



SARA reference: 2212-32676 SRA  
 Council reference: DA12-2022-2023  
 Applicant reference: -

4 January 2023

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—65 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 23 December 2022.

### Response

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Outcome:	Referral agency response – with conditions.
Date of response:	4 January 2023
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:	Development permit	Material change of use for Development of a storage shed and/or warehouse.
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 within 25m of a state-controlled road	

SARA reference: 2212-32676 SRA  
Assessment Manager: Blackall Tambo Regional Council  
Street address: 65 Arthur Street, Tambo; 65 Arthur Street, Tambo  
Real property description: 8T15032; 10T15032  
Applicant name: Joshua 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:

- Refused
- Reference: TMR23-038294
- Date: 3 January 2023

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](mailto:gerard.j.arthur@tmr.qld.gov.au)

## Representations

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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 Carl Porter, Principal Planning Officer, on 07 4924 2918 or via email [RockhamptonSARA@dSDLGP.qld.gov.au](mailto:RockhamptonSARA@dSDLGP.qld.gov.au) who will be pleased to assist.

Yours sincerely



Luke Lankowski  
Manager, Planning – Wide Bay Burnett

cc Joshua and Denae Phelps, [jdpgrazing@gmail.com](mailto:jdpgrazing@gmail.com)

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

## Attachment 1—Referral agency conditions

(Under section 56(1)(b)(i) of the *Planning Act 2016* the following conditions must be attached to any development approval relating to this application) (Copies of the plans and specifications referenced below are found at Attachment 5)

No.	Conditions	Condition timing
<b>Material change of use</b>		
Schedule 10, Part 9, division 4, subdivision 2, table 4 (Planning Regulation 2017)—The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of Department of Transport and Main Roads to be the enforcement authority for the development to which this development approval relates for the administration and enforcement of any matter relating to the following condition(s):		
1.	(a) Stormwater management of the development must ensure no worsening or actionable nuisance to the state-controlled road. (b) Any works on the land must not: <ul style="list-style-type: none"> <li>(i) create any new discharge points for stormwater runoff onto the state-controlled road;</li> <li>(ii) interfere with and/or cause damage to the existing stormwater drainage on the state-controlled road;</li> <li>(iii) surcharge any existing culvert or drain on the state-controlled road;</li> <li>(iv) reduce the quality of stormwater discharge onto the state-controlled road.</li> </ul>	At all times.
2.	Direct access is not permitted between the Landsborough Highway (Arthur Street) and the subject site.	At all times.

## Attachment 2—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 3—Reasons for referral agency response**

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

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

- The proposed development is for a shed or warehouse
- The site adjoins a State-controlled road (Arthur Street) and also a local road (Albert Street).
- Access can be gained from the local road.
- Likely stormwater impact of the proposed development is minimal and can be addressed by a condition.
- The proposed development complies with the relevant parts of State Code 1 of the SDAP with the application of conditions.

### **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 4—Change representation provisions**

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Our ref TMR23-038294  
Applicant ref  
Enquiries Gerard Arthur



Department of  
**Transport and Main Roads**

3 January 2023

## **Decision Notice – Access Prohibited (s62(1) *Transport Infrastructure Act 1994*)**

Development application reference number DA12-2022-2023, lodged with Blackall-Tambo Regional Council involves constructing or changing a vehicular access between Lot 8T15032, 10T15032, the land the subject of the application, and the Landsborough 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 Joshua and Denae Phelps

### **Application Details**

Address of Property 65 Arthur Street, Tambo QLD 4478  
Real Property Description 8T15032, 10T15032  
Aspect/s of Development Development Permit for Material Change of Use for Storage Shed

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

It has been decided that all access between the state-controlled road and the land subject of the application is prohibited.

### **Reasons for the decision**

The reasons for this decision are as follows:

- The 'service road', fronting Lot 10 (between the highway and the property boundary) is not formalised and does not comply to any standard.
- The 'service road' fronting Lot 10 does not contain any formalised intersection onto Landsborough Highway.
- The current 'service road' and intersection pose significant road safety risks (if not formalised).
- Upgrading the 'service road' and intersection will incur significant costs.

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**

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 is 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.

If further information about this approval or any other related query is required, Gerard Arthur, Development Control Officer (Project Planning and Corridor Management) should be contacted by email at [gerard.j.arthur@tmr.qld.gov.au](mailto:gerard.j.arthur@tmr.qld.gov.au) or on (07) 4651 2722.

Yours sincerely



Dale Bowden  
Manager (Project Planning & Corridor Management)

Attachments: Attachment A – Decision evidence and findings  
Attachment B - Section 70 of TIA  
Attachment C - Appeal Provisions



## Attachment A

### Decision Evidence and Findings

Findings on material questions of fact:

- This DA application is over both Lot 8 and Lot 10 on T15032. Therefore, direct access can be obtained from Albert Street (the local government road), either via an access easement over Lot 8 in favour of Lot 10 OR by amalgamating the two allotments. Gaining access from Albert Street only is encouraged and in accordance with TMR Vehicular Access to State-Controlled Roads Policy.
- With all the above in mind, TMR does not believe conditioning the applicant to formalise the 'service road' and intersection onto the highway to be reasonable (as it will be too costly). Furthermore, not formalising the service road and intersection will have significant road safety concerns and result in an unacceptable impact to road safety. Therefore, TMR cannot support direct access from the highway with no upgrades. Thus, the only reasonable alternative is to only support direct access from Albert Street, the local government road (and in accordance with TMR's Vehicular Access to State-Controlled Roads Policy).

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>
Strategic Framework Report	J Phelps	21/12/2022	N/A	1
Map-Shed Position	J Phelps	21/12/2022	N/A	N/A
Lot Plan Report	SARA	23/12/2022	N/A	N/A

## 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.

# 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.