

8.3 NEGOTIATED DECISION NOTICE - G & G CORDENOS AND S CORDENOS - MATERIAL CHANGE OF USE - CHILD CARE CENTRE - LOT 53 ON SP204554 - 47 ANZAC AVENUE, MAREEBA - MCU/22/0017

Date Prepared: 28 June 2023

Author: Senior Planner

Attachments:

1. Decision Notice dated 24 April 2023
2. Applicant's written representations received 14 June 2023

APPLICATION DETAILS

APPLICATION		PREMISES	
APPLICANT	G & G Cordenos and S Cordenos	ADDRESS	47 Anzac Avenue, Mareeba
DATE REQUEST FOR NDN LODGED	14 June 2023	RPD	Lot 53 on SP204554
TYPE OF APPROVAL	Development Permit		
PROPOSED DEVELOPMENT	Material Change of Use – Child Care Centre		
FILE NO	MCU/22/0017	AREA	4061m2
LODGED BY	Planning Plus	OWNER	G & G Cordenos and S Cordenos
PLANNING SCHEME	Mareeba Shire Council Planning Scheme 2016		
ZONE	Low Density Residential zone		
LEVEL OF ASSESSMENT	Impact Assessment		
SUBMISSIONS	Three (3)		

EXECUTIVE SUMMARY

Council approved a development application described in the above application details at its meeting held on 19 April 2023, subject to conditions.

The application was impact assessable and three (3) properly made submissions were received in response to public notification of the application.

Planning Plus on behalf of the applicant has subsequently made written representations about *Condition 4.8 Anzac Avenue widening*. As a result of those representations, Council officers recommend an amendment of condition 4.8 to credit the agreed cost of these works against the adopted infrastructure charges payable for this development.

It is recommended that the application be approved in part and a negotiated decision notice be issued.

OFFICER'S RECOMMENDATION

It is recommended that:

1. "In relation to the written representations made by Planning Plus regarding conditions of the following development approval:

APPLICATION		PREMISES	
APPLICANT	G & G Cordenos and S Cordenos	ADDRESS	47 Anzac Avenue, Mareeba
DATE LODGED	24 June 2022	RPD	Lot 53 on SP204554
TYPE OF APPROVAL	Development Permit		
PROPOSED DEVELOPMENT	Material Change of Use - Child Care Centre		

and in accordance with the Planning Act 2016, the following:

- (a) Condition 4.8 of Council's Decision Notice issued on 24 April 2023 be amended as follows:

4.8 Anzac Avenue widening

4.8.1 *The applicant/developer must widen the Anzac Avenue sealed pavement by 4.5 metres on the development side, commencing at the eastern end of the existing kerb and channel and extending for a distance of 50 metres to the east, in accordance with FNQROC Development Manual standards (as amended) to the satisfaction of Council's delegated officer.*

4.8.2 *Kerb and channel is to be provided on the development side, for the entire length of the widening required under 4.8.1.*

4.8.3 *The agreed value of the widening required under 4.8.1 will be credited against the adopted infrastructure charges payable for this development, where the applicant/developer has completed the widening required under 4.8.1 at their cost. Prior to the commencement of the widening required under 4.8.1, the applicant/development must submit full specifications and costings for the widening for agreement by Council's delegated officer.*

2. A Negotiated Decision Notice be issued to the applicant / referral agencies and submitters advising of Council's decision."

THE SITE

The site is situated at 47 Anzac Avenue, Mareeba and is more particularly described as Lot 53 on SP204554. The site is irregular in shape with an area of 4,061m² and is zoned Low Density Residential under the Mareeba Shire Council Planning Scheme 2016.

The site is flat and except for a for sale sign in the north-eastern corner, vacant.

The site has frontages of approximately 107 metres to the Kennedy Highway and 80 metres to Anzac Avenue. Both frontage roads are constructed to bitumen sealed standard. Informal access to the site is gained from Anzac Avenue.

The properties adjoining the western boundary comprise of a residential lot containing a dwelling house, and Lot 201 containing the Mareeba Bowls Club and the Cedric Davies Community Hub. Both of these adjoining lots are zoned Low Density Residential.

The immediate locality is characterised by residential and rural residential lots generally ranging between 1,000m² and up to 8,000m².

The site is not currently connected to Mareeba's reticulated water and sewerage networks.



Map Disclaimer:

Based on or contains data provided by the State of Queensland (Department of Environment and Resource Management) (2009). In consideration of the State permitting use of this data you acknowledge and agree that the State gives no warranty in relation to the data (including accuracy, reliability, completeness, currency or suitability) and accepts no liability (including without limitation, liability in negligence) for any loss, damage or costs (including consequential damage) relating to any use of the data. Data must not be used for direct marketing or be used in breach of the privacy laws.



Map Disclaimer:

Based on or contains data provided by the State of Queensland (Department of Environment and Resource Management) (2009). In consideration of the State permitting use of this data you acknowledge and agree that the State gives no warranty in relation to the data (including accuracy, reliability, completeness, currency or suitability) and accepts no liability (including without limitation, liability in negligence) for any loss, damage or costs (including consequential damage) relating to any use of the data. Data must not be used for direct marketing or be used in breach of the privacy laws.

BACKGROUND AND CONTEXT

Council at its Ordinary Meeting on 19 April 2023 approved the application made by Planning Plus on behalf of G & G Cordenos and S Cordenos for the issue of a development permit for Material Change of Use - Child Care Centre over land described as Lot 53 on SP204554, situated at 47 Anzac Avenue, Mareeba.

The approval was granted subject to conditions and the Decision Notice was issued on 24 April 2023 and is included as **Attachment 1**.

Planning Plus on behalf of the applicant, has written to Council making representations (**Attachment 2**) in relation to Condition 4.8, and requests the issue of a negotiated decision notice.

APPLICANT'S REPRESENTATIONS

Condition 4.8

4.8 Anzac Avenue widening

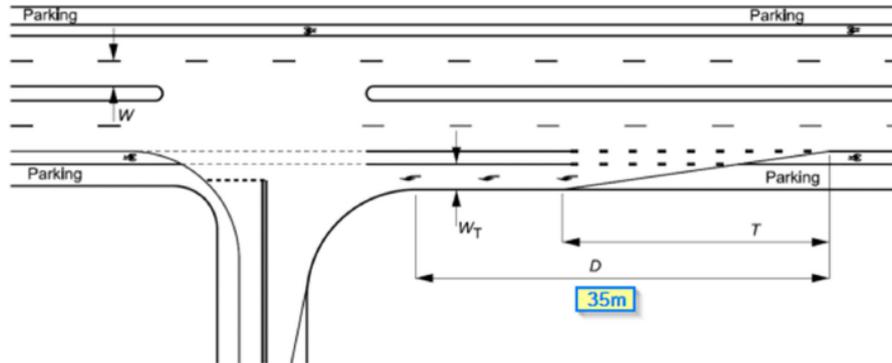
4.8.1 The applicant/developer must widen the Anzac Avenue sealed pavement by 4.5 metres on the development side, commencing at the eastern end of the existing kerb and channel and extending for a distance of 50 metres to the east, in accordance with FNQROC Development Manual standards (as amended) to the satisfaction of Council's delegated officer.

4.8.2 Kerb and channel is to be provided on the development side, for the entire length of the widening required under 4.8.1.

Representation by Applicant

“Advice from the applicant’s traffic engineer is that there is no engineering basis for the prescribed extent of road widening. The advice is that if a left turn treatment was required here in the future, an AUL(S) would be the appropriate treatment. An AUL(S) requires 35m which fits neatly within the current road with the access at the current location.

Figure 8.11: Auxiliary left-turn treatment [AUL(S)] on the major leg of an intersection



Notes:

For setting out details of the left-turn geometry, use vehicle turning path templates and/or the details in Table 8.4. Approaches to left-turn lanes can create hazardous situations between cyclists and left-turning vehicles. Treatments to reduce the number of potential conflicts at left-turn slip lanes are given in AGRD Part 4 Section 9. The holding line is typically placed in prolongation of the kerb line or edge line, however, it may be set back if there is a problem with the design vehicle over-running the holding line, or if it is desired to hold vehicles back some distance from the intersecting roadway (AS 1742.2 - 2009). The setback needs to be balanced such that sight distance is not negatively impacted to create a safety issue and the needs of pedestrians is met.

Values of D and T are provided in Table 8.4 and the dimensions of the treatment are defined as follows:

- W = Nominal through lane width (m) (incl. widening for curves). For a new intersection on an existing road, the width is to be in accordance with the current link strategy.
- W_T = Nominal width of turn lane (m) (incl. widening for curves based on the design turning vehicle) = 3.0 m minimum.
- T = Physical taper length (m) given by:

$$T = \frac{0.33V W_T}{3.6}$$
- V = Design speed of major road approach (km/h).

Source: Department of Transport and Main Roads (2006).

Table 8.4: Dimensions for D and T in AUL(S) treatment

Design speed of major road approach (km/h)	Diverge/deceleration length D (m) ⁽¹⁾	Taper length T (m) ⁽²⁾
50	20	20
60	25	20
70	35	30
80	45	30
90	55	40

1 Based on a 20% reduction in through road speed at the start of the taper and a value of deceleration of 3.5 m/s² (Table 5.2). Adjust for grade using the 'correction to grade' factor in Table 5.3.
 2 Based on a turn lane width of 3.0 m and a bicycle lane width of 1.5 m.

On the above basis, and the fact that the prescribed widening is situated beyond the road frontage of the site, the subject condition is considered unreasonable.

Notwithstanding, the applicant advises that they would be willing to accept a condition requiring additional road widening if the works were considered trunk works and were fully creditable/reimbursable. It is noted that the Mareeba Shire LGIP identifies Anzac Avenue is an existing Higher Order Local Road and the road clearly serves a trunk function. Any upgrades to this road are therefore considered to be trunk works where they are not required directly as a result of the proposed development.

In summary, we request that the condition requiring the additional road widening and kerb and channel be removed or changed such that the works are identified as being trunk works.”

Response

Condition 4.8 was imposed by Council in response to concerns raised by submitters about the proposed development’s potential to further impact on traffic movements in the vicinity of the Anzac Avenue/Ferretti Close intersection.

The Mareeba Shire Council Planning Scheme 2016 identifies Anzac Avenue as a Collector Road and the Mareeba Shire Council Local Government Infrastructure Plan identifies Anzac Avenue as an Existing Higher Order Local Road (trunk infrastructure).

The widening of Anzac Avenue as required by Condition 4.8 would also be considered trunk infrastructure.

Due to the reason for the imposition of Condition 4.8, Council officers are of the view that the widening requirement should be maintained, however, the agreed value of these works should be offset against the adopted infrastructure charges applicable to the development.

The applicable adopted infrastructure charge as of 1 July 2023 is \$42,131.20.

It is recommended that Condition 4.8 be amended as follows:

4.8 Anzac Avenue widening

4.8.1 The applicant/developer must widen the Anzac Avenue sealed pavement by 4.5 metres on the development side, commencing at the eastern end of the existing kerb and channel and extending for a distance of 50 metres to the east, in accordance with FNQROC Development Manual standards (as amended) to the satisfaction of Council’s delegated officer.

4.8.2 Kerb and channel is to be provided on the development side, for the entire length of the widening required under 4.8.1.

4.8.3 The agreed value of the widening required under 4.8.1 will be credited against the adopted infrastructure charges payable for this development, where the applicant/developer has completed the widening required under 4.8.1 at their cost. Prior to the commencement of the widening required under 4.8.1, the applicant/development must submit full specifications and costings for the widening for agreement by Council’s delegated officer.



65 Rankin Street
 PO Box 154 MAREEBA QLD 4880
 P: 1300 308 461
 F: 07 4092 3323
 W: www.msc.qld.gov.au
 E: info@msc.qld.gov.au

24 April 2023

Planning Officer: Carl Ewin
 Direct Phone: (07) 4086 4656
 Our Reference: MCU/22/0017
 Your Reference: 20-14

Giuliano & Gina Cordenos and Stephen Cordenos
 C/- Planning Plus
 PO Box 399
 REDLYNCH QLD 4870

Dear Applicants,

Decision Notice

Planning Act 2016

I refer to your application and advise that on 19 April 2023, Council decided to approve the application in full subject to conditions.

Details of the decision are as follows:

APPLICATION DETAILS

Application No:	MCU/22/0017
Street Address:	47 Anzac Avenue, Mareeba
Real Property Description:	Lot 53 on SP204554
Planning Scheme:	Mareeba Shire Council Planning Scheme 2016

DECISION DETAILS

Type of Decision:	Approval
Type of Approval:	Development Permit for Material Change of Use – Child Care Centre
Date of Decision:	19 April 2023

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*.)

Public Office: 65 Rankin Street, Mareeba QLD 4880. Postal address: PO Box 154, Mareeba QLD 4880



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

(C) 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 notify 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 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 Waste Management

On site refuse storage area must be provided and be screened from view from adjoining properties and road reserve by one (1) metre wide landscaped screening buffer, 1.8m high solid fence or building.
 - 3.5 Noise Nuisance

Refrigeration equipment, pumps, compressors and mechanical ventilation systems must be located, designed, 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.

3.6 Air Conditioner & Building Plant Screening

The applicant/developer is required to install and maintain suitable screening to all air conditioning, lift motor rooms, plant and service facilities located at the top of or on the external face of the building. The screening structures must be constructed from materials that are consistent with materials used elsewhere on the facade of the building. There are to be no individual external unscreened air conditioning units attached to the exterior building facade.

3.7 Building Amenity

The development must complement and integrate with the established built character of the Low Density Residential zone, having regard to:

- (a) roof form and pitch;
- (b) eaves and awnings;
- (c) building materials, colours and textures; and
- (d) window and door size and location.

3.8 Safety fencing

A child proof fence or physical barrier is provided to prevent unintended access to the following areas, directly from indoor or outdoor areas intended to accommodate children:

- (a) Vehicle manoeuvring and parking areas;
- (b) Refuse storage and servicing areas; and
- (c) Air conditioning, refrigeration plant and mechanical plant.

3.9 Hours of Operation

The operating hours shall be between 6.30am and 6pm Monday to Saturday. No operations are permitted on Sunday or Public Holidays.

4. Infrastructure Services and Standards

4.1 Access

A **commercial** access crossover must be constructed (from the edge of Anzac Avenue to the property boundary of the subject lot) in accordance with the FNQROC Development Manual, to the satisfaction of Council's delegated officer.

Where applicable, the applicant/developer must ensure that any redundant vehicle crossovers are removed and reinstated with kerb and channel.

4.2 Stormwater Drainage/Water Quality

- 4.2.1 Prior to building works commencing, the applicant/developer must submit a Stormwater Management Plan and Report prepared and certified by a suitably qualified design engineer (RPEQ) that meets or exceeds the standards of design and construction set out in the Queensland Urban Drainage Manual (QUDM) and the FNQROC Development Manual to the satisfaction of Council's delegated officer.
- 4.2.2 The Stormwater Management Plan must ensure a non-worsening effect on surrounding land as a consequence of the development, and must take all reasonable and practicable measures to ensure discharge occurs in compliance with the Queensland Urban Drainage Manual (QUDM) and the FNQROC Development Manual.
- 4.2.3 The applicant/developer must construct the stormwater drainage infrastructure for the development in accordance with the approved Stormwater Management Plan and Report.
- 4.2.4 All stormwater drainage must be collected from site and discharged to an approved legal point of discharge.

4.3 Car Parking/Internal Driveways

- 4.3.1 The applicant/developer must ensure the development is provided with on-site car parking spaces generally in accordance with Site Plan 1675-SK02 which are available solely for the parking of vehicles associated with the use of the premises.
- 4.3.2 All car parking spaces and internal driveways 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.
- 4.3.3 All car parking spaces and internal driveways 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.

4.4 Landscaping and Fencing

- 4.4.1 The development must be landscaped in accordance with an approved landscape plan.
- 4.4.2 Prior to the issue of the development permit for operational works, a detailed landscape plan, must be prepared for the site and submitted to Council's delegated officer for consideration and approval.

4.4.3 The landscape plan must demonstrate compliance with the Landscaping Code. Plant species are to be generally selected from the Plant Schedule in Planning Scheme Policy 6 - Landscaping and preferred plant species.

4.4.4 The landscaping plan must incorporate the following:

- (i) A 1.8 metre high colorbond (neutral colour) solid screen fence must be established along the full length of the common boundary between Lot 53 on SP204554 and Lot 197 on NR3143.
- (ii) The fencing is to be erected prior to the commencement of the use and maintained in good order for the life of the development, to the satisfaction of Council's delegated officer.

4.4.5 A minimum of 25% of new plants is provided as larger, advanced stock with a minimum plant height of 0.7 metres and mulched to a minimum depth of 0.1 metres with organic mulch.

4.4.6 The landscaping of the site must be carried out in accordance with the endorsed landscape plan/s, and prior to the commencement of the use, and mulched, irrigated and maintained to the satisfaction of Council's delegated officer.

4.5 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.

4.6 Water Supply

The applicant/developer must connect the proposed development to Council's reticulated water supply in accordance with FNQROC Development Manual standards (as amended) to the satisfaction of Council's delegated officer.

Where the existing reticulated water supply does not currently service the site or is not at an adequate capacity, the applicant/developer is required to extend or upgrade the reticulated water supply infrastructure to connect the site to Council's existing infrastructure at a point that has sufficient capacity to service the development in accordance with FNQROC Development Manual standards (as amended).

If a new or upgraded water service connection is required to service the development, it must be provided in accordance with FNQROC Development Manual standards (as amended) to the satisfaction of Council's delegated officer.

4.7 Sewerage Connection

The applicant/developer must connect the proposed development to Council’s reticulated sewerage system in accordance with FNQROC Development Manual standards (as amended) to the satisfaction of Council’s delegated officer.

Where sewerage connections are not available to the site, or where existing connections are not satisfactory for the proposed development, the applicant/developer is required to extend or upgrade the reticulated sewerage infrastructure to connect the site to Council’s existing infrastructure at a point that has sufficient capacity to service the development in accordance with FNQROC Development Manual standards (as amended).

4.8 Anzac Avenue widening

4.8.1 The applicant/developer must widen the Anzac Avenue sealed pavement by 4.5 metres on the development side, commencing at the eastern end of the existing kerb and channel and extending for a distance of 50 metres to the east, in accordance with FNQROC Development Manual standards (as amended) to the satisfaction of Council’s delegated officer.

4.8.2 Kerb and channel is to be provided on the development side, for the entire length of the widening required under 4.8.1.

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— (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	Schedule 10, Part 9, Division 4, Subdivision 2, Table 4	State Assessment & Referral Agency (SARA) Department of State Development, Manufacturing, Infrastructure and Planning PO Box 2358 Cairns Qld 4870 CairnsSARA@dsmip.qld.gov.au

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
1675-SK01	Cover Sheet	Humac Design	-
1675-SK02	Site Plan	Humac Design	-
1675-SK03	Site Imagery	Humac Design	-
1675-SK04	Area Plan	Humac Design	-

ADVISORY NOTES

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

(D) ASSESSMENT MANAGER'S ADVICE

- (a) An Adopted Infrastructure Charges Notice has been issued with respect to the approved development. The Adopted Infrastructure Charges Notice details the type of infrastructure charge/s, the amount of the charge/s and when the charge/s are payable.
- (b) The Adopted Infrastructure Charges Notice does not include all charges or payments that are payable with respect to the approved development. 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.
- (c) 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.
- (d) 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.
- (e) 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

DECISION NOTICE

MCU/22/0017
Page 8

significance. Further information on these matters can be obtained from www.dccew.gov.au.

(f) 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.dsdsatsip.qld.gov.au.

PROPERTY NOTES

Not Applicable.

FURTHER DEVELOPMENT PERMITS REQUIRED

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

SUBMISSIONS

There were three (3) 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. S Gillies	PO Box 166, Mareeba
2. R & E Piagno	PO Box 166, Mareeba
3. M & H Cotter	18 Ferretti Close, Mareeba

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

Mareeba Shire Council

DECISION NOTICE

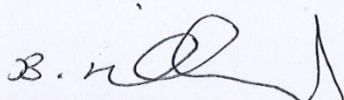
MCU/22/0017
Page 9

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
 Adopted Infrastructure Charge Notice

Mareeba Shire Council

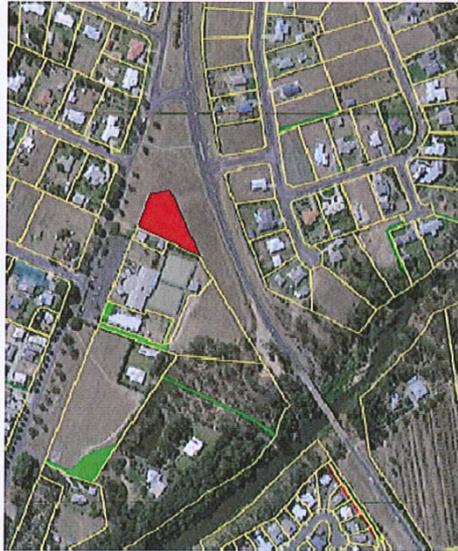
DECISION NOTICE

MCU/22/0017
Page 10

Approved Plans/Documents

www.humacdesign.com.au

PROPOSED CHILDCARE
STEVE CORDENOS
47 ANZAC AVENUE
MAREEBA



PRELIMINARY ONLY
PROPOSED CHILDCARE
COVER SHEET
1473-SK01

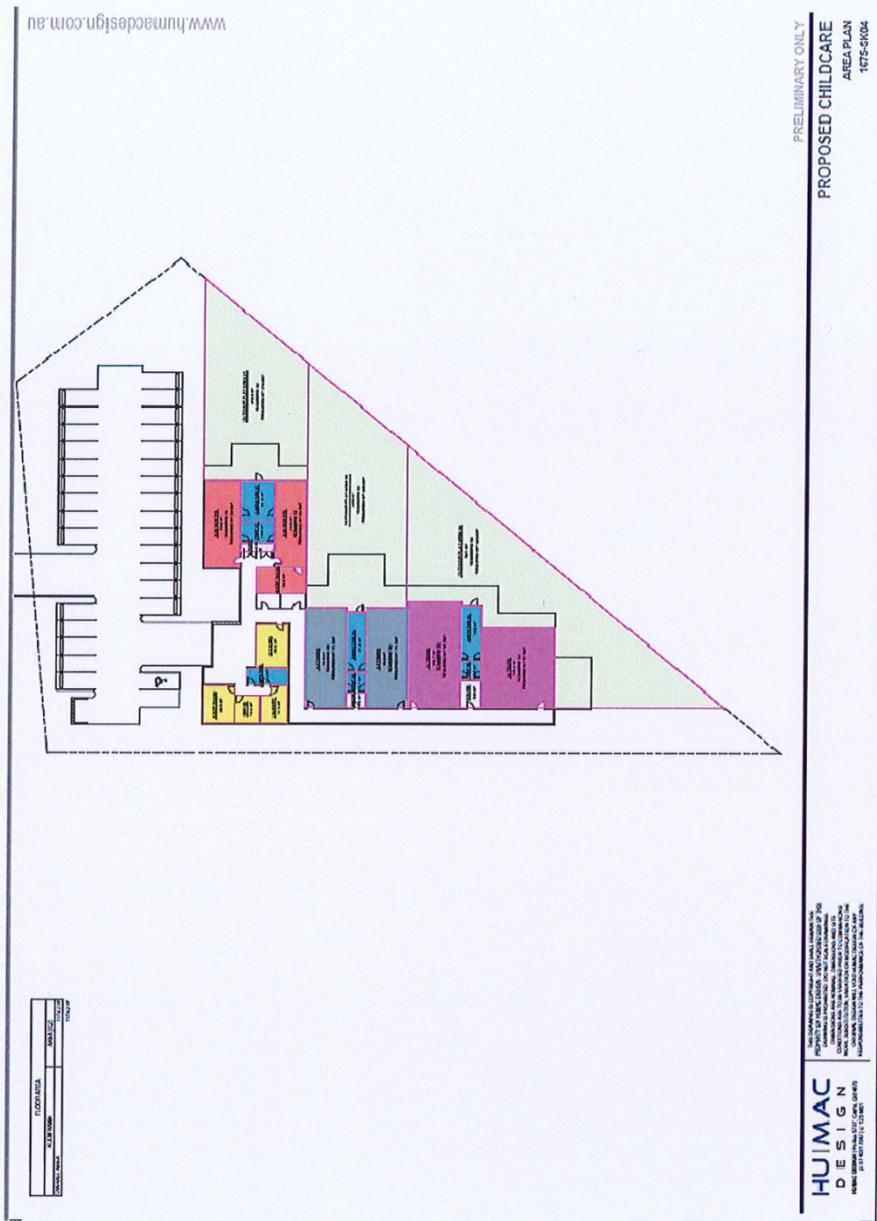
HUMAC
DESIGN
MEMBER OF THE HUMAN DESIGN GROUP
1473-SK01

24/4/2023
B. [Signature]

Mareeba Shire Council

DECISION NOTICE

MCU/22/0017
Page 13



PRELIMINARY ONLY
PROPOSED CHILDCARE
 AREA PLAN
 1875-S104

HUIMAC
 DESIGN
 1875-S104
 1875-S104

24/4/2023
 B. n. [Signature]

Mareeba Shire Council

DECISION NOTICE

MCU/22/0017
Page 14

Referral Agency Response

RA6-N



SARA reference: 2207-29773 SRA
Council reference: MCU/22/0017
Your reference: 20-14/001193

24 March 2023

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

Attention: Brian Millard

Dear Sir/Madam

SARA referral agency response—47 Anzac Avenue, Mareeba
(Referral agency response given under section 58 of the *Planning Act 2016*)

The development application described below was confirmed as properly referred by the State Assessment and Referral Agency (SARA) on 14 October 2022.

Response

Outcome:	Referral agency response – with conditions
Date of response:	24 March 2023
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 Childcare Centre
SARA role:	Referral agency	
SARA trigger:	Schedule 10, Part 9, Division 4, Subdivision 2, Table 4 (Planning Regulation 2017)	

Page 1 of 5

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

Mareeba Shire Council

DECISION NOTICE

MCU/22/0017
Page 15

2207-29773 SRA

Development application for a material change of use of premises within 25m of a state-controlled road

SARA reference: 2207-29773 SRA
 Assessment manager: Mareeba Shire Council
 Street address: 47 Anzac Avenue, Mareeba
 Real property description: Lot 53 on SP204554
 Applicant name: Giuliano Cordenos, Gina Cordenos and Stephen Cordenos
 Applicant contact details: C/- Planning Plus
 PO Box 399
 REDLYNCH QLD 4870
 info@planningplusqld.com.au

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

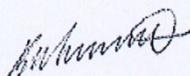
Representations

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

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

For further information please contact Sue Lockwood, Senior Planning Officer, on 40373214 or via email CairnsSARA@dcdilgp.qld.gov.au who will be pleased to assist.

Yours sincerely



Brett Nancarrow
Manager (Planning)

cc Giuliano Cordenos, Gina Cordenos and Stephen Cordenos, info@planningplusqld.com.au

enc Attachment 1 - Referral agency conditions
 Attachment 2 - Advice to the applicant
 Attachment 3 - Reasons for referral agency response
 Attachment 4 - Representations about a referral agency response provisions

State Assessment and Referral Agency

Page 2 of 5

Mareeba Shire Council

DECISION NOTICE

MCU/22/0017
Page 16

2207-29773 SRA

Attachment 1—Referral agency conditions

(Under section 58(1)(b)(i) of the *Planning Act 2016* the following conditions must be attached to any development approval relating to this application)

No.	Conditions	Condition timing
Material change of use		
10.9.4.2.4.1 – Material change of use of premises within 25m of a state-controlled road—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.	(a) Noise attenuation measures must be designed to achieve the following maximum internal acoustic levels for all indoor education areas, indoor play areas and sleeping rooms in a childcare centre: <ul style="list-style-type: none"> ▪ ≤35 dB(A) L_{eq} (1 hour) (maximum hour over 24 hours). (b) RPEQ certification must be provided to the Cairns Corridor Management Unit at Far.North.Queensland.IDAS@tmr.qld.gov.au within the Department of Transport and Main Roads, confirming that the development has been constructed in accordance with parts (a) of this condition.	(a) Prior to obtaining a development approval for building works. (b) Prior to commencement of use and to be maintained at all times.
2.	(a) Stormwater management of the development must not cause worsening to the operating performance of the state-controlled road, such that any works on the land must not: <ul style="list-style-type: none"> (i) create any new discharge points for stormwater runoff onto the state-controlled road corridor; (ii) concentrate or increase the velocity of flows to state-controlled road corridor. 	At all times.
3.	Direct access is not permitted between the Kennedy Highway and the subject site.	At all times.

State Assessment and Referral Agency

Page 3 of 5

Mareeba Shire Council

DECISION NOTICE

MCU/22/0017
Page 17

2207-29773 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) (version 3.0). If a word remains undefined it has its ordinary meaning.
2.	<p>Advertising device</p> <p>If the childcare centre development is proposing to erect an advertising device that will be visible from a state-controlled road advice should be sought from the Department of Transport and Main Roads (DTMR) to ensure that the advertising device visible from a state-controlled road, and beyond the boundaries of the state-controlled road, is unlikely 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 / or a device which is deemed to create a danger to traffic.</p>

State Assessment and Referral Agency

Page 4 of 5

Mareeba Shire Council

2207-29773 SRA

Attachment 3—Reasons for referral agency response

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

The reasons for the SARA’s decision are:

With conditions the proposed development:

- does not increase the likelihood or frequency of accidents, fatalities or serious injury for users of a state-controlled road
- does not adversely impact the structural integrity or physical condition of state-controlled roads, road transport infrastructure, public passenger transport infrastructure or active transport infrastructure
- does not adversely impact the function and efficiency of state-controlled roads or future state-controlled roads
- does not adversely impact the state’s ability to plan, construct, maintain, upgrade or operate state-controlled roads, future state-controlled roads or road transport infrastructure
- does not significantly increase the cost to the state to plan, construct, upgrade or maintain state-controlled roads, future state-controlled roads or road transport infrastructure
- protects community amenity from significant adverse impacts of environmental emissions generated by road transport infrastructure or vehicles using state-controlled roads.

Material used in the assessment of the application:

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

Attachment 4—Representations about a referral agency response provisions

(page left intentionally blank – 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 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.

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

DECISION NOTICE

MCU/22/0017
Page 23

-
- (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.

Mareeba Shire Council

Brian Millard

Subject: FW: MCU/22/0017 - MCU - Child Care Centre - 47 Anzac Ave Mareeba - G and G Cordenos and S Cordenos - Negotiated Decision Notice Request

From: Evan Yelavich <Evan@planningplusqld.com.au>

Sent: Wednesday, 14 June 2023 7:17 AM

To: Brian Millard <BrianM@msc.qld.gov.au>; Carl Ewin <CarlE@msc.qld.gov.au>

Subject: RE: MCU/22/0017 - MCU - Child Care Centre - Decision Notice and Adopted Infrastructure Charges Notice - 47 Anzac Ave Mareeba - G and G Cordenos and S Cordenos

Hi Brian/Carl,

I refer to the above Decision Notice and provide the following change representations under Section 75 of the Planning Act 2016.

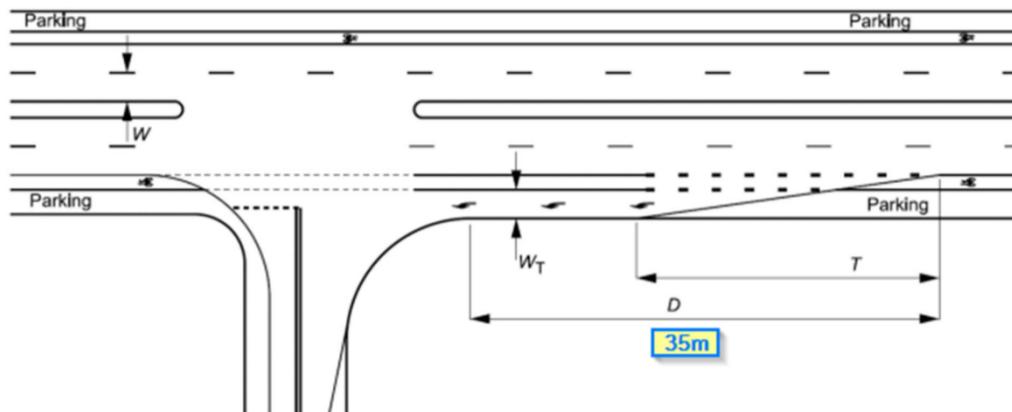
4.8 Anzac Avenue widening

4.8.1 The applicant/developer must widen the Anzac Avenue sealed pavement by 4.5 metres on the development side, commencing at the eastern end of the existing kerb and channel and extending for a distance of 50 metres to the east/ in accordance with FNQROC Development Manual standards (as amended) to the satisfaction of Council's delegated officer.

4.8.2 Kerb and channel is to be provided on the development side, for the entire length of the widening required under 4.8.1.

Advice from the applicant's traffic engineer is that there is no engineering basis for the prescribed extent of road widening. The advice is that if a left turn treatment was required here in the future, an AUL(S) would be the appropriate treatment. An AUL(S) requires 35m which fits neatly within the current road with the access at the current location.

Figure 8.11: Auxiliary left-turn treatment [AUL(S)] on the major leg of an intersection



Notes:

For setting out details of the left-turn geometry, use vehicle turning path templates and/or the details in Table 8.4. Approaches to left-turn lanes can create hazardous situations between cyclists and left-turning vehicles. Treatments to reduce the number of potential conflicts at left-turn slip lanes are given in AGRD Part 4 Section 9. The holding line is typically placed in prolongation of the kerb line or edge line, however, it may be set back if there is a problem with the design vehicle over-running the holding line, or if it is desired to hold vehicles back some distance from the intersecting roadway (AS 1742.2 - 2009). The setback needs to be balanced such that sight distance is not negatively impacted to create a safety issue and the needs of pedestrians is met.

Values of D and T are provided in Table 8.4 and the dimensions of the treatment are defined as follows:

- W = Nominal through lane width (m) (incl. widening for curves). For a new intersection on an existing road, the width is to be in accordance with the current link strategy.
- WT = Nominal width of turn lane (m) (incl. widening for curves based on the design turning vehicle) = 3.0 m minimum.
- T = Physical taper length (m) given by:

$$T = \frac{0.33V W_T}{3.6}$$
- V = Design speed of major road approach (km/h).

Source: Department of Transport and Main Roads (2006).

Table 8.4: Dimensions for D and T in AUL(S) treatment

Design speed of major road approach (km/h)	Diverge/deceleration length D (m) ⁽¹⁾	Taper length T (m) ⁽²⁾
50	20	20
60	25	20
70	35	30
80	45	30
90	55	40

1 Based on a 20% reduction in through road speed at the start of the taper and a value of deceleration of 3.5 m/s² (Table 5.2). Adjust for grade using the 'correction to grade' factor in Table 5.3.
 2 Based on a turn lane width of 3.0 m and a bicycle lane width of 1.5 m.

On the above basis, and the fact that the prescribed widening is situated beyond the road frontage of the site, the subject condition is considered unreasonable.

Notwithstanding, the applicant advises that they would be willing to accept a condition requiring additional road widening if the works were considered trunk works and were fully creditable/reimbursable. It is noted that the Mareeba Shire LGIP identifies Anzac Avenue is an existing Higher Order Local Road and the road clearly serves a

trunk function. Any upgrades to this road are therefore considered to be trunk works where they are not required directly as a result of the proposed development.

In summary, we request that the condition requiring the additional road widening and kerb and channel be removed or changed such that the works are identified as being trunk works.

We trust this information is sufficient for your purposes but please advise if you require any further information.

Regards

Evan Yelavich
Director / Planner

P: (07) 40 393 409

M: 0402 073 082

E: evan@planningplusqld.com.au

W: www.planningplusqld.com.au

A: P.O Box 399, Redlynch QLD 4870

