## DELEGATED REPORT

**SUBJECT:** **L MORGANTE - RECONFIGURING A LOT - BOUNDARY REALIGNMENT - LOTS 12, 13 & 14 ON RP708066 - 542 EMERALD END ROAD, MAREEBA - RAL/19/0005**

**DATE:** 15 May 2019

**REPORT OFFICER'S TITLE:** Planning Officer

**DEPARTMENT:** Corporate and Community Services

### APPLICATION DETAILS

| APPLICATION | | PREMISES | |
|---|---|---|---|
| **APPLICANT** | L Morgante | **ADDRESS** | 542 Emerald End Road, Mareeba |
| **DATE LODGED** | 25 March 2019 | **RPD** | Lot 12, 13 and 14 on RP708066 |
| **TYPE OF APPROVAL** | Development Permit | | |
| **PROPOSED DEVELOPMENT** | Reconfiguring a Lot - Boundary Realignment | | |

| | | | |
|---|---|---|---|
| **FILE NO** | RAL/19/0005 | **AREA** | Lot 12 - 5.294 ha<br>Lot 13 - 4.983 ha<br>Lot 14 - 4.742 ha |
| **LODGED BY** | U&I Town Plan | **OWNER** | L Morgante |
| **PLANNING SCHEME** | Mareeba Shire Council Planning Scheme - July 2016 | | |
| **ZONE** | Rural Zone | | |
| **LEVEL OF ASSESSMENT** | Code Assessment | | |
| **SUBMISSIONS** | N/A - Code Assessment only | | |

**ATTACHMENTS:** 1. Proposal Plan/s

## EXECUTIVE SUMMARY

*Council is in receipt of a code assessable development application described in the above application details. Being code assessable, the application was not required to undergo public notification.*

*The application and supporting material has been assessed against the Mareeba Shire Council Planning Scheme 2016 and does not conflict with any relevant aspect of the Planning Scheme.*

*Draft conditions were provided to the Applicant care of their consultant and have been agreed to. It is recommended that the application be approved in full, subject to conditions.*



Document Set ID: 3522501
Version: 1, Version Date: 15/05/2019

## OFFICER'S RECOMMENDATION

1. That in relation to the following development application:

| APPLICATION | | PREMISES | |
|---|---|---|---|
| **APPLICANT** | L Morgante | **ADDRESS** | 542 Emerald End Road, Mareeba |
| **DATE LODGED** | 25 March 2019 | **RPD** | Lot 12, 13 and 14 on RP708066 |
| **TYPE OF APPROVAL** | Development Permit | | |
| **PROPOSED DEVELOPMENT** | Reconfiguring a Lot - Boundary Realignment | | |

and in accordance with the Planning Act 2016, the applicant be notified that the application for a development permit for the development specified in (A) is:

Approved by Council in accordance with the approved plans/documents listed in (B), subject to assessment manager conditions in (C), assessment manager's advice in (D), relevant period in (E), further permits in (F), and further approvals from Council listed in (G);

And

The assessment manager does **not** consider that the assessment manager's decision conflicts with a relevant instrument.

(A) APPROVED DEVELOPMENT: Development Permit for Reconfiguring a Lot - Boundary Realignment

(B) APPROVED PLANS:

| Plan/Document Number | Plan/Document Title | Prepared by | Dated |
|---|---|---|---|
| R3-19 (1) | Development Plans - Boundary Realignment | U&i Town Plan | 19/03/2019 |

(C) ASSESSMENT MANAGER'S CONDITIONS (COUNCIL)

(a) <u>Development assessable against the Planning Scheme</u>

1. Development must be carried out generally in accordance with the approved plans and the facts and circumstances of the use as submitted with the application, subject to any alterations:

   - found necessary by Council's delegated officer at the time of examination of the engineering plans or during construction of the development because of particular engineering requirements; and
   - to ensure compliance with the following conditions of approval.

2. Timing of Effect

The conditions of the development permit must be complied with to the satisfaction of Council's delegated officer prior to the endorsement of the plan of survey, except where specified otherwise in these conditions of approval.

3. General

3.1 The development approval would not have been issued if not for the conditions requiring the construction of infrastructure or the payment of infrastructure charges/contributions contained within the conditions of approval.

3.2 The applicant/developer is responsible for the cost of necessary alterations to existing public utility mains, services or installations required by works in relation to the proposed development or any works required by condition(s) of this approval.

3.3 All payments required to be made to the Council (including contributions, charges and bonds) pursuant to any condition of this approval must be made prior the endorsement of the plan of survey and at the rate applicable at the time of payment.

3.4 The developer must relocate (in accordance with FNQROC standards) any services such as water, sewer, drainage, telecommunications and electricity that are not wholly located within the lots that are being created/serviced where required by the relevant authority unless approved by Council's delegated officer.

3.5 Where utilities (such as sewers on non-standard alignments) traverse lots to service another lot, easements must be created in favour of Council for access and maintenance purposes. The developer is to pay all costs (including Council's legal expenses) to prepare and register the easement documents.

3.6 Where approved existing buildings and structures are to be retained, setbacks to any new property boundaries are to be in accordance with Planning Scheme requirements for the relevant structure and/or Queensland Development Code. Where existing building/s are in proximity to new property boundaries, a plan demonstrating compliance with the required setback must be submitted prior to endorsement of the plan of survey.

3.7 All works must be designed, constructed and carried out in accordance with FNQROC Development Manual requirements and to the satisfaction of Council's delegated officer.

3.8 Charges

All outstanding rates, charges and expenses pertaining to the land are to be paid in full.

4. Infrastructure Services and Standards

4.1 Access

4.1.1 Access must be provided/constructed to each allotment in accordance with the FNQROC Development Manual standards, to the satisfaction of Council's delegated officer.

As shown on the submitted plan, a shared access crossover is permitted to service Lots 1 and 2.

4.1.2 A bitumen, asphalt, or reinforced concrete driveway shall be provided within the access handle of proposed Lot 2 to the satisfaction of Councils delegated officer. The driveway will:

- have a minimum formation width of 3 metres;
- be constructed for the full length of the access handle and be connected to the crossover;
- be formed with one-way crossfall to cater for stormwater drainage such that any stormwater runoff is contained within the access handle; and
- include service and utility conduits to be provided for the full length of the access handle.

4.2 Stormwater Drainage

4.2.1 The applicant/developer must take all necessary steps to ensure a non-worsening effect on surrounding land as a consequence of the development and must take all reasonable and practical measures to ensure discharge occurs in compliance with the Queensland Urban Drainage Manual (QUDM) and the FNQROC Development Manual, to the satisfaction of Council's delegated officer.

4.2.2 All stormwater drainage must be discharged to an approved legal point of discharge.

(D) ASSESSMENT MANAGER'S ADVICE

(a) A number of other charges or payments may be payable as conditions of approval. The applicable fee is set out in Council's Fees & Charges Schedule for each respective financial year.

(b) Endorsement Fees

Council charges a fee for the endorsement of a Survey Plan, Community Management Statements, easement documents, and covenants. The fee is set out in Council's Fees & Charges Schedule applicable for each respective financial year.

(c) Compliance with applicable codes/policies

The development must be carried out to ensure compliance with the provisions of Council's Local Laws, Planning Scheme Policies, Planning Scheme and Planning Scheme Codes to the extent they have not been varied by a condition of this approval.

(d) Environmental Protection and Biodiversity Conservation Act 1999

The applicant is advised that referral may be required under the *Environmental Protection and Biodiversity Conservation Act 1999* if the proposed activities are likely

to have a significant impact on a matter of national environmental significance. Further information on these matters can be obtained from www.environment.gov.au

(e) Cultural Heritage

In carrying out the activity the applicant must take all reasonable and practicable measures to ensure that no harm is done to Aboriginal cultural heritage (the "cultural heritage duty of care"). The applicant will comply with the cultural heritage duty of care if the applicant acts in accordance with gazetted cultural heritage duty of care guidelines. An assessment of the proposed activity against the duty of care guidelines will determine whether or to what extent Aboriginal cultural heritage may be harmed by the activity. Further information on cultural heritage, together with a copy of the duty of care guidelines and cultural heritage search forms, may be obtained from www.datsip.qld.gov.au

(E) RELEVANT PERIOD

When approval lapses if development not started (s.85)

- Reconfiguring a Lot – four (4) years (starting the day the approval takes effect);

(F) OTHER NECESSARY DEVELOPMENT PERMITS AND/OR COMPLIANCE PERMITS

- Nil

(G) OTHER APPROVALS REQUIRED FROM COUNCIL

- Access approval arising from condition number 4.1 (Please contact Planning Section to obtain application form and applicable fee).

## THE SITE

The subject land is made up of 3 allotments situated at 542 Emerald End Road, Mareeba, and described as Lots 12, 13 and 14 on RP708066. All three lots are regular in shape and are all zoned *Rural* under the Mareeba Shire Council Planning Scheme 2016.

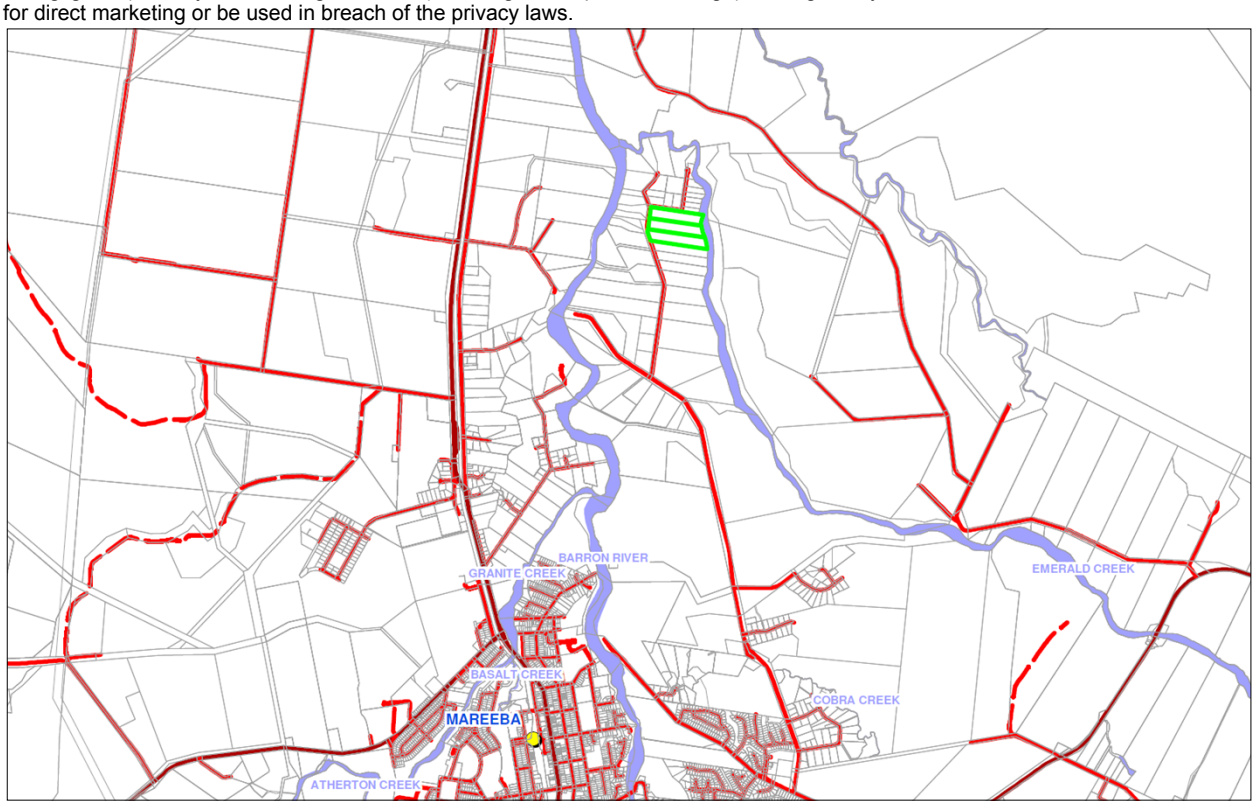
Lot 12 has an area of 5.294 hectares and a frontage of 110 metres to Emerald End Road which is constructed to a bitumen sealed standard. Lot 12 is improved by 3 outbuildings entirely situated within the lot as well as a dwelling and a forth outbuilding which are only partly built on the lot as they have been built over the common boundary between lots 12 and 13.

Lot 13 has an area of 4.983 hectares and a frontage of 100.6 metres to Emerald End Road also. Lot 13 is improved by a dwelling and one outbuilding which are only partly built on the property, built over the common boundary with Lot 12.

Lot 14 has an area of 4.742 hectares and a frontage of 100.6 metres to Emerald End Road and a further 280.9 metres of frontage to Emerald End Close which is also constructed to a bitumen sealed standard. Lot 14 contains no improvements.

A mature fruit tree orchard currently exists over the western half of all three lots with the primary intention of the proposed boundary realignment to include the entire orchard in one larger allotment. All three lots back onto Emerald Creek which flows immediately east of the land. Surrounding lots to the north and west of the land are zoned Rural Residential and primarily contain single dwellings while allotments to the south are zoned Rural and are also primarily used as rural lifestyle lots.

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

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## BACKGROUND AND CONTEXT

Nil

## PREVIOUS APPLICATIONS & APPROVALS

Nil

## DESCRIPTION OF PROPOSED DEVELOPMENT

The development application seeks a Development Permit for Reconfiguring a Lot - Boundary Realignment in accordance with the plans shown in **Attachment 1**.

The applicants propose to realign the common boundaries of the three allotments in a configuration that will result in the existing fruit tree orchard, which is currently established over all three lots, being entirely within one allotment (proposed Lot 3). Two rural lifestyle lots will also be created in the north-east corner of the land immediately adjacent existing rural residential allotments.

The proposed Lots will be as follows:

- Proposed Lot 1 - area of approx. 9,962m$^2$, frontage to Emerald End Close of 10m, vacant;
- Proposed Lot 2 - area of approx. 1.12 ha, frontage to Emerald End Close of 10m, vacant; and
- Proposed Lot 3 - area of 12.902 ha, frontage of 261m to Emerald End Close and 311m to Emerald End Road, will contain existing dwelling house and 5 outbuildings.

## REGIONAL PLAN DESIGNATION

The subject site is included within the Regional Landscape and Rural Production Area land use category in the Far North Queensland Regional Plan 2009-2031. Mareeba is identified as a Major Regional Activity Centre in the Regional Plan. The Regional Plan Map 3- 'Areas of Ecological Significance' also identifies the site as containing:

- *Wetland Area of General Ecological Significance*
- *Terrestrial Area of General Ecological Significance*

## PLANNING SCHEME DESIGNATIONS

| | |
|---|---|
| Strategic Framework: | ***Land Use Category***<br>• *Rural Area - Rural Agricultural Area*<br>***Natural Environment Elements***<br>• *Biodiversity Areas* |
| Zone: | *Rural zone* |
| Overlays: | Agricultural land overlay<br>Airport environs overlay<br>Bushfire hazard overlay<br>Environmental significance overlay<br>Flood hazard overlay<br>Hill and Slope Overlay<br>Transport Infrastructure Overlay |

## RELEVANT PLANNING INSTRUMENTS

Assessment of the proposed development against the relevant planning instruments is summarised as follows:-

### (a) Far North Queensland Regional Plan 2009-2031

Separate assessment against the Regional Plan is not required because the Mareeba Shire Council Planning Scheme appropriately advances the Far North Queensland Regional Plan 2009-2031, as it applies to the planning scheme area.

### (b) State Planning Policy

Separate assessment against the State Planning Policy (SPP) is not required because the Mareeba Shire Council Planning Scheme appropriately integrates all relevant aspects of the SPP.

### (c) Mareeba Shire Council Planning Scheme 2016

**Relevant Development Codes**

The following Development Codes are considered to be applicable to the assessment of the application:

6.2.9 Rural zone code
8.2.1 Agricultural land overlay code
8.2.2 Airport environs overlay code
8.2.3 Bushfire hazard overlay code
8.2.4 Environmental significance overlay code
8.2.6 Flood hazard overlay code
8.2.8 Hill and slope overlay code
8.2.12 Transport infrastructure overlay code
9.4.2 Landscaping code
9.4.3 Parking and access code
9.4.4 Reconfiguring a lot code
9.4.5 Works, services and infrastructure code

The application included a planning report and assessment against the planning scheme. An officer assessment has found that the application satisfies the relevant acceptable solutions (or probable solutions/performance criteria where no acceptable solution applies) of the relevant codes set out below, provided reasonable and relevant conditions are attached to any approval.

| Relevant Codes | Comments |
|---|---|
| Rural Zone Code | The application complies or can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code. |
| Agricultural Land Overlay Code | The application complies or can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code. |
| Airport Environs Overlay Code | The application complies or can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code. |
| Bushfire Hazard Overlay Code | The application complies or can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code. |
| Environmental Significance Overlay Code | The application complies or can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code. |
| Flood Hazard Overlay Code | The application complies or can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code. |
| Hill and Slope Overlay Code | The application complies or can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code. |
| Transport Infrastructure Overlay Code | The application complies or can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code. |
| Landscaping Code | Not applicable - Refer to comments in code document. |
| Parking and Access Code | Not applicable - Refer to comments in code document. |
| Reconfiguring a Lot Code | The application complies or can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code apart from the following:<br>▪ Acceptable Outcome AO1.1<br>It is considered that the proposed development can achieve compliance with the higher order performance outcome PO1. Refer to code document for commentary. |

| | |
|---|---|
| Works, Services and Infrastructure Code | The application complies or can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code. |

**(e) Planning Scheme Policies/Infrastructure Charges Plan**

The following planning scheme policies are relevant to the application:

Planning Scheme Policy 4 - FNQROC Regional Development Manual

A condition will be attached to any approval requiring all development works be designed and constructed in accordance with FNQROC Development Manual standards.

**REFERRAL AGENCY**

**Concurrence**

The application triggered referral to the Department of State Development, Manufacturing, Infrastructure and Planning (SARA - Vegetation Management) as a Referral Agency.

The Department advised in their Referral Agency Response (approval subject to conditions) dated 1 May 2019 that they require the conditions to be attached to any approval **(Attachment 2**).

**PLANNING DISCUSSION**

Nil

***Date Prepared:*** *15 May 2019*

DECISION BY DELEGATE

DECISION

Having considered the Planning Officer's report detailed above, I approve, as a delegate of Council, the application subject to the conditions listed in the report.

Dated the 15TH day of MAY 2019

**BRIAN MILLARD**
**SENIOR PLANNER**

MAREEBA SHIRE
AS A DELEGATE OF THE COUNCIL

Document Set ID: 3522501
Version: 1, Version Date: 15/05/2019

**ATTACHMENT 1**

**PROPOSAL PLANS (ECM Doc Set ID 3511077)**

Document Set ID: 3522501
Version: 1, Version Date: 15/05/2019

**ATTACHMENT 2**

RA6-N

Queensland Government

Department of
**State Development, Manufacturing, Infrastructure and Planning**

SARA reference: 1903-10466 SRA
Council reference: BM:CE:nj
Applicant reference: R3-19

1 May 2019

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

Attention: Carl Ewin

Dear Sir/Madam

**SARA response—542 Emerald End Road, Mareeba**
**Reconfiguring a lot (boundary realignment 3 lots into 3 lots)**
(Referral agency response given under section 56 of the *Planning Act 2016*)

The development application described below was confirmed as properly referred by the Department of State Development, Manufacturing, Infrastructure and Planning on 29 March 2019.

**Response**

| | |
|---|---|
| Outcome: | Referral agency response – with conditions. |
| Date of response: | 1 May 2019 |
| Conditions: | The conditions in **Attachment 1** must be attached to any development approval. |
| Advice: | Advice to the applicant is in **Attachment 2**. |

**Development details**

| | | |
|---|---|---|
| Description: | Development permit | Reconfiguring a lot for Boundary Realignment |
| SARA role: | Referral Agency. | |
| SARA trigger: | Schedule 10, Part 3, Division 4, Table 2, Item 1 (Planning Regulation 2017)<br>Clearing native vegetation | |
| SARA reference: | 1903-10466 SRA | |

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



Document Set ID: 3519528
Version: 1, Version Date: 01/05/2019

Document Set ID: 3522501
Version: 1, Version Date: 15/05/2019

| | |
|---|---|
| Assessment Manager: | Mareeba Shire Council |
| Street address: | 542 Emerald End Road, Mareeba |
| Real property description: | Lots 12, 13 and 14 on RP708066 |
| Applicant name: | Lynne Morgante |
| Applicant contact details: | C/- U&i Town Plan<br>PO Box 676<br>Mareeba QLD 4880<br>ramon@uitownplan.com.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 Sue Lockwood, Senior Planning Officer, on 40373215 or via email CairnsSARA@dsdmip.qld.gov.au who will be pleased to assist.

Yours sincerely

Brett Nancarrow
Manager (Planning)

cc Lynne Morgante c/- U&i Town Plan, ramon@uitownplan.com.au

enc Attachment 1 - Referral agency conditions
Attachment 2 - Advice to the applicant
Attachment 3 - Change representation provisions
Attachment 4 - Approved plans and specifications



Document Set ID: 3522501
Version: 1, Version Date: 15/05/2019

## 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 4)

| No. | Conditions | Condition timing |
|---|---|---|
| **Reconfiguring a lot** | | |
| Schedule 10, Part 3, Division 4, Table 2, Item 1 Clearing native vegetation — The chief executive administering the *Planning Act 2016* nominates the Director-General of the Department of Natural Resources, Mines and Energy 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 lot boundaries must be generally in accordance with the following plan:<br>- Development Plans – Boundary Realignment Located at 542 Emerald End Road, Mareeba, prepared by U&I Town Plan, dated 19/03/2019, reference Plan # R3-19(1). | At registration of the the Plan of Survey |
| 2. | The clearing of vegetation under this development approval is limited to the area identified as Area C (Parts C1) as shown on attached Technical Agency Response Plan (TARP) 1903-10466 SRA dated 11 April 2019. | At all times |
| 3. | No clearing of vegetation is to occur within areas identified as Area A (Parts A1 and A2) as shown on the attached Technical Agency Response Plan (TARP) 1903-10466 SRA dated 11 April 2019. | At all times |
| 4. | No built structure is to be established, constructed or located within areas identified as Area A (Parts A1 and A2) as shown on the attached Technical Agency Response Plan (TARP) 1903-10466 SRA dated 11 April 2019. | At all times |
| 5. | No built structure, other than for fences, roads, hardstands, and underground services, is to be established, constructed or located within areas identified as Area B (Part B1) as shown on attached Technical Agency Response Plan (TARP) 1903-10466 SRA dated 11 April 2019. | At all times |
| 6. | Any person(s) engaged or employed to carry out the clearing of vegetation under this development approval must be provided with a full copy of this development approval and must be made aware of the full extent of clearing authorised by this development approval. | Prior to clearing |



Document Set ID: 3519528
Version: 1, Version Date: 01/05/2019

Document Set ID: 3522501
Version: 1, Version Date: 15/05/2019

## Attachment 2—Advice to the applicant

| | |
|---|---|
| **General advice** | |
| 1. | Terms and phrases used in this document are defined in the *Planning Act 2016* its regulation or the State Development Assessment Provisions (SDAP) v2.4. If a word remains undefined it has its ordinary meaning. |
| **Digital Data** | |
| 2. | To request an electronic file of the Derived Points (Attached to Plan: 1903-10466 SRA) as contained in this technical agency response, email a request to the Department of Natural Resources, Mines and Energy (DNRME) at northvegetation@dnrme.qld.gov.au and include application reference (1903-10466 SRA). |



Document Set ID: 3519528
Version: 1, Version Date: 01/05/2019

Document Set ID: 3522501
Version: 1, Version Date: 15/05/2019