



SARA reference: 2409-42485 SRA  
 Council reference: MCU/09/0005  
 Applicant reference: 24003

14 November 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 56 of the *Planning Act 2016*)

The development application for an other change, described below, was confirmed as properly referred by the State Assessment and Referral Agency (SARA) on 15 October 2024.

### Response

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Outcome:	Referral agency response – with conditions	
Date of response:	14 November 2024	
Conditions:	The conditions in <b>Attachment 1</b> must be attached to any development approval	
Advice:	Advice to the applicant is in <b>Attachment 2</b>	
Reasons:	The reasons for the referral agency response are in <b>Attachment 3</b>	

### Development details

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Description:	Other change - Development permit	Material Change of Use - Food and Drink Outlet
SARA role:	Referral agency	
SARA trigger:	Schedule 10, Part 9, Division 4, Subdivision 2, Table 4, Item 1	

(10.9.4.2.4.1) Planning Regulation 2017 - Material change of use of premises near a State transport corridor

SARA reference: 2409-42485 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

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: TMR24-044002 (500/1411)
- Date: 11 November 2024

If you are seeking further information on the road access permit, please contact Steven Zelenika, Senior Town Planner, at the Department of Transport and Main Roads by email at [steven.z.zelenika@tmr.qld.gov.au](mailto:steven.z.zelenika@tmr.qld.gov.au) or on (07) 4045 7063.

*Human Rights Act 2019* considerations: A consideration of the 23 fundamental human rights protected under the Human Rights 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 Isley Peacey, Senior Planning Officer, on 4037 3202 or via email [CairnsSARA@dSDLGP.qld.gov.au](mailto:CairnsSARA@dSDLGP.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

## 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 documents referenced below are found at Attachment 5)

No.	Conditions	Condition timing
<b>Other change - Development permit - Material Change of Use - Food and Drink Outlet</b>		
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 06/11/2024, Reference TMR24-044002 (500/1411), Issue A.	At all times.

## Attachment 2—Advice to the applicant

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<b>General advice</b>	
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.

## Attachment 3—Reasons for referral agency response

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(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:

- can be conditioned to 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;
- maintains or improves access to public passenger transport infrastructure or active transport infrastructure;
- does not adversely impact the state's ability to operate public passenger services on state-controlled roads;
- protects community amenity from significant adverse impacts of environmental emissions generated by road transport infrastructure or vehicles using state-controlled roads.
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### 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

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## **Attachment 5—Documents referenced in conditions**

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512SP145485

2SP310235  
3946 KENNEDY HWY

1SP310235

Kennedy Highway (32A)

SRHOJ RD

**PLANS AND DOCUMENTS**  
referred to in the REFERRAL  
AGENCY RESPONSE

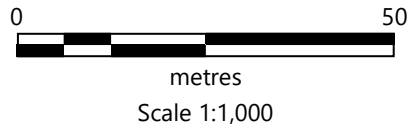
SARA ref: 2409-42485 SRA

Date: 14 November 2024



**Permitted Road Access Location**  
Near the common boundary with Lot 512SP145485 and  
approx 150m west of Srhoj Rd.

GPS location x 145.501376, y -16.985070



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Branch/Unit : **Corridor Management / Far North District**

Projection/Datum : Geocentric Datum of Australia (GDA) 2020

File ref: TMR24-044002 (500-1411)

Land parcels	Subject land
Easements	

# TMR Layout Plan (32A - 39.14km)

Plan: 1 / 1  
Issue: A  
Drawn by: DWH

Queensland Government  
Transport and Main Roads

Date: 6/11/2024

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Our ref TMR24-044002 (500/1411)  
Your ref 24003  
Enquiries Steven Zelenika



Department of  
**Transport and Main Roads**

11 November 2024

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

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

Development application reference number MCU/09/0005, lodged with Mareeba Shire Council involves constructing or changing a vehicular access between Lot 2 on SP310235, the land the subject of the application, and Kennedy Highway, a state-controlled road.

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

### Applicant Details

Name and address C & C Pratt  
225 Walsh Street  
Mareeba QLD 4880

### Application Details

Address of Property 3946 Kennedy Highway, Mareeba QLD 4880  
Real Property Description Lot 2 on SP310235  
Aspect/s of Development Development Permit for Change Application (Other Change) for Material Change of Use - Food and Drink Outlet (formerly defined as Restaurant)

### Decision (given under section 67 of TIA)

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

No.	Conditions of Approval	Condition Timing
1.	The Permitted Road Access Location between Lot 2 on SP310235 and the Kennedy Highway is in accordance with: <ul style="list-style-type: none"><li>TMR Layout Plan (32A – 39.14km) dated 6/11/2024 (Attachment D); and</li><li>Site Plan prepared by Scope Town Planning.</li></ul>	At all times.
2.	Direct access is prohibited between the Kennedy Highway and Lot 2 on SP310235 at any other location other than the Permitted Road Access Location described in Condition 1.	At all times.

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

No.	Conditions of Approval	Condition Timing
3.	<p>The use of the Permitted Road Access Location is to be restricted to Design vehicles up to a maximum size Three Axle Truck or Bus – Class 4 Medium Length Heavy Vehicle **</p> <p>Note: **as described in Austroads Vehicle Classification</p>	At all times.
4.	<p>Road Access Works comprising of a rural property access must be maintained at the permitted access location described in Condition 1, generally in accordance with:</p> <p>(a) 'Type B' Property Access prepared by Queensland Government dated 3/2024, Drawing 1807, Issue C.</p>	Maintained at all times.

### Reasons for the decision

The reasons for this decision are as follows:

- a) The original s62 approval for Lot 28 on SP160169 (previous development site) encompassing the approved Restaurant (Ice Creamery) was issued to JS & LD & GS Dixon on or about 2 March 2009.
- b) The original lot encompassing the approved Ice Creamery has changed including the landowner.
- c) The new lot is identified as Lot 2 on SP310235 and the new landowner is C and C Pratt.
- d) Lot 2 on SP310235 (the subject site) has road frontage and direct vehicular access via the Kennedy Highway, a state-controlled road.
- e) A changed application for the approved Ice Creamery has been submitted by C and C Pratt (the applicant).
- f) A new s62 approval is required to be issued to C and C Pratt as part of the changed application for the vehicular access via Lot 2 on SP310235.

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

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

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

### Further information about the decision

1. In accordance with section 67(7) of TIA, this decision notice:
  - a) starts to have effect when the development approval has effect; and
  - b) stops having effect if the development approval lapses or is cancelled; and
  - c) replaces any earlier decision made under section 62(1) in relation to the land.
2. In accordance with section 485 of the TIA and section 31 of the *Transport Planning and Coordination Act 1994* (TPCA), a person whose interests are affected by this decision may

apply for a review of this decision only within 28 days after notice of the decision was given under the TIA. A copy of the review provisions under TIA and TPCA are attached in **Attachment C** for information.

3. In accordance with section 485B of the TIA and section 35 of TPCA a person may appeal against a reviewed decision. The person must have applied to have the decision reviewed before an appeal about the decision can be lodged in the Planning and Environment Court. A copy of the Appeal Provisions under TIA and TPCA is attached in **Attachment C** for information.

### **Further approvals**

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

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

If further information about this approval or any other related query is required, Steven Zelenika, Senior Town Planner should be contacted by email at [steven.z.zelenika@tmr.qld.gov.au](mailto:steven.z.zelenika@tmr.qld.gov.au) or on (07) 4045 7063.

Yours sincerely



Liliya Yates  
A/Principal Engineer (Civil)

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

## Attachment A

### Decision Evidence and Findings

Evidence or other material on which findings were based:

<b>Title of Evidence / Material</b>	<b>Prepared by</b>	<b>Date</b>	<b>Reference no.</b>	<b>Version/Issue</b>
TMR Layout Plan (32A – 39.14km)	Queensland Government Transport and Main Roads	6/11/2024	TMR24-044002 (500/1411)	D
Site Plan	Scope Town Panning	-	-	-

## **Attachment B**

### **Section 70 of TIA**

*Transport Infrastructure Act 1994*

Chapter 6 Road transport infrastructure

Part 5 Management of State-controlled roads

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

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

Maximum penalty—200 penalty units.

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

**Attachment C**  
**Appeal Provisions**

*Transport Infrastructure Act 1994*  
Chapter 16 General provisions

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**485 Internal review of decisions**

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

**485B Appeals against decisions**

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

- (5) The court may order—
  - (a) the appeals to be heard together or 1 immediately after the other; or
  - (b) 1 appeal to be stayed until the other is decided.
- (6) Subsection (5) applies even if all or any of the parties to the appeals are not the same.
- (7) In this section—

**original decision** means a decision described in schedule 3.

**reviewed decision** means the chief executive's decision on a review under section 485.

### **31 Applying for review**

- (1) A person may apply for a review of an original decision only within 28 days after notice of the original decision was given to the person under the transport Act.
- (2) However, if—
  - (a) the notice did not state the reasons for the original decision; and
  - (b) the person asked for a statement of the reasons within the 28 days mentioned in subsection (1)the person may apply within 28 days after the person is given the statement of the reasons.
- (3) In addition, the chief executive may extend the period for applying.
- (4) An application must be written and state in detail the grounds on which the person wants the original decision to be reviewed.

### **32 Stay of operation of original decision**

- (1) If a person applies for review of an original decision, the person may immediately apply for a stay of the decision to the relevant entity.
- (2) The relevant entity may stay the original decision to secure the effectiveness of the review and any later appeal to or review by the relevant entity.
- (3) In setting the time for hearing the application, the relevant entity must allow at least 3 business days between the day the application is filed with it and the hearing day.
- (4) The chief executive is a party to the application.
- (5) The person must serve a copy of the application showing the time and place of the hearing and any document filed in the relevant entity with it on the chief executive at least 2 business days before the hearing.
- (6) The stay—
  - (a) may be given on conditions the relevant entity considers appropriate; and
  - (b) operates for the period specified by the relevant entity; and
  - (c) may be revoked or amended by the relevant entity.
- (7) The period of a stay under this section must not extend past the time when the chief executive reviews the original decision and any later period the relevant entity allows the applicant to enable the applicant to appeal against the decision or apply for a review of the decision as provided under the QCAT Act.
- (8) The making of an application does not affect the original decision, or the carrying out of the original decision, unless it is stayed.



(9) In this section—

**relevant entity** means—

- (a) if the reviewed decision may be reviewed by QCAT—QCAT; or
- (b) if the reviewed decision may be appealed to the appeal court—the appeal court.

### **35 Time for making appeals**

(1) A person may appeal against a reviewed decision only within—

- (a) if a decision notice is given to the person—28 days after the notice was given to the person; or
- (b) if the chief executive is taken to have confirmed the decision under section 34(5)—56 days after the application was made.

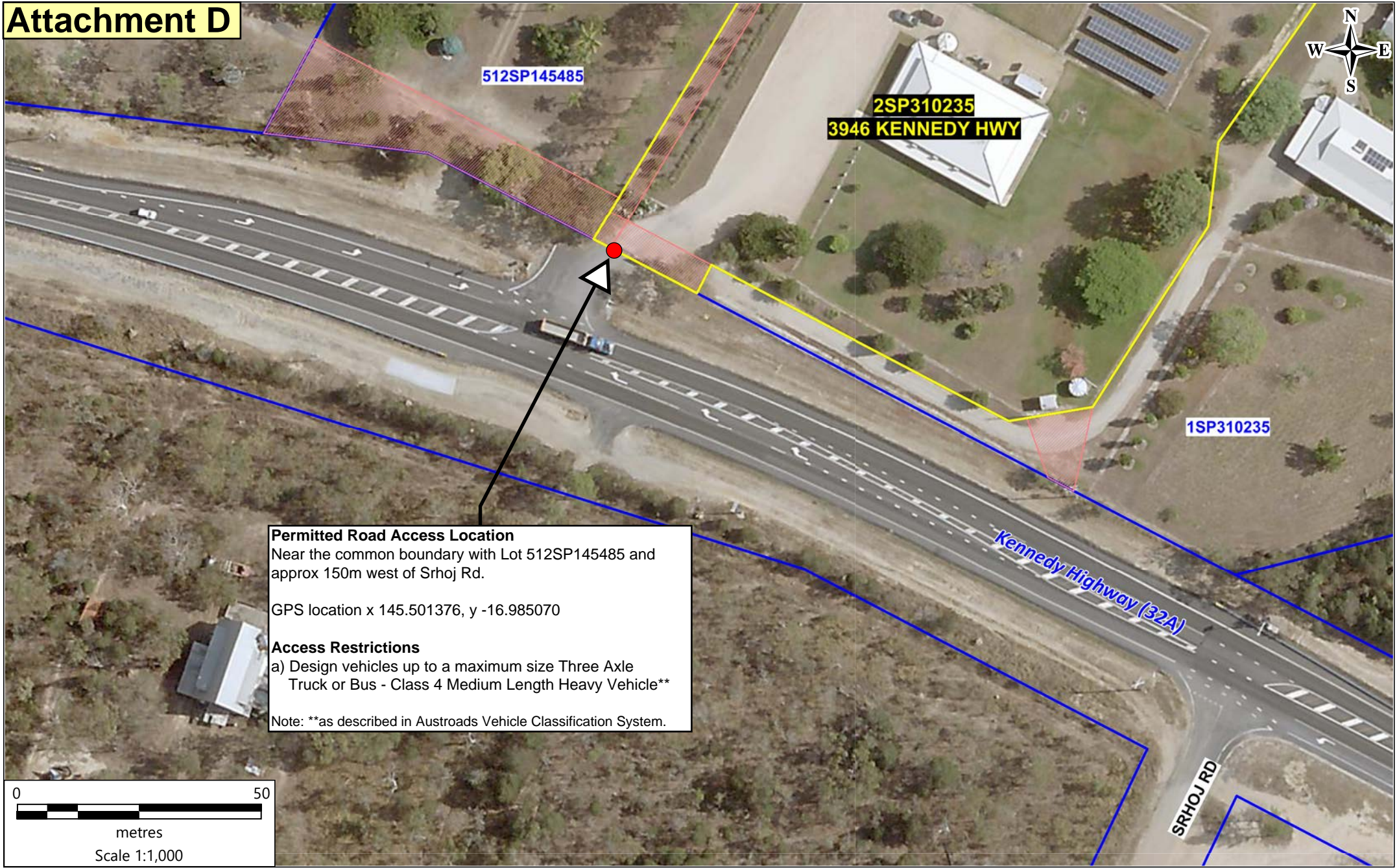
(2) However, if—

- (a) the decision notice did not state the reasons for the decision; and
- (b) the person asked for a statement of the reasons within the 28 days mentioned in subsection (1)(a);

the person may apply within 28 days after the person is given a statement of the reasons.

(3) Also, the appeal court may extend the period for appealing.

# Attachment D



512SP145485

2SP310235  
3946 KENNEDY HWY

1SP310235

Kennedy Highway (32A)

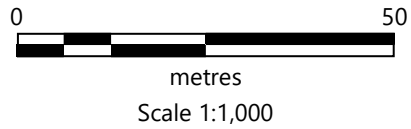
SRHOJ RD

**Permitted Road Access Location**  
Near the common boundary with Lot 512SP145485 and approx 150m west of Srhoj Rd.

GPS location x 145.501376, y -16.985070

**Access Restrictions**  
a) Design vehicles up to a maximum size Three Axle Truck or Bus - Class 4 Medium Length Heavy Vehicle\*\*

Note: \*\*as described in Austroads Vehicle Classification System.



Branch/Unit : **Corridor Management / Far North District**

Projection/Datum : Geocentric Datum of Australia (GDA) 2020

File ref: TMR24-044002 (500-1411)

Land parcels	Subject land
Easements	

**TMR Layout Plan  
(32A - 39.14km)**

Plan: 1 / 1  
Issue: A  
Drawn by: DWH

Queensland Government  
Transport and Main Roads

Date: **6/11/2024**

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



Prepared by Scope Town Planning

# 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 Rules<sup>1</sup> regarding **representations about a referral agency response**

## Part 6: Changes to the application and referral agency responses

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### 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.<sup>2</sup>
- 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.

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<sup>1</sup> Pursuant to Section 68 of the *Planning Act 2016*

<sup>2</sup> 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.<sup>3</sup>

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<sup>3</sup> 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.