



18 September 2024

Planning Officer: Carl Ewin
Direct Phone: 074086 4656
Our Reference: MCU/24/0010
Your Reference: 24003

Clive S Pratt & Christine L Pratt
C/- Scope Town Planning
225 Walsh Street
MAREEBA QLD 4880

Dear Applicants,

Decision Notice

Planning Act 2016

I refer to your application and advise that on 18 September 2024, Council decided to approve the application in full subject to conditions.

Details of the decision are as follows:

APPLICATION DETAILS

Application No: MCU/24/0010
Street Address: 3946 Kennedy Highway, Mareeba
Real Property Description: Lot 2 on SP310235
Planning Scheme: Mareeba Shire Council Planning Scheme 2016

DECISION DETAILS

Type of Decision: Approval
Type of Approval: Development Permit for Material Change of Use – Club
Date of Decision: 18 September 2024

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

(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 All conditions of this 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 Hours of Operation

The authorised operating hours for the club use is from 5:00pm to 11:00pm on **Friday and Saturday only**. No operations are permitted on Public Holidays. "Closed" signage must be placed at the premises gates by no later than 10:00pm each night to discourage the late arrival of club patrons. All club patrons must have vacated the property by no later than 11:00pm.

3.5 The club use must utilise the internal confines of the existing ice creamery building only. No club related activity is permitted on the patio/verandah at any time other than for dining or for smokers using/accessing any designated outdoor smoking area/s. No dining is permitted on the patio/verandah past 10:00pm.

To minimise noise impacts, all facility doors must be closed for the duration of club events and must be made from solid materials such as glass and/or timber.

3.6 Regardless of what is permitted under any issued or subsequent liquor license, liquor is only to be sold to patrons on-site attending club events and is not to be sold to passing trade other than ice creamery patrons. Liquor sales must cease no later than 10:00pm.

3.7 No amplified music or loudspeakers/microphones are permitted on-site at any time. Low level music/sound from televisions is permitted provided it is not audible at any property boundary.

3.8 Signage

1 free standing sign is permitted at the site access to advertise either the club use, ice creamery use or both, and must comply with the following:

- The sign must not exceed 2.4m x 1.2m or a maximum sign face area of 2.9m².
- The sign must only advertise the ice creamery or club use.
- The sign must not be illuminated, revolve, strobe or flash.
- Lighting can be installed to shine onto the site access sign face only (light spillage must be avoided) and must be on a timer so as to run only on Friday and Saturday nights between 5pm and 11pm. No other signage within the property bounds or on the building is permitted to be illuminated in any way.
- The sign must be maintained in good order and safe repair for the life of the development.

- 3.9 No loitering is permitted in the car parking area. Signage must be erected to state as much and staff/management must ensure that loitering does not occur and that patrons leave in a timely manner.

3.10 Waste Management

On site refuse storage areas 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.

3.11 Noise Nuisance

3.11.1 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 location.

3.11.2 A solid two (2) metre high, neutral colour, sound reflective acoustic fence must be installed along the western boundary of the site extending from a point parallel to the south-west corner of the car park and spanning a length no less than 60 metres.

The design of the acoustic fencing must be endorsed by a suitably qualified acoustic engineer with design plans and a site plan submitted to Council for review prior to any building works commencing.

The fencing required under 3.11.2 must be maintained in accordance with the approved design and in good order and safe repair for the life of the development, to the satisfaction of Council's delegated officer.

3.12 Emissions

Emissions associated with the development (e.g. light, noise, dust, odour) must not cause an 'environmental nuisance' within the meaning of the *Environmental Protection Act (1994)* to any sensitive receptor.

4. Infrastructure Services and Standards

4.1 Access

The existing concrete sealed section of the access driveway must be maintained to its current standard for the life of the development, to the satisfaction of Council's delegated officer.

The fencepost on the eastern side of the site access must be moved to the east to a point in line with the western side of the ice creamery welcome signage.

4.2 Stormwater Management

- 4.2.1 The applicant/developer must take all necessary steps to ensure a non-worsening effect on surrounding land as a consequence of the development.
- 4.2.2 All stormwater drainage collected from the site must be discharged to an approved legal point of discharge.

4.3 Landscaping

- 4.3.1 A landscape plan must be prepared for the site and submitted to Council's delegated officer for consideration and approval. The landscape plan must include the following:
- a 3-metre-wide vegetated buffer between the access driveway and car parking area and the western boundary. The buffer is not permitted to be planted on any part of Emt A on SP160169. The buffer must span the entire length of the access driveway and car park area and must include shrubs, plants and trees that will grow to form an effective buffer of no less than 3 metres in height at maturity and should include at least 25% larger more advanced plant stock.
 - a 3-metre-wide x 10-metre-long vegetated buffer extending from the south-east corner wall the ice creamery building towards the south-east truncated corner of the site. The buffer must include shrubs, plants and trees that will grow to form an effective privacy buffer for the dwelling on adjoining Lot 1 on SP310235.
- 4.3.2 All plant varieties must be generally in accordance with Schedule A of Planning Scheme Policy No. 9 (Landscaping Policy).
- 4.3.3 The landscaping of the site must be carried out in accordance with the endorsed landscaping plan, and irrigated, mulched and maintained for the life of the development to the satisfaction of Council's delegated officer.

4.4 Fencing

4.4.1 The applicant/developer must, with the consent of the landowner/s of Lot 512 on SP145485, erect a solid 1.8 metre high, colorbond fence of neutral colour (colour to be agreed to by the landowners of Lot 512) along the front boundary of Lot 512 extending from the south-east corner of the Lot for a distance of 20 metres. The fencing must include a gate/s of the same width as that existing.

The applicant/development must give reasonable notice to the landowner/s of Lot 512 of their intention to begin construction.

If, in the opinion of Council's delegated officer, the landowners of Lot 512 on SP145485 are withholding consent, or not making a genuine effort to help progress the construction of the fence, the development may proceed without the fencing required under this condition.

4.4.2 1.8-metre-high non-acoustic solid screen, neutral colour fencing must be installed along the western boundary of the site extending from the northern end of the acoustic fencing required under Condition 3.11.2 to a point in line with the south-east corner of the existing shed on adjoining Lot 512 on SP145485.

This fencing must be maintained in good order and safe repair for the life of the development, to the satisfaction of Council's delegated officer.

4.4.3 2-metre-high non-acoustic solid screen, neutral colour fencing must be installed along the western boundary of the site extending from the southern end of the acoustic fencing required under Condition 3.11.2 to the south-west corner of the site and connecting to the fencing required under Condition 4.4.1.

This fencing must be maintained in good order and safe repair for the life of the development, to the satisfaction of Council's delegated officer.

4.5 Water Supply

The quality of water provided on site for human consumption must be of a standard for drinking water set by the Australian Drinking Water Guidelines 2004 (National Health and Medical Research Council and the National Resource Management Ministerial Council).

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 (ASNZ1547) to the satisfaction of the Council's delegated officer.

4.7 Car Parking/Internal Driveways

The existing 60 metre x 20 metre car parking area is to be maintained at its current size and dimensions for the life of the development.

All vehicles associated with the approved use must park on-site, and "No Parking" signage must be erected at the site entrance to discourage patrons from parking within the Kennedy Highway road reserve.

Should the existing car parking area prove inadequate due to ongoing instances of vehicles parking within the Kennedy Highway road reserve, the existing car parking area must be extended to the north to accommodate the increased demand generated by all approved uses on-site.

The car parking area and all other trafficable areas must be surface treated with dust free all weather compacted gravel or pebble/stone treatment and must be appropriately drained, to the satisfaction of Council's delegated officer. The dust free surface treatment must be maintained in good order and safe repair for the life of the development.

Should Council receive a substantiated dust complaint as a result of traffic on any unsealed surface, all trafficable areas must be surface treated with either asphalt or 2 coat bitumen seal and be appropriately drained and maintained with an intact surface treatment for the life of the development, to the satisfaction of Council's delegated officer.

4.8 Lighting

Where outdoor lighting is installed, illumination resulting from direct, reflected or other incidental light emanating from the subject land does not exceed eight (8) lux when measured at any point 1.5m outside the property boundary of the subject site. The lighting fixtures installed on site must meet appropriate lux levels as documented within Australian Standard 4282 - Control of the Obtrusive Effects of Outdoor Lighting.

REFERRAL AGENCIES

The referral agencies applicable to this application are:

- Schedule 10, Part 9, Division 4, Subdivision 2, Table 4 – Material change of use of premises near a State transport corridor or that is a future State transport corridor

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
-	MCU/09/0005 Change Application and MCU/24/0010 Club Application Site Plan	Scope Town Planning	-
ARK-001	Layout Plan	Applicant	September 2007

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) 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.

(b) 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.**(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 significance. Further information on these matters can be obtained from www.dcceew.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

(f) Electric Ants

Electric ants are designated as restricted biosecurity matter under the *Biosecurity Act 2014*.

Certain restrictions and obligations are placed on persons dealing with electric ant carriers within the electric ant restricted zone. Movement restrictions apply in accordance with Sections 74–77 of the *Biosecurity Regulation 2016*. Penalties may be imposed on movement of electric ant carriers and electric ants in contravention of the legislated restrictions. It is the responsibility of the applicant to check if the nominated property lies within a restricted zone.

All persons within and outside the electric ant biosecurity zone have an obligation (a **general biosecurity obligation**) to manage biosecurity risks and threats that are under their control, they know about, or they are expected to know about. Penalties may apply for failure to comply with a general biosecurity obligation.

For more information please visit the electric ant website at [Electric ants in Queensland | Business Queensland](#) or contact Biosecurity Queensland 13 25 23.

PROPERTY NOTES

Not Applicable.

FURTHER DEVELOPMENT PERMITS REQUIRED

Not Applicable.

SUBMISSIONS

There were 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. Carol Henry	3948 Kennedy Highway, Mareeba raisinl2@bigpond.com
2. Janelle Beasley	Vanjan26@hotmail.com
3. Shelley Henry	3950 Kennedy Highway, Mareeba shelley.henry3@bigpond.com
4. Allan William Henry – Bill	3950 Kennedy Highway, Mareeba allanhenry8@bigpond.com
5. Kerry & Owen Brown	PO Box 32, Kairi QLD 4872 brownsonthewallaby@bigpond.com
6. Julie Marshall	38 Iluka Street, Mareeba Julie.marshall79@gmail.com
7. Tamie Brown	PO Box 442, Tolga QLD 4882 tamie.m.brown@bigpond.com
8. Georgia Sloane	134 Kovacic Road, Mareeba Georgia_sloane89@hotmail.com
9. Ron and Catherine Sloane	132 Kovacic Road, Mareeba
10. Ron Sloane	132 Kovacic Road, Mareeba
11. David & Rosemary Tempany	21 Pike Road, Mareeba billabong.land.oz@gmail.com
12. Joanne Geary	3944 Kennedy Highway, Mareeba butlersteve086@gmail.com
13. Lynette Moore	40 Catherine Atherton Drive, Mareeba lynnreemoore@hotmail.com

RIGHTS OF APPEAL

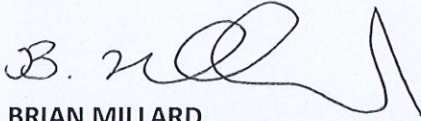
You are entitled to appeal against this decision. A copy of the relevant appeal provisions from the *Planning Act 2016* is attached.

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



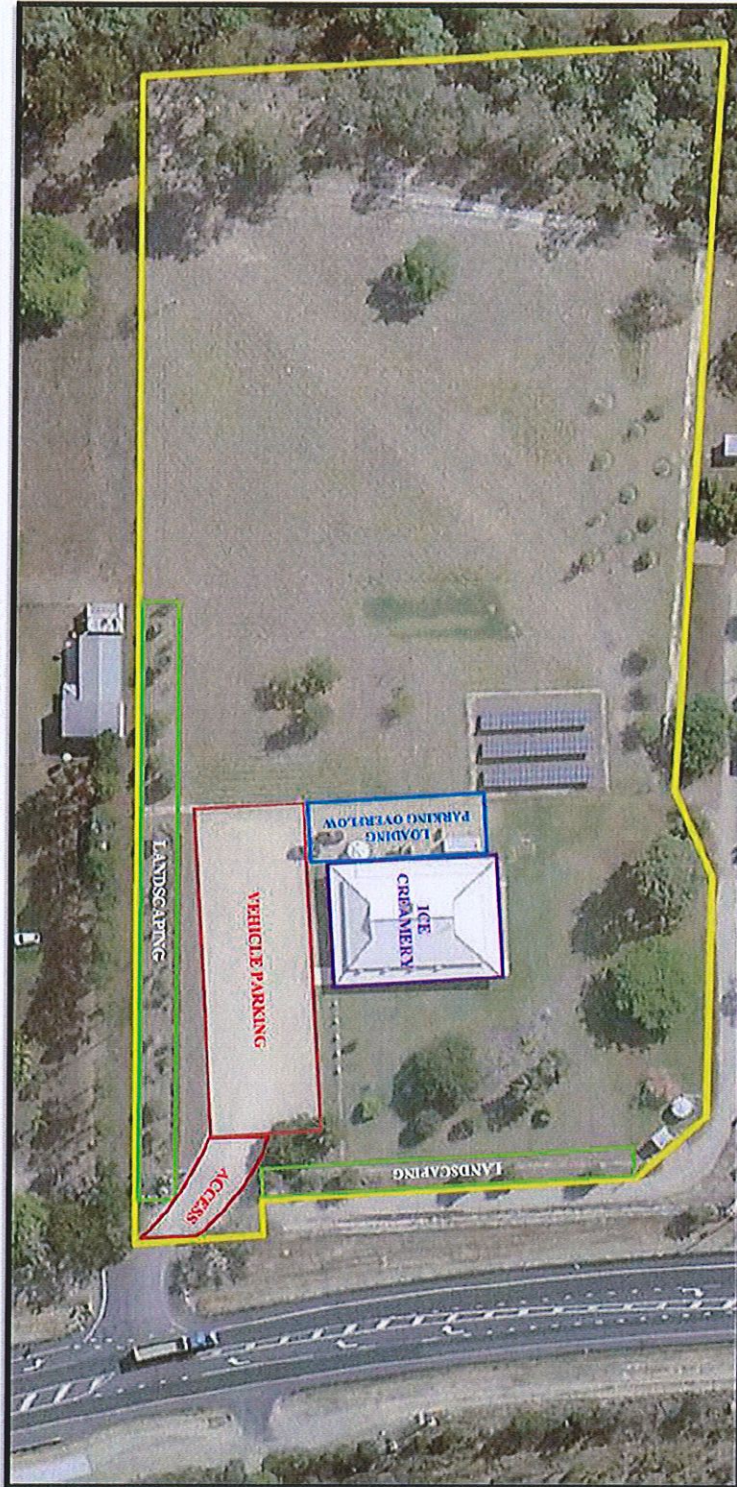
BRIAN MILLARD
COORDINATOR PLANNING SERVICES

Enc: Approved Plans/Documents
Referral Agency Response
Appeal Rights

Approved Plans/Documents

21003 - MCU - 3946 Kennedy Hwy, Mareeba Cld. 4889

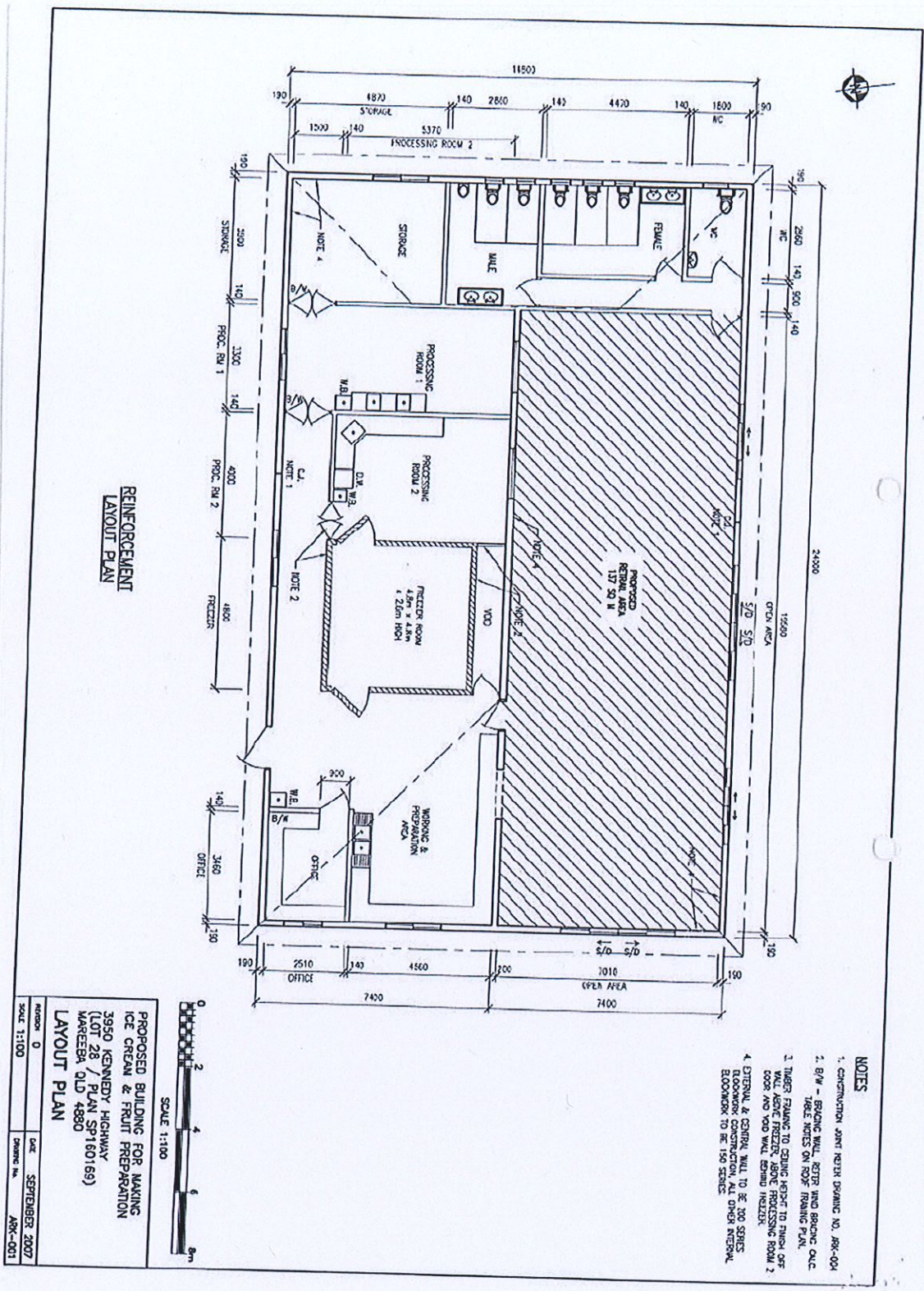
MCU/09/0005 Change Application and MCU/24/0010 Club Application Site Plan



Prepared by Scope Town Planning



18/9/2024
B. n. [Signature]



18/9/2024
B. Will

Referral Agency Response

RA6-N



SARA reference: 2405-40426 SRA
 Council reference: MCU/24/0010
 Applicant reference: 24003

2 July 2024

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

Attention: Carl Ewin

Dear Sir/Madam

SARA referral agency response—3946 Kennedy Highway, 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 4 June 2024.

Response

Outcome:	Referral agency response – with conditions
Date of response:	2 July 2024
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 (Club)
SARA role:	Referral agency
SARA trigger:	Schedule 10, Part 9, Division 4, Subdivision 2, Table 4, Item 1 (Planning Regulation 2017)

Page 1 of 6

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

2405-40426 SRA

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

SARA reference: 2405-40426 SRA

Assessment manager: Mareeba Shire Council

Street address: 3946 Kennedy Highway, Mareeba

Real property description: Lot 2 on SP310235

Applicant name: C & C Pratt
C/- Scope Town Planning

Applicant contact details: 225 Walsh St
Mareeba QLD 4880
scopetownplanning@gmail.com

Human Rights Act 2019 considerations: Section 58 of the *Human Rights Act 2019* specifies required conduct for public entities when acting or making a decision. Sections 15 – 37 of the *Human Rights Act 2019* identifies the human rights a public entity must consider in making a decision.

The decision has been assessed for compatibility with human rights under the *Human Rights Act 2019*. The decision was found not to limit human rights under the *Human Rights Act 2019* therefore, it is reasonable to conclude the decision is compatible with human rights.

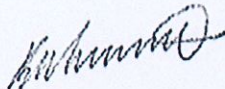
Representations

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 CaimsSARA@dsgilp.qld.gov.au who will be pleased to assist.

Yours sincerely



Brett Nancarrow
Manager (Planning)

cc C & C Pratt c/- Scope Town Planning, scopetownplanning@gmail.com

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
Attachment 5 - Documents referenced in conditions

2405-40426 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) (Copies of the documents referenced below are found at Attachment 5)

No.	Conditions	Condition timing
Material change of use		
[insert SARA trigger reference from above eg 10.9.4.2.4.1 – 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.	The road access location is to be located generally in accordance with TMR Layout Plan (32A – 39.14km), prepared by Queensland Government Transport and Main Roads, dated 14/06/2024, Reference TMR24-042733, Issue A	At all times

2405-40426 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.

2405-40426 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:

The proposed development complies with the relevant provisions of State code 1: Development in a state-controlled road environment, as it:

- does not to 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 the state-controlled road
- does not adversely impact the function and efficiency of state-controlled road
- does not adversely impact the state's ability to plan, construct, maintain, upgrade or operate the state-controlled road.

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
- section 58 of the *Human Rights Act 2019*

Attachment 4—Representations about a referral agency response provisions

(page left intentionally blank – attached separately)

2405-40428 SRA

Attachment 5—Documents referenced in conditions

(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*

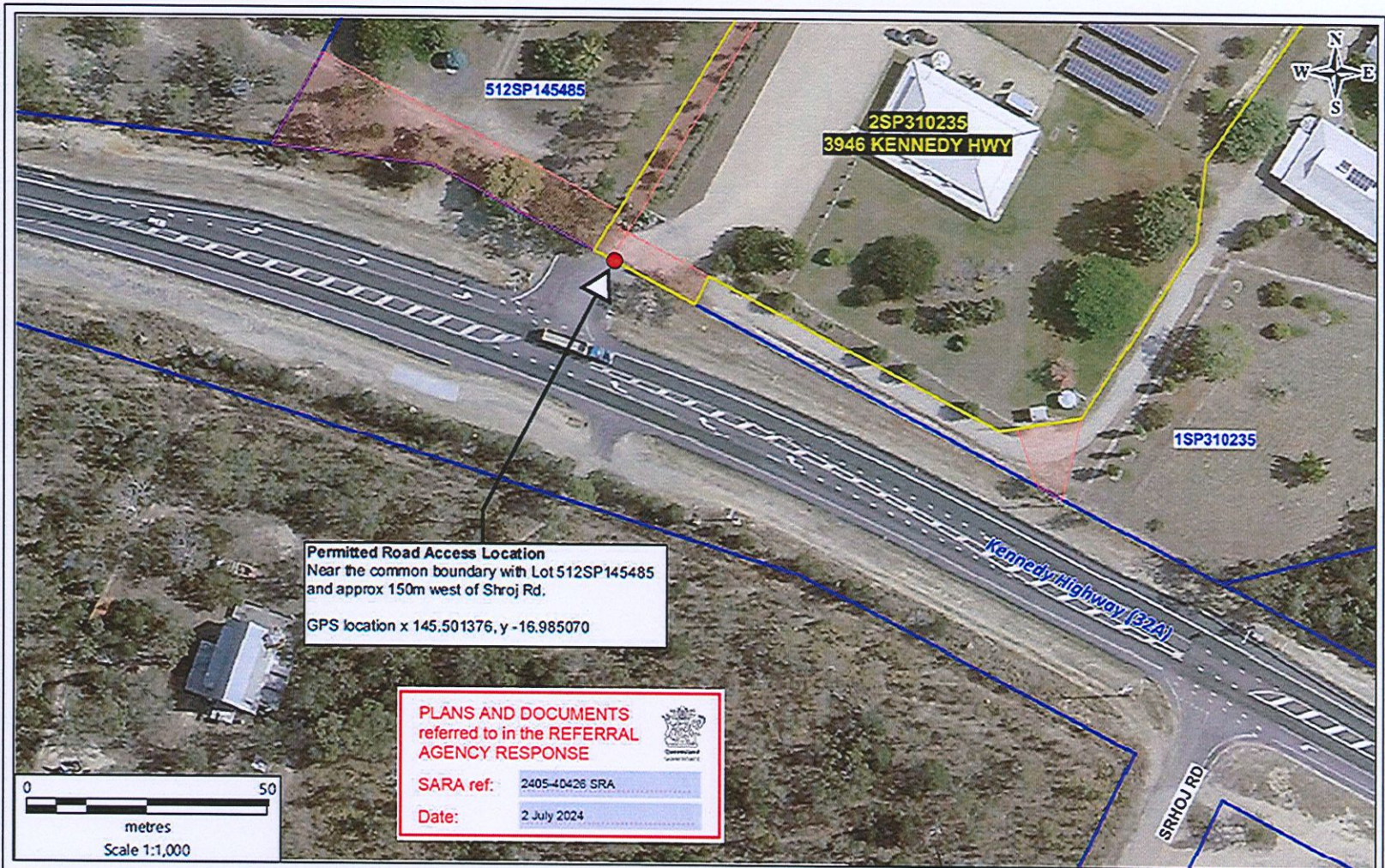
² In the instance an applicant has made representations to the concurrence agency under section 30, and the concurrence agency agrees to make the change included in the representations, section 28.2(c) is taken to have been satisfied.

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.



Permitted Road Access Location
 Near the common boundary with Lot 512SP145485
 and approx 150m west of Stroj Rd.
 GPS location x 145.501376, y -16.985070

PLANS AND DOCUMENTS
 referred to in the REFERRAL
 AGENCY RESPONSE

SARA ref: 2405-40426 SRA
 Date: 2 July 2024

Brand/Unit: Corridor Management / Far North District
 Projection/Datum: Geocentric Datum of Australia (GDA) 2020
 File ref: TMR24-042733
 Document Set ID: 4377951

Land parcels
 Easements
 Subject land

TMR Layout Plan
 (32A - 39.14km)

Plan: 1 / 1
 Issue: A
 Drawn by: RPK
 Date: 14/06/2024

Queensland Government
 Transport and Main Roads

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.