

Our ref TMR17-022871 (500-1184)  
Your ref  
Enquiries Ronald Kaden



Department of  
**Transport and Main Roads**

9 January 2018

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

This is not an authorisation to commence work on a state-controlled road<sup>1</sup>

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  
Aspect/s of Development Development Permit for Material Change of Use for Shopping 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 A 08/01/2018, 2. Floor Plans drawing DA-100H dated December 2017 prepared by TPG Architects, and 3. Vehicle Swept Paths drawing Sheet 1 of 2 dated 4 Dec 2017 prepared by CMG Consulting Engineers.	At all times.
2	Road access works comprising a Commercial / Industrial Vehicle	Prior to commencement of

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

No.	Conditions of Approval	Condition Timing
	Crossing must be provided at the permitted access location, generally in accordance with FNQROC Standard Drawing S1015	use
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	<p>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.</p> <p>Note: ** as described in Austroads Vehicle Classification System</p>	At all times.
6	<p>The location of any property gate must be positioned wholly within the boundaries of Lot 410PTD2091 such that:</p> <ul style="list-style-type: none"> <li>a) No other gate infrastructure is to encroach into the state-controlled road corridor,</li> <li>b) The gate must open away from, or parallel to, Macrossan Street,</li> <li>c) It is controlled remotely, and</li> <li>d) There is no requirement for traffic to queue on Macrossan Street.</li> </ul>	At all times.

### Reasons for the decision

The reasons for this decision are as follows:

- Lot 410 on PTD2091 (the subject site) has direct access via Port Douglas Road (Macrossan Street), a state-controlled road,
- The planning report prepared by Planz Town Planning indicates that the existing access is to be relocated to the western side of the property,
- The relocated access is considered a new access,
- An assessment of the new access by TMR indicates that the access will be required to comply with FNQROC standards,
- Therefore, the proposed development requires a new section 62 approval from TMR to satisfy PO15.

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, Development Control Officer, Corridor Management should be contacted by email at [ron.p.kaden@tmr.qld.gov.au](mailto:ron.p.kaden@tmr.qld.gov.au) or on (07) 4045 7151.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter McNamara', written in a cursive style.

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 and associated documents

## Attachment A

### Decision Evidence and Findings

Findings on material questions of fact:

<b>Title of Evidence / Material</b>	<b>Prepared by</b>	<b>Date</b>	<b>Reference no.</b>	<b>Version/Issue</b>
Application for Development Permit: Material Change of Use Shops, Multi-Unit Housing & Holiday Accommodation (7 Units) including Supporting Information	Planz Town Planning	20 September 2017	-	-
Information Response for MCU Mixed Development	Planz Town Planning	14 December 2017	-	-
Floor Plans	TPG Architects	December 2017	DA-100H	-
Vehicle Swept Paths	C.M.G Consulting Engineers Pty Ltd	4 December 2017	Sheet 1 of 2	-
TMR Layout Plan (6504 - 5.49km)	Queensland Government Transport and Main Roads	08 January 2018	TMR17-22871 (500-1184)	A

## **Attachment B**

### **Section 70 of TIA**

*Transport Infrastructure Act 1994*

Chapter 6 Road transport infrastructure

Part 5 Management of State-controlled roads

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#### **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

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**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.