



# Blackall-Tambo Regional Council

Blackall-Tambo Regional Council

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ABN: 42 062 968 922

## DECISION NOTICE APPROVAL

*PLANNING ACT 2016, SECTION 63*

I refer to your application and advise that on 14 December 2022, Blackall-Tambo Regional Council decided to approve the application in full, subject to conditions. Details of the decision are as follows:

### 1. APPLICATION DETAILS

**Application Number:** DA 05-2022-2023  
**Properly Made Date:** 15 September 2022  
**Decision Date:** 14 December 2022  
**Planning Scheme:** Blackall-Tambo Region Planning Scheme 2020

### 2. APPLICANT DETAILS

**Name:** J & DS Phelps  
**Postal Address:** PO Box 929  
DALBY QLD 4405  
**Email Address:** [jdpgrazing@gmail.com](mailto:jdpgrazing@gmail.com)

### 3. PROPERTY DETAILS

**Street Address:** 51 Arthur Street, Tambo  
**Real Property Description:** Lot 510 on T1501  
**Local Government Area:** Blackall-Tambo Regional Council

### 4. DECISION DETAILS

The following type of approval has been issued:

- Development Permit for Material Change of Use for Short-term accommodation (6 units)

## 5. CURRENCY PERIOD

This development approval will lapse at the end of the period set out in section 85(1)(a) of the *Planning Act 2016*.

## 6. ASSESSMENT MANAGER CONDITIONS

### 1.0 PARAMETERS OF APPROVAL

- 1.1 The Developer is responsible for ensuring compliance with this development approval and the conditions of the approval by an employee, agent, contractor or invitee of the Developer at all times unless otherwise stated.
- 1.2 Where these conditions refer to "Council" in relation to requiring Council to approve or be satisfied as to any matter, or conferring on the Council a function, power or discretion, that role of the Council may be fulfilled in whole or in part by a delegate appointed for that purpose by Council.
- 1.3 All conditions, works, or requirements of this development approval must be undertaken and completed prior to commencement of the use and to Council's satisfaction, unless otherwise stated in a development condition.
- 1.4 The cost of all works associated with the construction of the development including services, facilities and/or public utility alterations required are met at no cost to the Council or relevant utility provider, unless otherwise stated in a development condition.
- 1.5 The developer is required to have repaired any damage to existing infrastructure that may have occurred during any works carried out for the development. To the extent the damage is deemed to create a hazard to the community, it must be repaired immediately.
- 1.6 Unless otherwise stated, all works must be designed, constructed and maintained in accordance with the relevant Council policies, guidelines and standards.

### 2.0 APPROVED PLANS AND DOCUMENTS

- 2.1 The approved development must be completed and maintained generally in accordance with the approved plans and documents, except where amended by the conditions of this permit:

Plan/Document Name	Plan/Document Number	Revision Number	Date
Site Plan and Elevations	001 Sheet 1 of 1	1	16/08/2022

- 2.2 Where there is any conflict between the conditions of this approval and the details shown on the approved plans and documents, the conditions of approval must prevail.

### 3.0 LIMITATIONS OF OPERATION

- 3.1 Guests of the Short-term accommodation are limited to a maximum stay of three (3) consecutive months at any one time.
- 3.2 The Short-term accommodation is limited to a maximum of six (6) units.

#### **4.0 ACCESS AND PARKING WORKS**

- 4.1 Design, construct and maintain the Charles Street and Arthur Street crossovers in accordance with the approved plans (see Condition 2.1) and generally in accordance with the standard drawing, Figure 1 or 2, from the General Development Code of the Blackall-Tambo Region Planning Scheme.
- 4.2 Provide and maintain a minimum of six (6) car parking spaces on-site for guests. All car parking spaces must be clearly delineated by either line-marking or signage.
- 4.3 Design and construct and maintain all car parking and manoeuvring areas in accordance with the approved plan (see Condition 2.1) and *AS2890.1 – Parking Facilities* and *Austroads Publication AP-G34-13 – Austroads Design Vehicle and Turning Path Templates*.
- 4.4 All car parking and vehicle manoeuvring areas must be either compacted gravel or concrete.

#### **5.0 SITE MANAGEMENT PLAN**

- 5.1 Maintain and implement a site management plan for the Short-term accommodation. The site management plan is to include measures to manage operational aspects of the development including, but not limited to, hours of operation, noise management, site care and maintenance, complaints management and refuse management.

#### **6.0 ROOF AND ALLOTMENT DRAINAGE**

- 6.1 Discharge of all roof and allotment drainage such that it does not restrict, impair or change the natural flow of runoff water or cause a nuisance to adjoining properties or infrastructure from the pre to the post-development condition.

#### **7.0 STORMWATER WORKS**

- 7.1 Undertake the development such that all stormwater, except for rainwater captured on-site in rainwater tanks, is to be drained from the site to a lawful point of discharge and carried without causing annoyance or nuisance to any person or property. All works must be designed, constructed and maintained in accordance with the *Queensland Urban Drainage Manual*.

#### **8.0 SEWERAGE AND WATER**

- 8.1 The premises must be connected to Council's reticulated water and sewerage network.
- 8.2 All works must be designed, constructed and maintained in accordance with the approved plans (refer to Condition 2.1), the *Plumbing and Drainage Act, Water Services Association of Australia (WSAA), 2011, "WSA 03-11 Water Supply Code of Australia" Version 3.1* and *Queensland Department of Energy and Water Supply, 2010, Planning Guidelines for Water Supply and Sewerage*.
- 8.3 Remove all redundant water supply and sewerage infrastructure, including but not limited to pipes and connection points.

## **9.0 TELECOMMUNICATION AND ELECTRICITY SUPPLY**

- 9.1 The premises must be connected to electricity and telecommunication services in accordance with the standards and requirements of the relevant service provider.

## **10.0 WASTE MANAGEMENT**

- 10.1 Store all waste within a waste storage area (for example, general waste, recyclable waste, pallets, empty drums etcetera). The waste storage area must be:

- 10.1.1 Designed to not cause nuisance to neighbouring properties;
- 10.1.2 Screened from any road frontage or adjoining property;
- 10.1.3 Of a sufficient size to accommodate a waste bin/s suitable to service the Short-term accommodation.

## **11.0 AMENITY AND ENVIRONMENTAL HEALTH**

- 11.1 Undertake the approved development so there is no environmental nuisance or detrimental effect on any surrounding land uses and activities by reason of the emission of noise, vibration, odour, fumes, smoke, vapour, steam soot, ash, wastewater, waste products, oil or otherwise
- 11.2 Install and operate all outdoor lighting to comply with *AS4282 – 1997 "Control of the Obtrusive Effects of Outdoor Lighting"*.

## **12.0 LANDSCAPING**

- 12.1 Establish and maintain landscaping to all boundaries of the site.
- 12.2 The landscaping must predominantly contain species consisting of native, drought tolerant groundcovers, shrubs, small trees and trees.

## **13.0 SITE WORKS AND EROSION AND SEDIMENT CONTROL**

- 13.1 Site works must be constructed such that they do not, at any time, in any way restrict, impair or change the natural flow of runoff water, or cause a nuisance or worsening to adjoining properties or infrastructure.
- 13.2 Prepare and implement an Erosion and Sediment Control Strategy (ESCS) in accordance with the *IECA 2008 Best Practice Erosion and Sediment Control* (as amended).
- 13.3 Implement the ESCS for the duration of the construction phase and until such time all exposed soils areas are permanently stabilised (for example, turfed, hydro mulched, concreted or landscaped).

## **14.0 ASSET MANAGEMENT**

- 14.1 Any alteration necessary to electricity, telephone, water mains, sewerage mains, and/or public utility installations resulting from the development or in connection with the development, must be undertaken and completed at no cost to Council.

## 7. ADVISORY NOTES

- A. Prior to commencing any construction activities, the applicant/developer will be required to obtain further development permits for building work, and plumbing and drainage work, and potentially for operational work, as required under relevant legislation for this work.
- B. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements. Any provisions contained in this approval relating to the enforcement of any of the conditions shall be in addition to all other rights, powers and privileges that the Council may possess or obtain, and nothing contained in these conditions shall be construed so as to prejudice, affect or otherwise derogate or limit these rights, powers and privileges of the Council.
- C. General environmental duty under the Environmental Protection Act 1994 and subordinate legislation prohibits unlawful environmental nuisance caused by noise, aerosols, particles, dust, ash, fumes, light, odour or smoke beyond the boundaries of the development site during all stages of the development including earthworks, construction and operation.
- D. This development approval does not authorise any activity that may harm Aboriginal cultural heritage. It is advised that under section 23 of the Aboriginal Cultural Heritage Act 2003, a person who carries out an activity must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage (the "cultural heritage duty of care").

## 8. STATEMENT OF REASONS

### 8.1 Description of Development

The development application is for a Development Permit for Material Change of Use for Short-term accommodation (6 units) approved as per Decision Notice DA 05-2022-2023.

### 8.2 Assessment Benchmarks

The following are the benchmarks that are applicable to this development:

Benchmark applying for the development	Benchmark reference
<ul style="list-style-type: none"><li>• Strategic Framework</li><li>• Township Zone Code</li><li>• General Development Code</li></ul>	<i>Blackall-Tambo Region Planning Scheme 2020</i>

### 8.3 Relevant Matters

Nil.

### 8.4 Matters Raised in Submission

Matter raised in submission	Response to matter raised
No issue with the development. Request that guests don't feed or complain about animals or destroy the fencing.	The applicant has been advised of the content of this submission. As this is a private matter, Council cannot impose a condition to address this matter.

<p>Detracts from services provided within the commercial precinct of the Township.</p>	<p>The development it is for six (6) Short-term accommodation units. It is not anticipated that this small-scale proposal will detract from other services provided in the Commercial precinct. It is anticipated that the proposal will allow additional Tourists to stay in town and support commercial uses in the township.</p>
<p>Does not complement the existing character of the area.</p>	<p>The proposed Short-term accommodation units will be of a similar form and scale of buildings in the locality through limiting the height to one storey. The units will also incorporate materials and features that are commonly used in nearby development, including the incorporation of a pitched roof and a balcony.</p>
<p>Will have an adverse impact on adjoining residential area particularly with the barbeque joining residential properties.</p>	<p>It is not anticipated that the barbeque area will unduly impact the surrounding residential properties. A condition has been included for a Site Management Plan to be developed for the site. The Site Management Plan requires measures to be included to manage operational aspects of the development including, but not limited to, hours of operation, noise management, site care and maintenance, complaints management and refuse management.</p>
<p>In future this sort of development outside the commercial precinct will lead to a reduced quality of accommodation experiences.</p>	<p>Council has assessed this application based on the assessment benchmarks contained within the Blackall-Tambo Region Planning Scheme 2020 and cannot comment on future scenarios.</p>
<p>This is a commercial venture and without management it is no way compatible or controllable with existing residential uses.</p>	<p>A condition has been included for a Site Management Plan to be developed for the site. The Site Management Plan requires measures to be included to manage operational aspects of the development including, but not limited to, hours of operation, noise management, site care and maintenance, complaints management and refuse management.</p>
<p>The adjoining residential uses will be impacted not only to privacy but to noise and lighting.</p>	<p>A condition has been included for a Site Management Plan to be developed for the site. The Site Management Plan</p>

	<p>requires measures to be included to manage operational aspects of the development including, but not limited to, hours of operation, noise management, site care and maintenance, complaints management and refuse management.</p> <p>A condition has also been included to ensure all outdoor lighting is consistent with AS4282 – 1997 “Control of the Obtrusive Effects of Outdoor Lighting”.</p>
<p>The nominated barbeque area will overlook the living areas of adjoining residential uses.</p>	<p>The barbeque area is an open structure that is limited to approximately 3m in height and will be setback approximately 8m from the closest residential boundary. A structure of this form and scale and is not expected to cause overlooking issues. Council has imposed a condition that requires landscaping to all boundaries, which will assist with any potential overlooking issues.</p>
<p>With no onsite management hours of operation cannot be limited.</p>	<p>A condition has been included for a Site Management Plan to be developed for the site. The Site Management Plan requires measures to be included to manage operational aspects of the development including, but not limited to, hours of operation, noise management, site care and maintenance, complaints management and refuse management.</p>
<p>Shows no screening for waste disposal and servicing areas.</p>	<p>A condition has been included that requires a waste storage area to be provided that is screened from neighbouring properties and roads.</p>
<p>Have the existing Boab trees been cleared of any cultural significance. As the overlaid plans seem to indicate some removal might be required.</p>	<p>Although not protected vegetation, the application material indicates that the trees will be retained.</p>
<p>There is no building code design or hydraulic design within the application</p>	<p>A condition has been included that requires all stormwater to be dispersed to a lawful point of discharge as to ensure no nuisance for adjoining properties.</p> <p>A separate building approval will be required prior to the commencement of</p>

	the use. The building application will be required to be assessed against the building code provisions.
Would not a building compliance be required or is the intent to put dongers on concrete blocks	A separate building approval will be required prior to the commencement of the use. The building application will be required to be assessed against the building code provisions.
We see no mention of the Tambo Caravan Park for other accommodation in the Proposal which would not complement that existing service or it's intended use.	The applicant is not required to describe or note surrounding uses. Council has assessed this application based on the assessment benchmarks contained within the Blackall-Tambo Region Planning Scheme 2020.
We believe to approve Short Term Accommodation in the Township zoning will create a precedent where the entire Township could be open to short term accommodation applications which is not in the Public Interest nor the intent of the current town plan	Council has assessed this application based on the assessment benchmarks contained within the Blackall-Tambo Region Planning Scheme 2020 and cannot comment on future scenarios. Applications are assessed on merit and on a site by site basis.
The applicant notes Oakwood House as an approved-existing short-term accommodation, we are not aware of that one when was it approved?	Council does not have any record of a development application for the property known as Oakwood House. Council will be required to advise the operator that they will need to seek a development approval for Short-term accommodation.

## 8.5 Reason for Decision

The development application is approved and the reasons for the decision are based on findings on material questions of fact:

- a) The Purpose of the Township zone allows for tourist attractions and short-term accommodation, if appropriate for the area. The proposal for Short-term accommodation is considered appropriate for the area due to the diverse nature of surrounding uses
- b) Conditions have been imposed to ensure any impacts associated with the Short-term accommodation are appropriately managed
- c) The development is of a reasonable scale and will be consistent with built form in the locality, through limiting the height to one storey, and through the incorporation of a pitched roof and a balcony
- d) The development will be able to connect to reticulated water and sewer as well as telecommunications and electricity services
- e) The development does not conflict with the State Planning Policy 2017 and Central West Regional Plan 2009.



**9. PROPERLY MADE SUBMISSIONS**

- Dean & Trisha-Marie Frousheger  
PO Box 17, TAMBO QUEENSLAND 4478
- Craig Barlow  
[cjelectrical@hotmail.com](mailto:cjelectrical@hotmail.com)

**10. REFERRAL AGENCIES**

PLANNING REGULATION 2017	FOR AN APPLICATION INVOLVING	NAME OF AGENCY	STATUS	RESPONSE
Schedule 10, Part 9, Subdivision 2, Table 4, Item 1	Material change of use of premises near a State transport corridor.	The Chief Executive  Department of State Development, Infrastructure, Local Government and Planning	Concurrence	The Department of State Development, Infrastructure, Local Government and Planning issued there referral agency response with no requirements on 5 October 2022. A copy of the response is attached, reference 2209-31169 SRA.

**11. FURTHER DEVELOPMENT PERMITS REQUIRED**

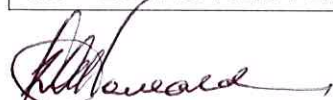
The following further development permits are required:

- Building Work; and
- Plumbing and Drainage Work.

**12. RIGHTS OF APPEAL**

The rights of applicants to appeal to a tribunal or the Planning and Environment Court against decisions about a development application are set out in chapter 6, part 1 of the *Planning Act 2016* (included in the attachment to this decision notice). For particular applications, there may also be a right to make an application for a declaration by a tribunal (see chapter 6, part 2 of the *Planning Act 2016*).

**13. DELEGATED PERSON**



DA Howard  
CHIEF EXECUTIVE OFFICER  
19 December 2022

Encl: **Attachment A** – Approved Plan  
**Attachment B** – SARA Referral Agency Response  
**Attachment C** – Appeal Provisions

## **Attachment A – Approved Plan**

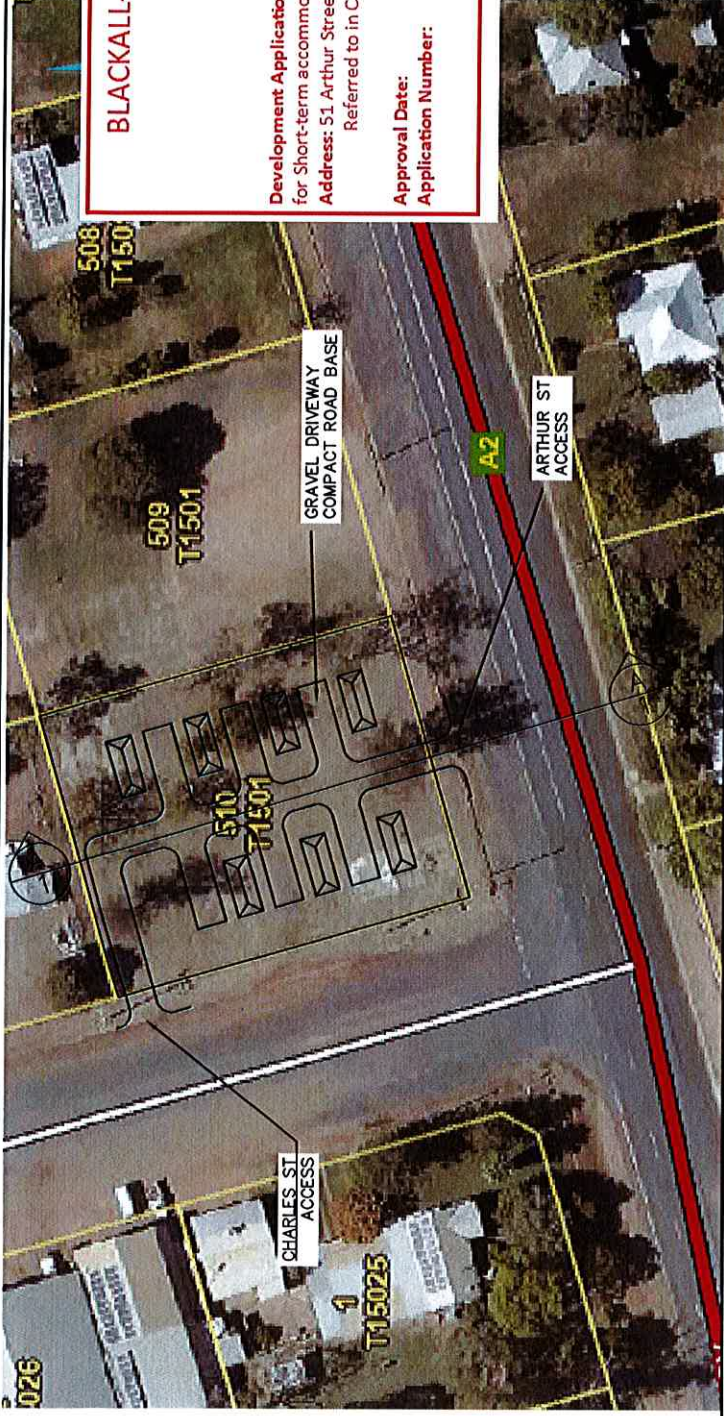
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 A3 CAD - DO NOT AMEND MANUALLY

**BLACKALL-TAMBO REGIONAL COUNCIL**

**DIGITALLY STAMPED  
 APPROVED PLAN**

**Development Application:** Development Permit for a Material Change of Use for Short-term accommodation (6 units)  
**Address:** 51 Arthur Street, Tambo described as Lot 510 on T1501  
 Referred to in Council's Decision Notice for DA 05-2022-2023

**Approval Date:** 14 December 2022  
**Application Number:** DA 05-2022-2023



ISSUE	DESCRIPTION	CHECKED	DATE
DESIGNED			
APPROVED			



**PROJECT TITLE**  
 LOT 510 TAMBO  
 SHORT TERM  
 ACCOMMODATION

**DRAWING TITLE**  
 SITE PLAN AND  
 ELEVATIONS

**CLIENT**  
 BOTTLE TREE PASTORAL CO

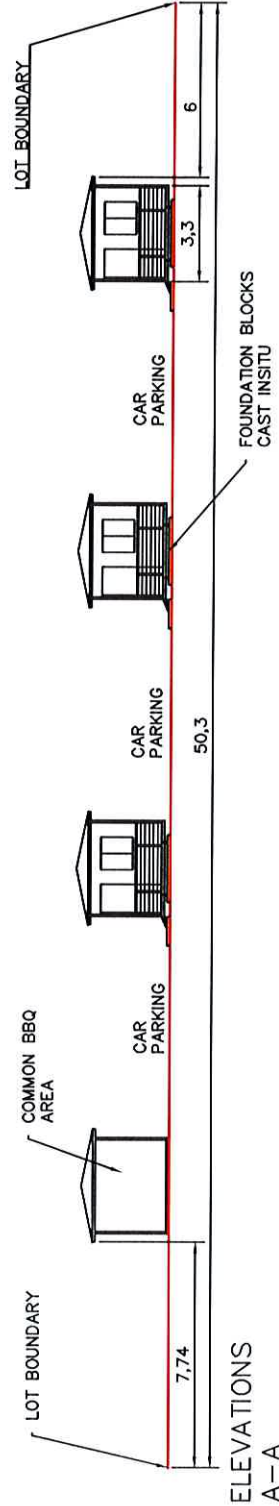
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 DATE  
 16:08:2022

**PROJECT NO.**  
 CAD FILE

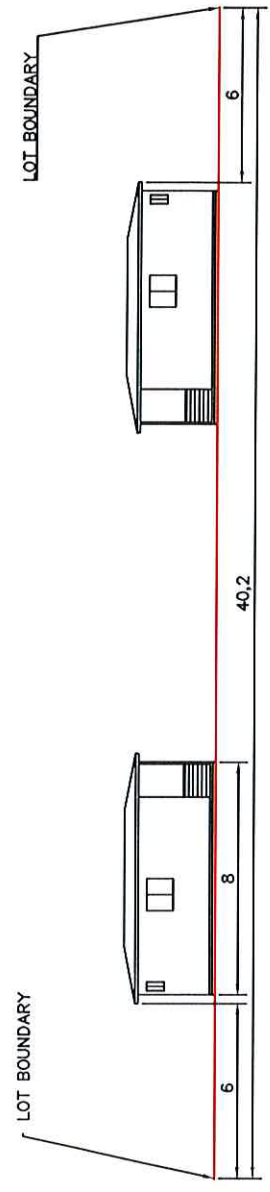
**DRAWING NO.**  
 001

**REVISION**  
 1

**NO. OF SHEETS**  
 SHEET 1 OF 1



**ELEVATIONS  
 A-A**



**ELEVATIONS  
 ARTHUR ST**

**Attachment B – SARA Referral Agency Response**



SARA reference: 2209-31169 SRA  
 Council reference: DA05-2022-2023

5 October 2022

Chief Executive Officer  
 Blackall Tambo Regional Council  
 PO Box 21  
 Blackall Qld 4472  
 admin@btrc.qld.gov.au

Attention: Kathy Dendle

Dear Sir/Madam

## SARA response—51 Arthur Street, Tambo

(Referral agency response given under section 56 of the *Planning Act 2016*)

The development application described below was confirmed as properly referred by the State Assessment and Referral Agency (SARA) on 26 September 2022.

### Response

Outcome:	Referral agency response - No requirements Under section 56(1)(a) of the <i>Planning Act 2016</i> , SARA advises it has no requirements relating to the application.
Date of response:	5 October 2022
Advice:	Advice to the applicant is in <b>Attachment 1</b> .
Reasons:	The reasons for the referral agency response are in <b>Attachment 2</b> .

### Development details

Description:	Development permit	Material change of use for short-term accommodation (6 units)
SARA role:	Referral Agency	
SARA trigger:	Schedule 10, Part 9, division 4, subdivision 2, table 4 (Planning Regulation 2017)	
	Development application for a material change of use near a State transport corridor or that is a future State transport corridor	
SARA reference:	2209-31169 SRA	

Assessment Manager: Blackall Tambo Regional Council  
Street address: 51 Arthur Street, Tambo  
Real property description: 510T1501  
Applicant name: Josh and Denae Phelps  
Applicant contact details: Jynoomali, Langlo Rd  
Tambo QLD 4478  
jdpgrazing@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: TMR22-037513
- Date: 05/10/2022

If you are seeking further information on the road access permit, please contact the Department of Transport and Main Roads at Gerard.j.arthur@tmr.qld.gov.au

## 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 3**.

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

For further information please contact Carl Porter, Principal Planning Officer, on 07 4924 2918 or via email RockhamptonSARA@dsdilgp.qld.gov.au who will be pleased to assist.

Yours sincerely



Anthony Walsh  
Manager Planning

cc Josh and Denae Phelps, annette@homesteadagri.com.au

enc Attachment 1 - Advice to the applicant  
Attachment 2 - Reasons for referral agency response  
Attachment 3 - Representations provisions  
Attachment 4 - S.62 *Transport Infrastructure Act 1994* decision notice

## Attachment 1—Advice to the applicant

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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) v3.0. If a word remains undefined it has its ordinary meaning.



## **Attachment 2—Reasons for referral agency response**

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

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### **The reasons for SARA's decision are:**

- The development is for short term accommodation (6 units).
- The site is located adjacent to a State-controlled road (SCR), being Arthur Street / the Landsborough Highway.
- The site is adjacent to a local road (Charles Street) and in proximity to the intersection with the SCR.
- The development is unlikely to have any detrimental impacts on the intersection or state-controlled road.
- The development complies with State code 1: Development in a state-controlled road environment.

### **Material used in the assessment of the application:**

- The development application material and submitted plans
- *Planning Act 2016*
- Planning Regulation 2017
- *The State Development Assessment Provisions* (version 3.0)
- The Development Assessment Rules
- SARA DA Mapping system

## **Attachment 3—Change representation provisions**

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**Attachment 4— S.62 Transport Infrastructure Act 1994 decision notice**

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## **Attachment C – Appeal Provisions**

## Attachment 3 - Extract of Appeal Provisions

Chapter 6 Dispute resolution

[s 229]

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- (2) The person is taken to have engaged in the representative's conduct, unless the person proves the person could not have prevented the conduct by exercising reasonable diligence.
- (3) In this section—
- conduct** means an act or omission.
- representative** means—
- (a) of a corporation—an executive officer, employee or agent of the corporation; or
- (b) of an individual—an employee or agent of the individual.
- state of mind**, of a person, includes the person's—
- (a) knowledge, intention, opinion, belief or purpose; and
- (b) reasons for the intention, opinion, belief or purpose.

## Chapter 6 Dispute resolution

### Part 1 Appeal rights

#### 229 Appeals to tribunal or P&E Court

- (1) Schedule 1 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.
- (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 an appeal relating to the *Plumbing and Drainage Act 2018*—
    - (i) for an appeal against an enforcement notice given because of a belief mentioned in the *Plumbing and Drainage Act 2018*, section 143(2)(a)(i), (b) or (c)—5 business days after the day the notice is given; or
    - (ii) for an appeal against a decision of a local government or an inspector to give an action notice under the *Plumbing and Drainage Act 2018*—5 business days after the notice is given; or

- (iii) otherwise—20 business days after the day the notice is given; or
- (g) 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—

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- (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, section 1, table 1, item 1—each principal submitter for the application whose submission has not been withdrawn; and
  - (d) for an appeal about a change application under schedule 1, section 1, table 1, item 2—each principal submitter for the application whose submission has not been withdrawn; and
  - (e) each person who may elect to be a co-respondent for the appeal other than an eligible submitter for a development application or change application the subject of the appeal; 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 is 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 to an appeal by filing a notice of election in the approved form—
- (a) if a copy of the notice of appeal is given to the person—within 10 business days after the copy is given to the person; or
  - (b) otherwise—within 15 business days after the notice of appeal is lodged with the registrar of the tribunal or the P&E Court.



- (7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department's website for this purpose.

### **231 Non-appealable decisions and matters**

- (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 the 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, any tribunal or another entity; and

- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, any 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 rules of the P&E Court.

## **Part 2 Development tribunal**

### **Division 1 General**

#### **233 Appointment of referees**

- (1) The Minister, or chief executive, (the *appointer*) may appoint a person to be a referee, by an appointment notice, if the appointer considers the person—
  - (a) has the qualifications or experience prescribed by regulation; and
  - (b) has demonstrated an ability—
    - (i) to negotiate and mediate outcomes between parties to a proceeding; and
    - (ii) to apply the principles of natural justice; and
    - (iii) to analyse complex technical issues; and
    - (iv) to communicate effectively, including, for example, to write informed succinct and well-organised decisions, reports, submissions or other documents.

## **Schedule 1      Appeals**

section 229

### **1      Appeal rights and parties to appeals**

- (1) Table 1 states the matters that may be appealed to—
  - (a) the P&E court; or
  - (b) a tribunal.
- (2) However, table 1 applies to a tribunal only if the matter involves—
  - (a) the refusal, or deemed refusal of a development application, for—
    - (i) a material change of use for a classified building; or
    - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
  - (b) a provision of a development approval for—
    - (i) a material change of use for a classified building; or
    - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
  - (c) if a development permit was applied for—the decision to give a preliminary approval for—
    - (i) a material change of use for a classified building; or
    - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
  - (d) a development condition if—
    - (i) the development approval is only for a material change of use that involves the use of a building classified under the Building Code as a class 2 building; and

- 
- (ii) the building is, or is proposed to be, not more than 3 storeys; and
  - (iii) the proposed development is for not more than 60 sole-occupancy units; or
  - (e) a decision for, or a deemed refusal of, an extension application for a development approval that is only for a material change of use of a classified building; or
  - (f) a decision for, or a deemed refusal of, a change application for a development approval that is only for a material change of use of a classified building; or
  - (g) a matter under this Act, to the extent the matter relates to the Building Act, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission; or
  - (h) a decision to give an enforcement notice—
    - (i) in relation to a matter under paragraphs (a) to (g); or
    - (ii) under the *Plumbing and Drainage Act 2018*; or
  - (i) an infrastructure charges notice; or
  - (j) the refusal, or deemed refusal, of a conversion application; or
  - (l) a matter prescribed by regulation.
- (3) Also, table 1 does not apply to a tribunal if the matter involves—
- (a) for a matter in subsection (2)(a) to (d)—
    - (i) a development approval for which the development application required impact assessment; and
    - (ii) a development approval in relation to which the assessment manager received a properly made submission for the development application; or
  - (b) a provision of a development approval about the identification or inclusion, under a variation approval, of a matter for the development.

Schedule 1

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- (4) Table 2 states the matters that may be appealed only to the P&E Court.
- (5) Table 3 states the matters that may be appealed only to the tribunal.
- (6) In each table—
  - (a) column 1 states the appellant in the appeal; and
  - (b) column 2 states the respondent in the appeal; and
  - (c) column 3 states the co-respondent (if any) in the appeal; and
  - (d) column 4 states the co-respondents by election (if any) in the appeal.
- (7) If the chief executive receives a notice of appeal under section 230(3)(f), the chief executive may elect to be a co-respondent in the appeal.
- (8) In this section—  
*storey* see the Building Code, part A1.1.

<b>Table 1</b> <b>Appeals to the P&amp;E Court and, for certain matters, to a tribunal</b>
1. Development applications For a development application other than an excluded application, an appeal may be made against— <ul style="list-style-type: none"><li>(a) the refusal of all or part of the development application; or</li><li>(b) the deemed refusal of the development application; or</li><li>(c) a provision of the development approval; or</li><li>(d) if a development permit was applied for—the decision to give a preliminary approval.</li></ul>

<b>Table 1 Appeals to the P&amp;E Court and, for certain matters, to a tribunal</b>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant	The assessment manager	If the appeal is about a concurrence agency's referral response—the concurrence agency	<p>1 A concurrence agency that is not a co-respondent</p> <p>2 If a chosen assessment manager is the respondent—the prescribed assessment manager</p> <p>3 Any eligible advice agency for the application</p> <p>4 Any eligible submitter for the application</p>
<p>2. Change applications</p> <p>For a change application other than an excluded application, an appeal may be made against—</p> <p>(a) the responsible entity's decision on the change application; or</p> <p>(b) a deemed refusal of the change application.</p>			

<b>Table 1 Appeals to the P&amp;E Court and, for certain matters, to a tribunal</b>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
<p>1 The applicant</p> <p>2 If the responsible entity is the assessment manager—an affected entity that gave a pre-request notice or response notice</p>	<p>The responsible entity</p>	<p>If an affected entity starts the appeal—the applicant</p>	<p>1 A concurrence agency for the development application</p> <p>2 If a chosen assessment manager is the respondent—the prescribed assessment manager</p> <p>3 A private certifier for the development application</p> <p>4 Any eligible advice agency for the change application</p> <p>5 Any eligible submitter for the change application</p>
<p>3. Extension applications</p> <p>For an extension application other than an extension application called in by the Minister, an appeal may be made against—</p> <p>(a) the assessment manager’s decision on the extension application; or</p> <p>(b) a deemed refusal of the extension application.</p>			

<b>Table 1 Appeals to the P&amp;E Court and, for certain matters, to a tribunal</b>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
<p>1 The applicant</p> <p>2 For a matter other than a deemed refusal of an extension application—a concurrence agency, other than the chief executive, for the application</p>	<p>The assessment manager</p>	<p>If a concurrence agency starts the appeal—the applicant</p>	<p>If a chosen assessment manager is the respondent—the prescribed assessment manager</p>
<p>4. Infrastructure charges notices</p> <p>An appeal may be made against an infrastructure charges notice on 1 or more of the following grounds—</p> <p>(a) the notice involved an error relating to—</p> <p style="padding-left: 20px;">(i) the application of the relevant adopted charge; or</p> <p><i>Examples of errors in applying an adopted charge—</i></p> <ul style="list-style-type: none"> <li>• the incorrect application of gross floor area for a non-residential development</li> <li>• applying an incorrect ‘use category’, under a regulation, to the development</li> </ul> <p style="padding-left: 20px;">(ii) the working out of extra demand, for section 120; or</p> <p style="padding-left: 20px;">(iii) an offset or refund; or</p> <p>(b) there was no decision about an offset or refund; or</p> <p>(c) if the infrastructure charges notice states a refund will be given—the timing for giving the refund; or</p> <p>(d) for an appeal to the P&amp;E Court—the amount of the charge is so unreasonable that no reasonable relevant local government could have imposed the amount.</p>			



<b>Table 1</b>			
<b>Appeals to the P&amp;E Court and, for certain matters, to a tribunal</b>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The person given the infrastructure charges notice	The local government that gave the infrastructure charges notice	—	—
<p>5. Conversion applications</p> <p>An appeal may be made against—</p> <p>(a) the refusal of a conversion application; or</p> <p>(b) a deemed refusal of a conversion application.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant	The local government to which the conversion application was made	—	—
<p>6. Enforcement notices</p> <p>An appeal may be made against the decision to give an enforcement notice.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The person given the enforcement notice	The enforcement authority	—	If the enforcement authority is not the local government for the premises in relation to which the offence is alleged to have happened—the local government

<b>Table 2 Appeals to the P&amp;E Court only</b>			
<p>1. Appeals from tribunal</p> <p>An appeal may be made against a decision of a tribunal, other than a decision under section 252, on the ground of—</p> <p>(a) an error or mistake in law on the part of the tribunal; or</p> <p>(b) jurisdictional error.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A party to the proceedings for the decision	The other party to the proceedings for the decision	—	—
<p>2. Eligible submitter appeals</p> <p>For a development application or change application other than an excluded application, an appeal may be made against the decision to approve the application, to the extent the decision relates to—</p> <p>(a) any part of the development application or change application that required impact assessment; or</p> <p>(b) a variation request.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
<p>1 For a development application—an eligible submitter for the development application</p> <p>2 For a change application—an eligible submitter for the change application</p>	<p>1 For a development application—the assessment manager</p> <p>2 For a change application—the responsible entity</p>	<p>1 The applicant</p> <p>2 If the appeal is about a concurrence agency’s referral response—the concurrence agency</p>	<p>Another eligible submitter for the application</p>

<b>Table 2 Appeals to the P&amp;E Court only</b>			
<p>3. Eligible submitter and eligible advice agency appeals</p> <p>For a development application or change application other than an excluded application, an appeal may be made against a provision of the development approval, or a failure to include a provision in the development approval, to the extent the matter relates to—</p> <p>(a) any part of the development application or change application that required impact assessment; or</p> <p>(b) a variation request.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
<p>1 For a development application—an eligible submitter for the development application</p> <p>2 For a change application—an eligible submitter for the change application</p> <p>3 An eligible advice agency for the development application or change application</p>	<p>1 For a development application—the assessment manager</p> <p>2 For a change application—the responsible entity</p>	<p>1 The applicant</p> <p>2 If the appeal is about a concurrence agency's referral response—the concurrence agency</p>	<p>Another eligible submitter for the application</p>
<p>4. Compensation claims</p> <p>An appeal may be made against—</p> <p>(a) a decision under section 32 about a compensation claim; or</p> <p>(b) a decision under section 265 about a claim for compensation; or</p> <p>(c) a deemed refusal of a claim under paragraph (a) or (b).</p>			

<b>Table 2 Appeals to the P&amp;E Court only</b>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person dissatisfied with the decision	The local government to which the claim was made	—	—
<p><b>5. Registered premises</b> An appeal may be made against a decision of the Minister under chapter 7, part 4.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
<p>1 A person given a decision notice about the decision</p> <p>2 If the decision is to register premises or renew the registration of premises—an owner or occupier of premises in the affected area for the registered premises who is dissatisfied with the decision</p>	The Minister	—	If an owner or occupier starts the appeal—the owner of the registered premises
<p><b>6. Local laws</b> An appeal may be made against a decision of a local government, or conditions applied, under a local law about—</p> <p>(a) the use of premises, other than a use that is the natural and ordinary consequence of prohibited development; or</p> <p>(b) the erection of a building or other structure.</p>			

<b>Table 2 Appeals to the P&amp;E Court only</b>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who— (a) applied for the decision; and (b) is dissatisfied with the decision or conditions.	The local government	—	—

<b>Table 3 Appeals to a tribunal only</b>			
<p><b>I. Building advisory agency appeals</b></p> <p>An appeal may be made against giving a development approval for building work to the extent the building work required code assessment against the building assessment provisions.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A building advisory agency for the development application related to the approval	The assessment manager	The applicant	<p>1 A concurrence agency for the development application related to the approval</p> <p>2 A private certifier for the development application related to the approval</p>

<b>Table 3 Appeals to a tribunal only</b>			
<p>2. Inspection of building work</p> <p>An appeal may be made against a decision of a building certifier or referral agency about the inspection of building work that is the subject of a building development approval under the Building Act.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant for the development approval	The person who made the decision	—	—
<p>3. Certain decisions under the Building Act and the <i>Plumbing and Drainage Act 2018</i></p> <p>An appeal may be made against—</p> <p>(a) a decision under the Building Act, other than a decision made by the Queensland Building and Construction Commission, if an information notice about the decision was given or required to be given under that Act; or</p> <p>(b) a decision under the <i>Plumbing and Drainage Act 2018</i>, other than a decision made by the Queensland Building and Construction Commission, if an information notice about the decision was given or required to be given under that Act.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who received, or was entitled to receive, an information notice about the decision	The entity that made the decision	—	—
<p>4. Local government failure to decide application under the Building Act</p> <p>An appeal may be made against a local government's failure to decide an application under the Building Act within the period required under that Act.</p>			

<b>Table 3 Appeals to a tribunal only</b>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who was entitled to receive notice of the decision	The local government to which the application was made	—	—
<p>5. Failure to make a decision about an application or other matter under the <i>Plumbing and Drainage Act 2018</i></p> <p>An appeal may be made against a failure to make a decision under the <i>Plumbing and Drainage Act 2018</i>, other than a failure by the Queensland Building and Construction Commission to make a decision, within the period required under that Act, if an information notice about the decision was required to be given under that Act.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who was entitled to receive an information notice about the decision	The entity that failed to make the decision	—	—