



17 December 2020

Senior Planner: Brian Millard
Direct Phone: 4086 4657
Our Reference: MCU/20/0013
Your Reference: 19-517

Djabugay Tribal Aboriginal Corporation
C/- Urban Sync Pty Ltd
PO Box 2970
CAIRNS QLD 4870

Dear Applicant/s

Decision Notice

Planning Act 2016

I refer to your application and advise that on 16 December 2020, Council decided to approve the application in full subject to conditions.

Details of the decision are as follows:

APPLICATION DETAILS

Application No: MCU/20/0013
Street Address: 1458 Kennedy Highway, Kuranda
Real Property Description: Lot 1 on RP728072
Planning Scheme: Mareeba Shire Council Planning Scheme 2016

DECISION DETAILS

Type of Decision: Approval
Type of Approval: Development Permit for Material Change of Use - Office, Educational Establishment (Training Room & Ranger Training Program) and Community Use (Art Centre & Ancillary Café)
Date of Decision: 16 December 2020

CURRENCY PERIOD OF APPROVAL

The currency period for this development approval is six (6) years starting the day that this development approval takes effect. (Refer to Section 85 "Lapsing of approval at end of currency period" of the *Planning Act 2016*.)

INFRASTRUCTURE

Where conditions relate to the provision of infrastructure, these are non-trunk infrastructure conditions unless specifically nominated as a "*necessary infrastructure condition*" for the provision of trunk infrastructure as defined under Chapter 4 of the *Planning Act 2016*.

ASSESSMENT MANAGER CONDITIONS

(A) ASSESSMENT MANAGER'S CONDITIONS (COUNCIL)

(a) Development assessable against the Planning Scheme

1. Development must be carried out generally in accordance with the approved plans and the facts and circumstances of the use as submitted with the application, subject to any alterations:
 - found necessary by Council's delegated officer at the time of examination of the engineering plans or during construction of the development because of particular engineering requirements; and
 - to ensure compliance with the following conditions of approval.
2. Timing of Effect
 - 2.1 The conditions of the development permit must be complied with to the satisfaction of Council's delegated officer prior to the commencement of the use, except where specified otherwise in these conditions of approval.
 - 2.2 Prior to the commencement of use, the applicant must demonstrate to Council that all the conditions of the development permit have been complied with, except where specified otherwise in these conditions of approval.
3. General
 - 3.1 The applicant/developer is responsible for the cost of necessary alterations to existing public utility mains, services or installations required by works in relation to the proposed development or any works required by condition(s) of this approval.
 - 3.2 All payments or bonds required to be made to the Council pursuant to any condition of this approval must be made prior to the commencement of the use, and at the rate applicable at the time of payment.
 - 3.3 All works must be designed, constructed and carried out in accordance with FNQROC Development Manual requirements (as amended) and to the satisfaction of Council's delegated officer.
 - 3.4 Noise Nuisance

Refrigeration equipment, pumps, compressors and mechanical ventilation systems must be located, designed, screened, installed and maintained to achieve a maximum noise level of 3dB(A) above background levels as measured from noise sensitive locations and a maximum noise level of 8dB(A) above background levels as measured from commercial locations.

3.5 Waste Management

All on site refuse storage area/s must be screened from view from adjoining properties and road reserve by a one (1) metre wide landscaped screening buffer, 1.8m high solid fence or building.

3.6 The development must be carried out in a manner to prevent the spread of weeds, seeds or other pests into clean areas or away from infested areas.

3.7 Hours of Operation

The operating hours for the Community Use (Art Centre & Ancillary Café) shall be between 8am and 5:30pm, Monday to Sunday.

3.8 Amplified music or loudspeakers of any kind must not be used in association with the approved use, unless in an emergency situation. Ambient music within the Community Use (Art Centre & Ancillary Café) is acceptable provided it is not audible outside the site boundaries.

4. Infrastructure Services and Standards

4.1 Stormwater Drainage/Water Quality

4.1.1 The applicant/developer must take all necessary steps to ensure a non-worsening effect on surrounding land as a consequence of the development.

4.1.2 All stormwater drainage concentrated by the development must be collected from site and discharged to an approved legal point of discharge.

4.2 Erosion and Sediment Control

The applicant/developer must implement and maintain an Erosion and sediment control (ESC) management plan on-site for the duration of the operational and/or building works, and until all exposed soil areas are permanently stabilised (e.g. turfed, hydro-mulched, concreted, landscaped).

4.3 Car Parking/Internal Driveways

The applicant/developer must ensure that the Community Use (Art Centre & Ancillary Café) is provided with five (5) on-site car parking spaces in generally in accordance with Drawing 20032 A01. These car parking spaces, and the access road connecting them to the Kennedy Highway must be concrete, bitumen or asphalt sealed and appropriately drained prior to the commencement of the use and to the satisfaction of Council's delegated officer.

The car parking spaces, and access road must be constructed in compliance with the following standards, to the satisfaction of Council's delegated officer:

- Australian Standard AS2890:1 Off Street Parking – Car Parking Facilities;
- Australian Standard AS1428:2001 – Design for Access and Mobility.

All other internal roads and car parking areas associated with the approved use must be maintained to a minimum gravelled standard.

4.4 Lighting

Where installed, external lighting must be designed and installed in accordance with *AS4282 – Control of the obtrusive effects of outdoor lighting* so as not to cause nuisance to residents or obstruct or distract pedestrian or vehicular traffic.

4.5 Water Supply

4.5.1 The Community Use (Art Centre & Ancillary Café) must be connected to the Kuranda reticulated water supply.

A water service connection must be provided to the subject lot in accordance with FNQROC Development Manual standards (as amended) to the satisfaction of Council's delegated officer.

4.5.2 All other aspects of the development must be provided with a potable water supply that can satisfy the standards for drinking water set by the Australian Drinking Water Guidelines 6, 2011 (National Health and Medical Research Council and the National Resource Management Ministerial Council).

All non-potable sources of water must be sign posted "non-potable water supply" or similar in order to deter consumption.

4.6 On-site Wastewater Management

All on site effluent disposal associated with the approved use must be in compliance with the latest version of On-Site Domestic Wastewater Management Standard (AS/NZ1547) to the satisfaction of the Council's delegated officer.

Where existing on-site effluent disposal system/s are to be used in association with the approved use, they must be evaluated by a registered site and soil evaluator, and a report lodged with Council outlining compliance with the On-Site Domestic-Wastewater Management Standard (AS/NZS1547:2000) to the satisfaction of Council's delegated officer.

REFERRAL AGENCIES

The referral agencies applicable to this application are:

Material change of use of premises near a State transport corridor or that is a future State transport corridor		
Development application for a material change of use, other than an excluded material change of use, that is assessable development under a local categorizing instrument, if all or part of the premises—	Schedule 10, Part 9, Division 4, Subdivision 2, Table 4	State Assessment & Referral Agency (SARA) PO Box 2358 Cairns QLD 4870 CairnsSARA@dsmip.qld.gov.au
(a) are within 25m of a State transport corridor; or		
(b) are a future State transport corridor; or		
(c) are—		
(i) adjacent to a road that intersects with a State-controlled road; and		
(ii) within 100m of the intersection		

A copy of any referral agency conditions are attached.

APPROVED PLANS

The following plans are Approved plans for the development:

Plan/Document Number	Plan/Document Title	Prepared by	Dated
-	Site Plan	-	11/6/2020
-	Existing Office	-	-
20032 A01	Site Plan	Bau Design Architects	18/03/2020
20032 A02	Demolition Plan	Bau Design Architects	19/03/2020
20032 A03	Floor Plan	Bau Design Architects	19/03/2020
20032 A04	Roof Plan	Bau Design Architects	16/03/2020
20032 A05	Elevations	Bau Design Architects	16/03/2020
20032 A06	Elevations	Bau Design Architects	16/03/2020
20032 A07	3D Image	Bau Design Architects	16/03/2020

ADVISORY NOTES

The following notes are included for guidance and information purposes only and do not form part of the assessment manager conditions:

(A) ASSESSMENT MANAGER'S ADVICE

- (a) A number of other charges or payments may be payable as conditions of approval. The applicable fee is set out in Council's Fees & Charges Schedule for each respective financial year.

(b) Water Meters/Water Service Connection

Prior to the water service connection works commencing and the installation of the meters by Council, an application for a Plumbing Compliance Permit is required to be submitted with detailed hydraulic drawings. The cost of the required water connection and meter (capping of any existing meter may be required) will be determined based upon the approved hydraulic drawings at the time of lodgement of a Water Quotation Request.

(c) Food Premises

Premises proposed for the storage and preparation, handling, packing or service of food must comply with the requirements of the Food Act 2006.

- (d) The change in the use of the building may also require a change in the classification of the building under the Building Act. You are advised to contact a Building Certifier to establish if a change in the classification of the building is required.

(e) Compliance with applicable codes/policies

The development must be carried out to ensure compliance with the provisions of Council's Local Laws, Planning Scheme Policies, Planning Scheme and Planning Scheme Codes to the extent they have not been varied by a condition of this approval.

(f) Compliance with Acts and Regulations

The erection and use of the building must comply with the Building Act and all other relevant Acts, Regulations and Laws, and these approval conditions.

(g) Environmental Protection and Biodiversity Conservation Act 1999

The applicant is advised that referral may be required under the *Environmental Protection and Biodiversity Conservation Act 1999* if the proposed activities are likely to have a significant impact on a matter of national environmental significance. Further information on these matters can be obtained from www.environment.gov.au.

(h) Cultural Heritage

In carrying out the activity the applicant must take all reasonable and practicable measures to ensure that no harm is done to Aboriginal cultural heritage (the "cultural heritage duty of care"). The applicant will comply with the cultural heritage duty of care if the applicant acts in accordance with gazetted cultural heritage duty of care guidelines. An assessment of the proposed activity against the duty of care guidelines will determine whether or to what extent Aboriginal cultural heritage may be harmed by the activity. Further information on cultural heritage, together with a copy of the duty of care guidelines and cultural heritage search forms, may be obtained from www.datsip.qld.gov.au.

(B) REFERRAL AGENCY CONDITIONS

Queensland Treasury conditions dated 28 October 2020.

PROPERTY NOTES

Not Applicable.

FURTHER DEVELOPMENT PERMITS REQUIRED

- Development Permit for Building Work
- Compliance Permit for Plumbing and Drainage Work

SUBMISSIONS

There were six (6) properly made submissions about the application. In accordance with the *Planning Act 2016*, the name, residential or business address, and electronic address of the principal submitter for each properly made submission is provided below;

Name of Principal submitter	Address
1. Kuranda Envirocare Inc	PO Box 494, Kuranda 4881
2. (Petition 40 signatories) K Parsons	11 Shane Court, Kuranda 4881
3. A Kempe & K Shimizu	3 Punch Close, Kuranda 4881
4. P Cohen	Punch Close, Kuranda 4881
5. D Pollock	3 Shane Court, Kuranda 4881
6. G Resta	5 Shane Court, Kuranda 4881

RIGHTS OF APPEAL

You are entitled to appeal against this decision. A copy of the relevant appeal provisions from the *Planning Act 2016* is attached.

During the appeal period, you as the applicant may suspend your appeal period and make written representations to council about the conditions contained within the development approval. If council agrees or agrees in part with the representations, a "negotiated decision notice" will be issued. Only one "negotiated decision notice" may be given. Taking this step will defer your appeal period, which will commence again from the start the day after you receive a "negotiated decision notice".

OTHER DETAILS

If you wish to obtain more information about Council's decision, electronic copies are available on line at www.msc.qld.gov.au, or at Council Offices.

Yours faithfully



BRIAN MILLARD
SENIOR PLANNER

Enc: Approved Plans/Documents
Referral Agency Response
Appeal Rights

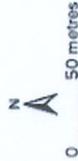
Copy: Department of State Development, Manufacturing, Infrastructure and Planning
CairnsSARA@dsdmip.qld.gov.au

Approved Plans/Documents

A product of
Queensland Globe



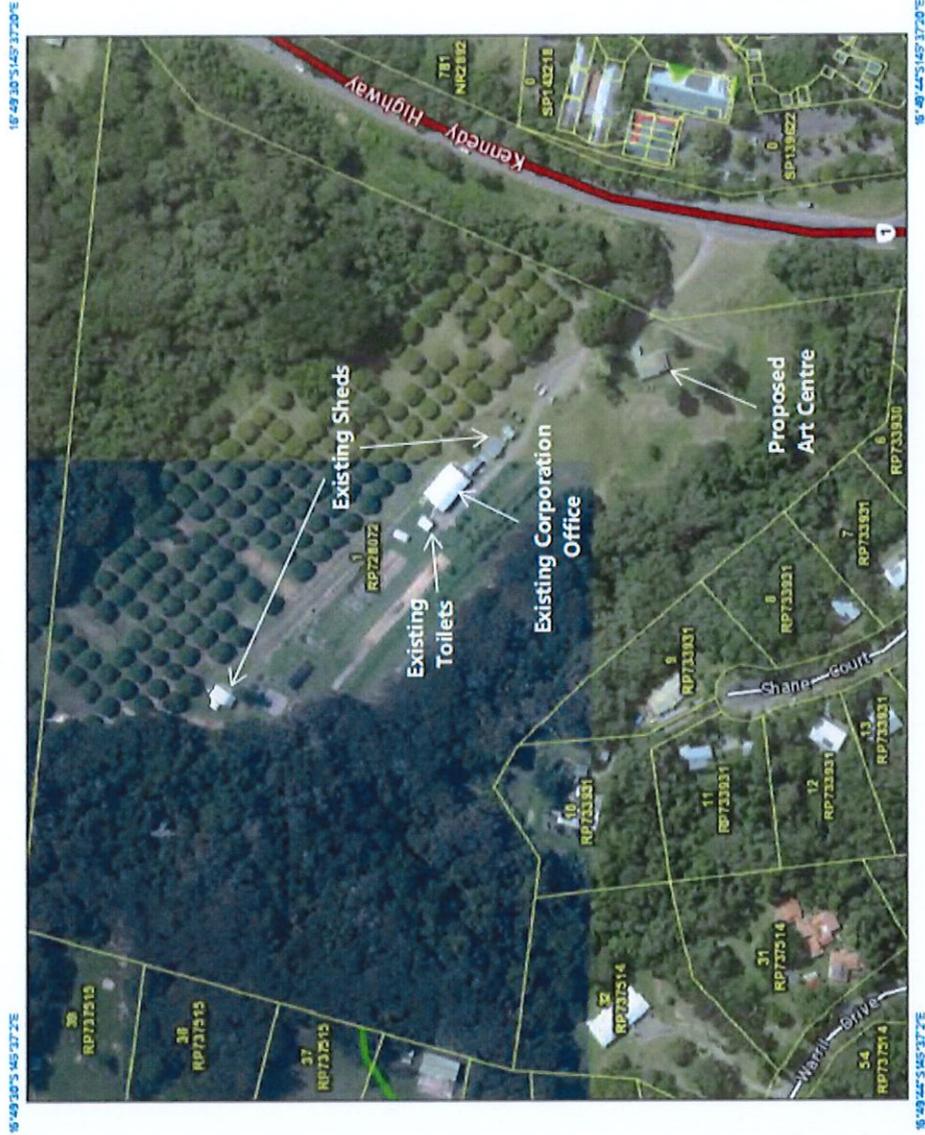
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Scale: 1:2762
Print date: 15/09/2020
Datum: Geocentric Datum of Australia 1994
Projection: Web Mercator EPSG:102100
For more information, visit
<http://log.ces.information.qld.gov.au/help-116/Centachut.html>

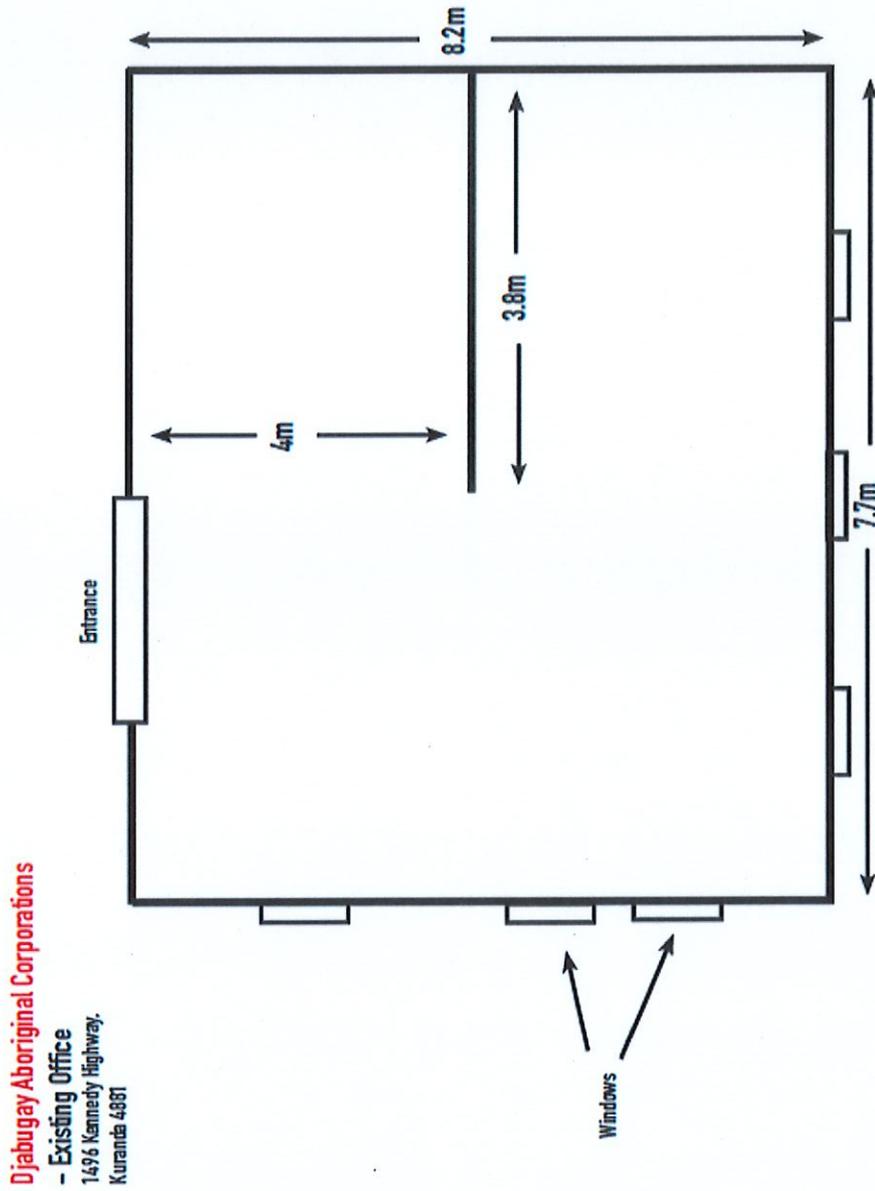
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Queensland Government
Department of Natural Resources, Mines and Energy



17/12/2020
B. [Signature]

Not To Scale



17/12/2020
B. Will

Sheet Number	Sheet Name	Scale
001	Site Plan	1:2000
002	Development Plan	1:2000
003	Site Plan	1:2000
004	Site Plan	1:2000
005	Site Plan	1:2000
006	Site Plan	1:2000
007	Site Plan	1:2000



baudesign
architects
11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

DJABUGAY ART CENTRE
1486 Kennedy Highway, Kuranda

Site Plan
1 : 2000

20032
18/03/2020 Issue 2

17/12/2020
B. M. [Signature]



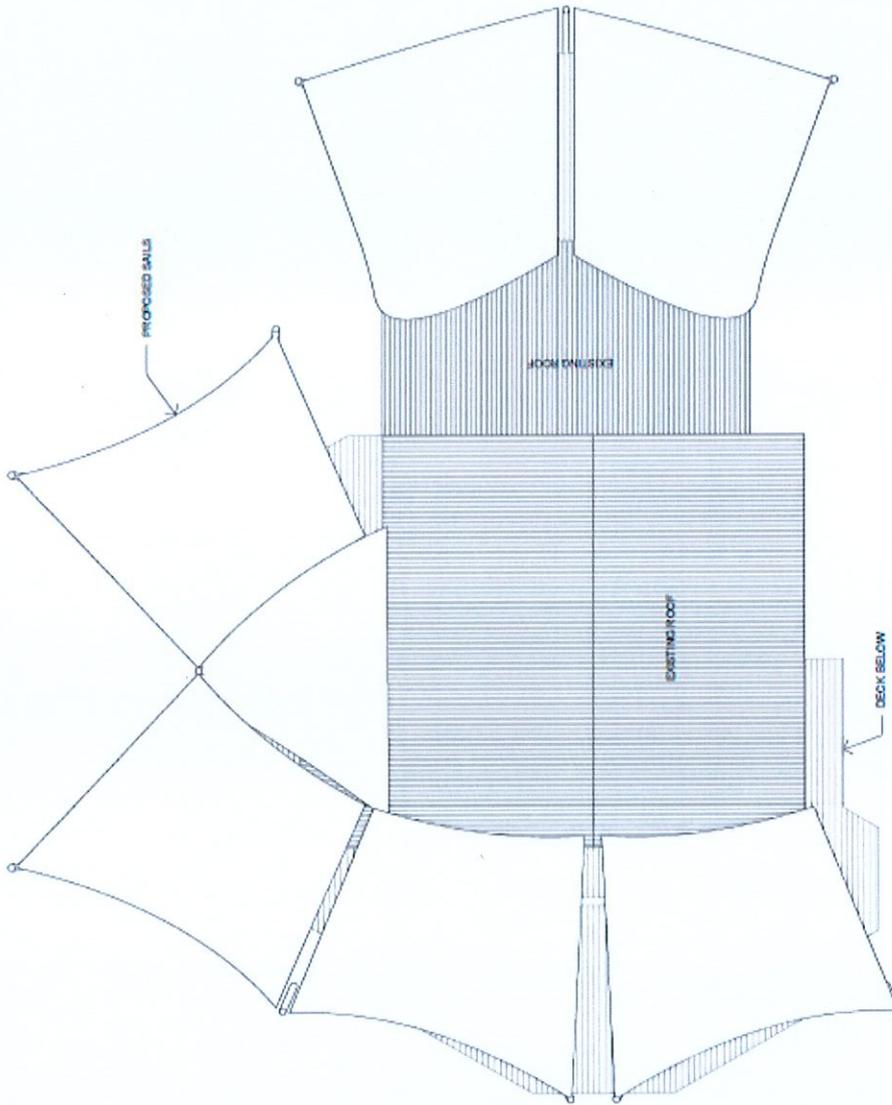
bau design
architects
 1496 KENNEDY HIGHWAY
 KURANDA
 QUEENSLAND 4887
 PHONE: 07 4071 1171
 EMAIL: bau@bausearchitects.com.au

20032
 19/03/2020 Issue 2

Demolition Plan
 1 : 100

DJABUGAY ART CENTRE
 1496 Kennedy Highway, Kuranda

17/12/2020
B. n. [Signature]



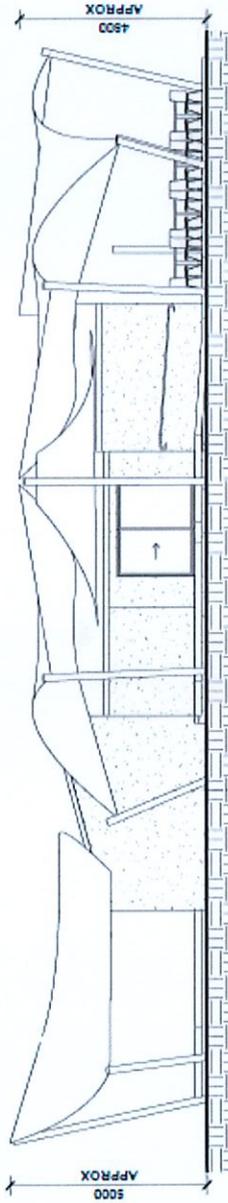
bau design
architects
L1 ARCHITECTS INC. (P/L)
15/03/2020
15/03/2020

20032
15/03/2020 Issue 1

Roof Plan
1 : 100

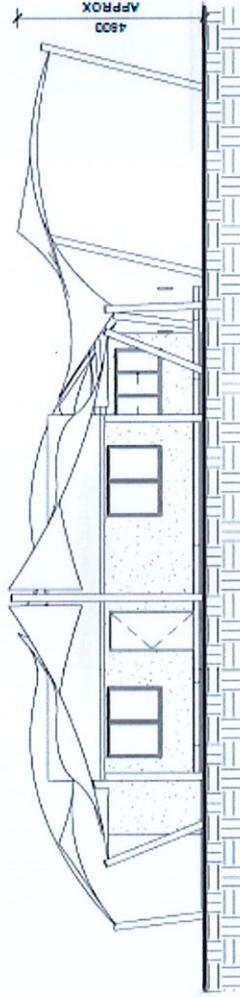
DJABUGAY ART CENTRE
1486 Kennedy Highway, Kuranda

17/12/2020
B. Will



EAST ELEVATION

1 : 100



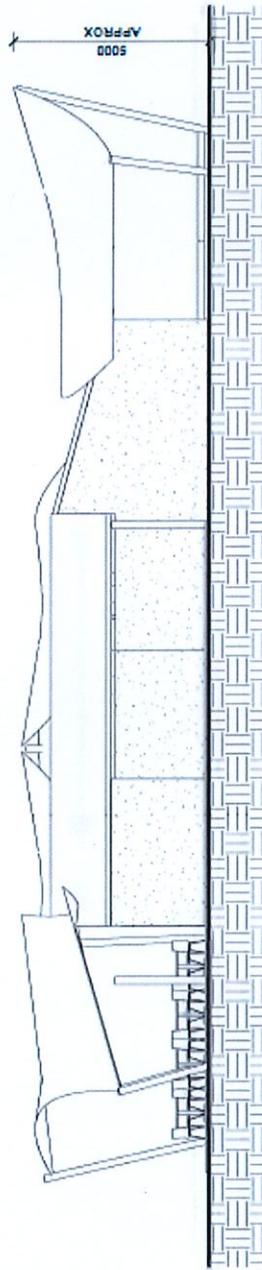
SOUTH ELEVATION

1 : 100

**baudesign
architects**
111 WILSON ROAD, SUITE 102
 DUNEDIN 9016 NEW ZEALAND

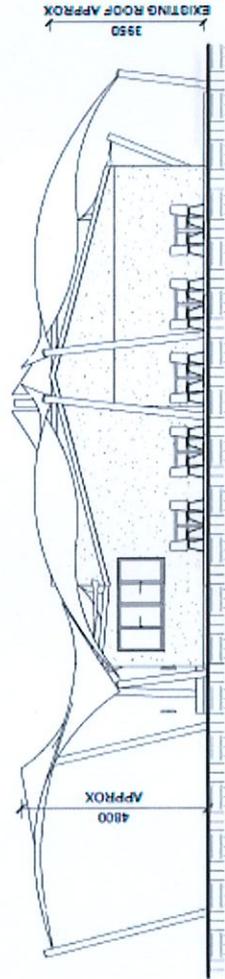
DJABUGAY ART CENTRE Elevations 20032
 1498 Kennedy Highway, Kuranda 16/03/2020 Issue 1 1 : 100

17/12/2020
B. [Signature]



WEST ELEVATION

1 : 100



NORTH ELEVATION

1 : 100

bau design
architects
17 ABINGDON CIRCLE, DE
MOUNTED
STURGEON
#4701146 004 9107116

DJABUGAY ART CENTRE Elevations 20032
1496 Kennedy Highway, Kuranda 16/03/2020 Issue 1
1 : 100

17/12/2020
B. [Signature]



Southern View



Northern View

baudesign
architects
REGISTERED ARCHITECTS
MEMBERS OF THE ARCHITECTS ACT 1997

DJABUGAY ART CENTRE
1496 Kennedy Highway, Kuranda

3D Image
20032
16/03/2020 Issue 1

17/12/2020
B. Hill

Referral Agency Response

RA6-N



Queensland Treasury

SARA reference: 2009-18958 SRA
 Council reference: MCU/20/0013
 Applicant reference: 18-517

28 October 2020

Chief Executive Officer
 Mareeba Shire Council
 PO Box 154
 Mareeba Qld 4880
 planning@msc.qld.gov.au

Attention: Carl Ewin

Dear Sir/Madam

SARA response—Material Change of Use, Djabugay Tribal Aboriginal Corporation, 1458 Kennedy Highway, Kuranda

(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 30 September 2020.

Response

Outcome:	Referral agency response – with conditions.
Date of response:	28 October 2020
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 an Office, Educational Establishment (Training Room & Ranger Training Program) and Community Use (Art Centre & Ancillary Cafe)
SARA role:	Referral Agency.	

Page 1 of 7

Far North Queensland regional office
 Ground Floor, Cnr Grafton and Hartley
 Street, Cairns
 PO Box 2358, Cairns QLD 4870

2509-18958 SRA

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: 2009-18958 SRA

Assessment Manager: Mareeba Shire Council

Street address: 1458 Kennedy Highway, Kuranda

Real property description: Lot 1 on RP728072

Applicant name: Djabugay Tribal Aboriginal Corporation ICN 1536

Applicant contact details: C/- Urban Sync Pty Ltd
PO Box 2870
Cairns QLD 4870
justin@urbansync.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: TMR20-03127 (500-1493)
- Date: 23 October 2020

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@dsmip.qld.gov.au who will be pleased to assist.

Yours sincerely



Brett Nancarrow
Manager (Planning)

cc Djabugay Tribal Aboriginal Corporation ICN 1536, justin@urbansync.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 specifications

2009-18956 SRA

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 (32A – 14.63km), prepared by Queensland Government Transport and Main Roads, dated 13/10/2020, Reference TMR20-31127 (500-1493), Issue A.</p> <p>(b) Road access works comprising of a sealed property access including a channelised right turn (CHR) and an auxiliary left-turn lane (AUL) must be provided at the road access location.</p> <p>(c) The road access works must be designed and constructed in accordance with Austroads Guide to Road Design, Part 4: Intersections and Crossings – General and 4A: Unsignalised and Signalised Intersections, specifically:</p> <p>(i) Figure A 30: Channelised right turn (CHR) on a two-lane rural road.</p> <p>(ii) Figure 8.4: Rural Auxiliary Left-turn Lane treatment (AUL).</p>	<p>(a) At all times.</p> <p>(b) and (c): Prior to the commencement of use.</p>
2.	<p>(a) Stormwater management of the development must ensure no worsening or actionable nuisance to the state-controlled road.</p> <p>(b) Any works on the land must not:</p> <p>(i) Create any new discharge points for stormwater runoff onto the state-controlled road.</p> <p>(ii) Interfere with and/or cause damage to the existing stormwater drainage on the state-controlled road.</p> <p>(iii) Surcharge any existing culvert or drain on the state-controlled road.</p> <p>(iv) Reduce the quality of stormwater discharge onto the state-controlled road.</p>	(a) and (b): At all times.

2009-16956 SRA

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>Advertising device</p> <p>Advertising advice should be obtained from the Department of Transport and Main Roads (DTMR) if the approved development intends to erect, alter or operate an advertising sign or another advertising device that would be visible from a state-controlled road, and beyond the boundaries of the state-controlled road, and reasonably likely to create a traffic hazard for the state-controlled road.</p> <p>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.</p>
3.	<p>Roads Works Approval</p> <p>In accordance with section 33 of the <i>Transport Infrastructure Act 1994</i> (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 <i>Transport Infrastructure Act 1994</i> 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).</p> <p>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.</p>

2009-18956 SRA

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 access to Kennedy Highway, a limited access state-controlled road.
- The road works required to change the existing access to Kennedy Highway, will ensure that impacts from increased traffic loadings on the state-controlled road are controlled and reduced, and the development will not worsen operating conditions on the state-controlled road network.
- The buildings for the development are setback a minimum of approximately 11m from the property boundary and approximately 50m from the Kennedy Highway carriageway.
- Stormwater and drainage flows are appropriately managed and will not impact the state-controlled road.
- The development will not be significantly impacted by the noise of vehicles using 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

2009-16956 SRA

Attachment 4—Change representation provisions

(page left intentionally blank – attached separately)

2009-16956 SRA

Attachment 5—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 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 2018*

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.

Appeal Rights

PLANNING ACT 2016 & THE PLANNING REGULATION 2017

Chapter 6 Dispute resolution

Part 1 Appeal rights

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 of the *Planning Act 2016* 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.

(Refer to Schedule 1 of the Planning Act 2016)

- (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.
- (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 has 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.

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.
- (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 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 the rules of the P&E Court.