994 | |
|  Parcels |  Subject Land |
|  Road Access Driveway | |

**TMR Layout Plan
(20A - 51.63km)**

| | | |
|---|-------------------------------------|----------------------------|
|  Queensland Government Transport and Main Roads | | |
| Plan: 1 / 1 | Issue: A | Date: 23/03/2021 |
| Drawn by: RPK | File ref: TMR20-31834 (500-1543) | |

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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.

¹ Pursuant to Section 68 of the *Planning Act 2016*

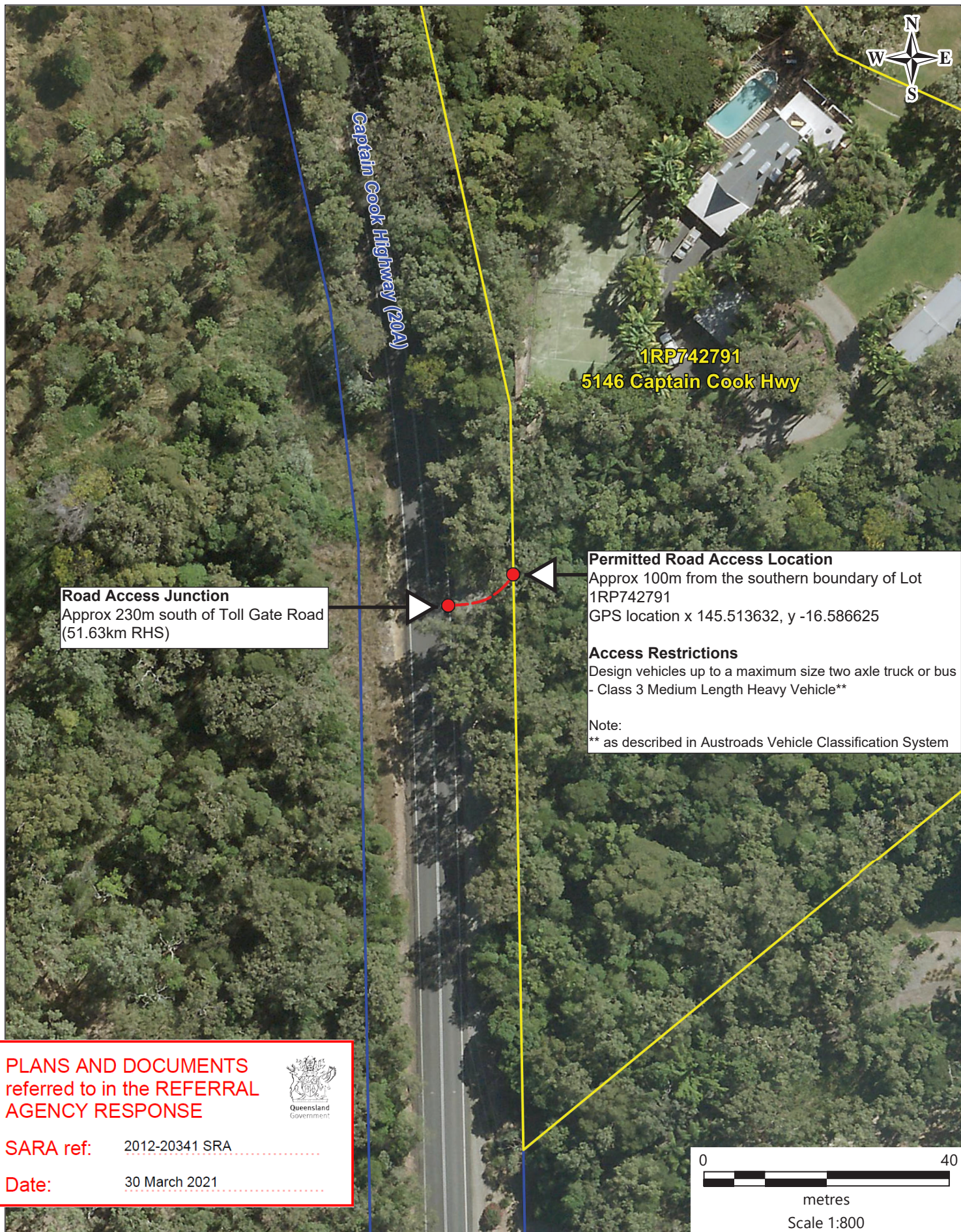
² In the instance an applicant has made representations to the concurrence agency under section 30, and the concurrence agency agrees to make the change included in the representations, section 28.2(c) is taken to have been satisfied.




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

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.



| | |
|---|--|
| Branch/Unit : Corridor Management / Far North District | |
| Projection/Datum : Geocentric Datum of Australia (GDA) 1994 | |
|  Parcels |  Subject Land |
|  Road Access Driveway | |




TMR Layout Plan (20A - 51.63km)




Queensland Government
Transport and Main Roads

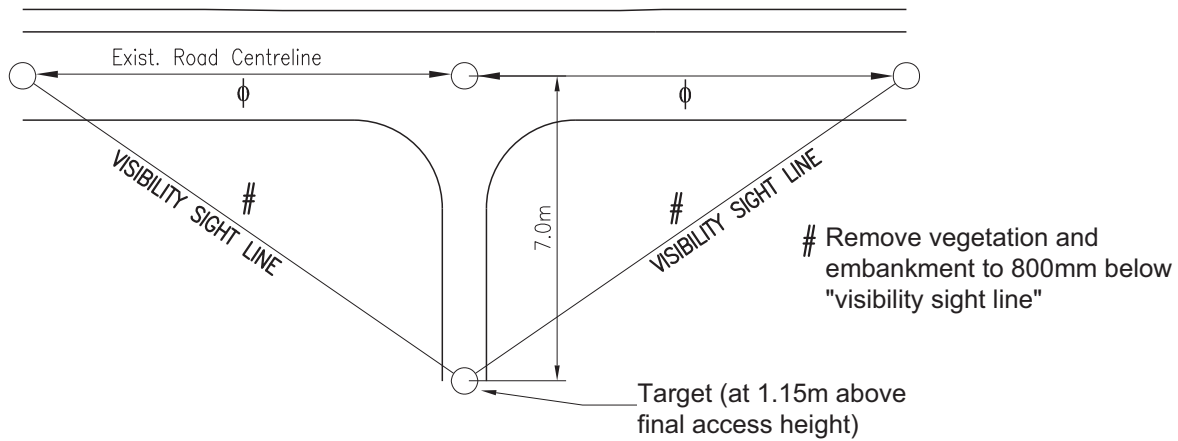
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|-----------------------|-------------------------------------|----------------------------|
| Plan: 1 / 1 | Issue: A | Date: 23/03/2021 |
| Drawn by: RPK | File ref: TMR20-31834 (500-1543) | |



| | |
|---|--|
| Branch/Unit : Corridor Management / Far North District | |
| Projection/Datum : Geocentric Datum of Australia (GDA) 1994 | |
|  Parcels |  Subject Land |
|  State-controlled road boundary | |

| | |
|--|--|
| TMR Layout Plan (Visibility Triangle) | |
| 80km/hr speed zone | |

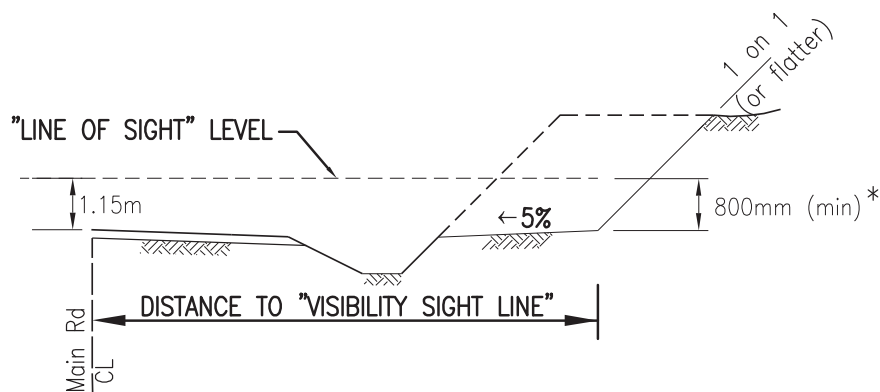
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|  Queensland Government Transport and Main Roads | | |
| Plan: 1 / 2 | Issue: A | Date: 26/03/2021 |
| Drawn by: RPK | File ref: TMR20-31834 (500-1543) | |



Visibility triangles - Plan

Visibility along Road Centre Line

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



Visibility benching - Section

Visibility benching

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

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

PLANS AND DOCUMENTS
referred to in the REFERRAL
AGENCY RESPONSE



SARA ref: 2012-20341 SRA

Date: 30 March 2021