

### 8.3 G DIXON - RECONFIGURING A LOT - SUBDIVISION (1 INTO 2 LOTS) - LOT 28 ON SP160169 - 3946 KENNEDY HIGHWAY, MAREEBA - RAL/19/0018

**Date Prepared:** 28 August 2019

**Author:** Senior Planner

**Attachments:**

1. Proposal Plan [↓](#)
2. Department of State Development, Manufacturing, Infrastructure and Planning response dated 27 August 2019 [↓](#)

#### APPLICATION DETAILS

APPLICATION		PREMISES	
APPLICANT	G Dixon	ADDRESS	3946 Kennedy Highway, Mareeba
DATE LODGED	1 August 2019	RPD	Lot 28 on SP160169
TYPE OF APPROVAL	Development Permit		
PROPOSED DEVELOPMENT	Reconfiguring a Lot - Subdivision (1 into 2 lots)		
FILE NO	RAL/19/0018	AREA	3.556 hectares
LODGED BY	G Dixon	OWNER	G, J & L Dixon
PLANNING SCHEME	Mareeba Shire Council Planning Scheme 2016		
ZONE	Rural zone		
LEVEL OF ASSESSMENT	Code Assessment		
SUBMISSIONS	n/a		

#### EXECUTIVE SUMMARY

Council is in receipt of a development application described in the above application details.

The application is code assessable and was not required to undergo public notification.

The application and supporting material has been assessed against the Mareeba Shire Council Planning Scheme 2016 and is in conflict with and is in conflict with a single Performance Outcome contained within the Agricultural Land Overlay Code relating to the conservation and protection of rural land.

The proposed development conflicts with the overarching intent of the Agricultural land overlay code as it would result in further fragmentation of rural land.

It is recommended that the application be refused.

**OFFICER'S RECOMMENDATION**

1. That in relation to the following development application:

APPLICATION		PREMISES	
APPLICANT	G Dixon	ADDRESS	3946 Kennedy Highway, Mareeba
DATE LODGED	1 August 2019	RPD	Lot 28 on SP160169
TYPE OF APPROVAL	Development Permit		
PROPOSED DEVELOPMENT	Reconfiguring a Lot - Subdivision (1 into 2 lots)		

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:

Refused by Council for reasons set out in (B).

- (A) REFUSED DEVELOPMENT: Development Permit for Reconfiguring a Lot - Subdivision (1 into 2 lots)

- (B) ASSESSMENT MANAGER'S REASONS FOR REFUSAL:

- The proposed development is in conflict with Overall outcome (a) of the Agricultural land overlay code;*
- The proposed development conflicts with the following Performance Outcome of the Agricultural land overlay code:*

**PO6**

*Any Reconfiguring a lot in the 'Class A' area, 'Class B' area or the 'Broadhectare rural' area identified on the **Agricultural land overlay maps (OM-001a-n)**, including boundary realignments, only occurs where it:*

- improves agricultural efficiency;*
- facilitates agricultural activity; or*
- facilitates conservation outcomes; or*
- resolves boundary issues where a structure is built over the boundary line of two lots;*

**THE SITE**

The subject site is situated at 3946 Kennedy Highway, Mareeba and is described as Lot 28 on SP160169. The site is generally regular in shape with a total area of 3.556 hectares and is zoned *Rural* under the Mareeba Shire Council Planning Scheme 2016.

The site has frontage of approximately 144 metres to the Kennedy Highway. Access to the Kennedy Highway is obtained via a substantial bitumen sealed access which is located at the extreme western extent of the site's frontage.

The subject site is improved by an ice creamery, dwelling house and a secondary dwelling. The majority of the site is flat and has been cleared of remnant vegetation. Landscaping is established around the ice creamery and the dwelling house.

The site is currently serviced by an on site water supply, on site effluent disposal system, electricity and telecommunication networks.



**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.



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.

## BACKGROUND AND CONTEXT

## PREVIOUS APPLICATIONS & APPROVALS

In 2009, a development permit was issued for Material Change of Use - Restaurant (retail ice creamery).

The development application seeks a Development Permit for Reconfiguring a Lot - Subdivision (1 into 2 lots) in accordance with the plans shown in **Attachment 1**.

- Lot 1 - 1.488 hectares, approx. 124.02 metres frontage to Kennedy Highway;
- Lot 2 - 2.042 hectares, approx. 20 metres frontage to Kennedy Highway.

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Access to both lots would continue via the established Kennedy Highway access. An access handle would be created for proposed Lot 1 to allow continued use of the existing internal driveway and Kennedy Highway access.

Services to each allotment would remain substantially unchanged from the existing arrangements for the respective buildings.

### 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. The Regional Plan Map 3- 'Areas of Ecological Significance' also identifies the site is:

- *State & Regional Conservation Corridors*
- *Terrestrial Area of General Ecological Significance*

### PLANNING SCHEME DESIGNATIONS

Strategic Framework:	<b>Land Use Categories</b> <ul style="list-style-type: none"><li>• Rural Agricultural Area</li><li>• Rural Other</li></ul> <b>Natural Environment Elements</b> <ul style="list-style-type: none"><li>• Biodiversity Areas</li></ul>
Zone:	Rural zone
Overlays:	Agricultural Land Overlay Airport Environs Overlay Bushfire Hazard Overlay Environmental Significance 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 Developments 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
- 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 did not include a planning report and assessment against the planning scheme. An officer assessment has found that the application would conflict with the identified section of the Agricultural Land Overlay Code.

Relevant Codes	Comments
Rural zone code	The application can be conditioned to comply with the codes relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome is provided).
Agricultural land overlay code	The application conflicts with the following performance outcomes and acceptable outcomes: <ul style="list-style-type: none"> <li>▪ PO6</li> </ul> Refer to planning discussion section of this report.
Airport environs overlay code	The application can be conditioned to comply with the codes relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome is provided).
Bushfire hazard overlay code	The application can be conditioned to comply with the codes relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome is provided).
Environmental significance overlay code	The application can be conditioned to comply with the codes relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome is provided).
Landscaping code	The application can be conditioned to comply with the codes relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome is provided).
Parking and access code	The application can be conditioned to comply with the codes relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome is provided).
Reconfiguring a lot code	The application can be conditioned to comply with the codes relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome is provided).
Works, services and infrastructure code	The application can be conditioned to comply with the codes relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome is provided).

**(D) Planning Scheme Policies**

The following planning scheme policies are relevant to the application:

Planning Scheme Policy 4 - FNQROC Regional Development Manual

All development works will be conditioned to be designed and constructed in accordance with the FNQROC Development Manual.

**(E) Adopted Infrastructure Charges Notice**

Not applicable. Both proposed allotments would contain established improvements at the time of new lot registration.

**REFERRAL AGENCY**

The application triggered referral to the Department of State Development, Manufacturing, Infrastructure and Planning as a Concurrence Agency (State controlled road).

That Department advised in a letter dated 27 August 2019 that they require the conditions to be attached to any approval (**Attachment 2**).

**Internal Consultation**

Technical Services.

**PLANNING DISCUSSION**

Noncompliance with Performance Outcome PO6 of the Agricultural Land Overlay Code is summarised as follows:

**PO6**

Any Reconfiguring a lot in the 'Class A' area, 'Class B' area or the 'Broadhectare rural' area identified on the **Agricultural land overlay maps (OM-001a-n)**, including boundary realignments, only occurs where it:

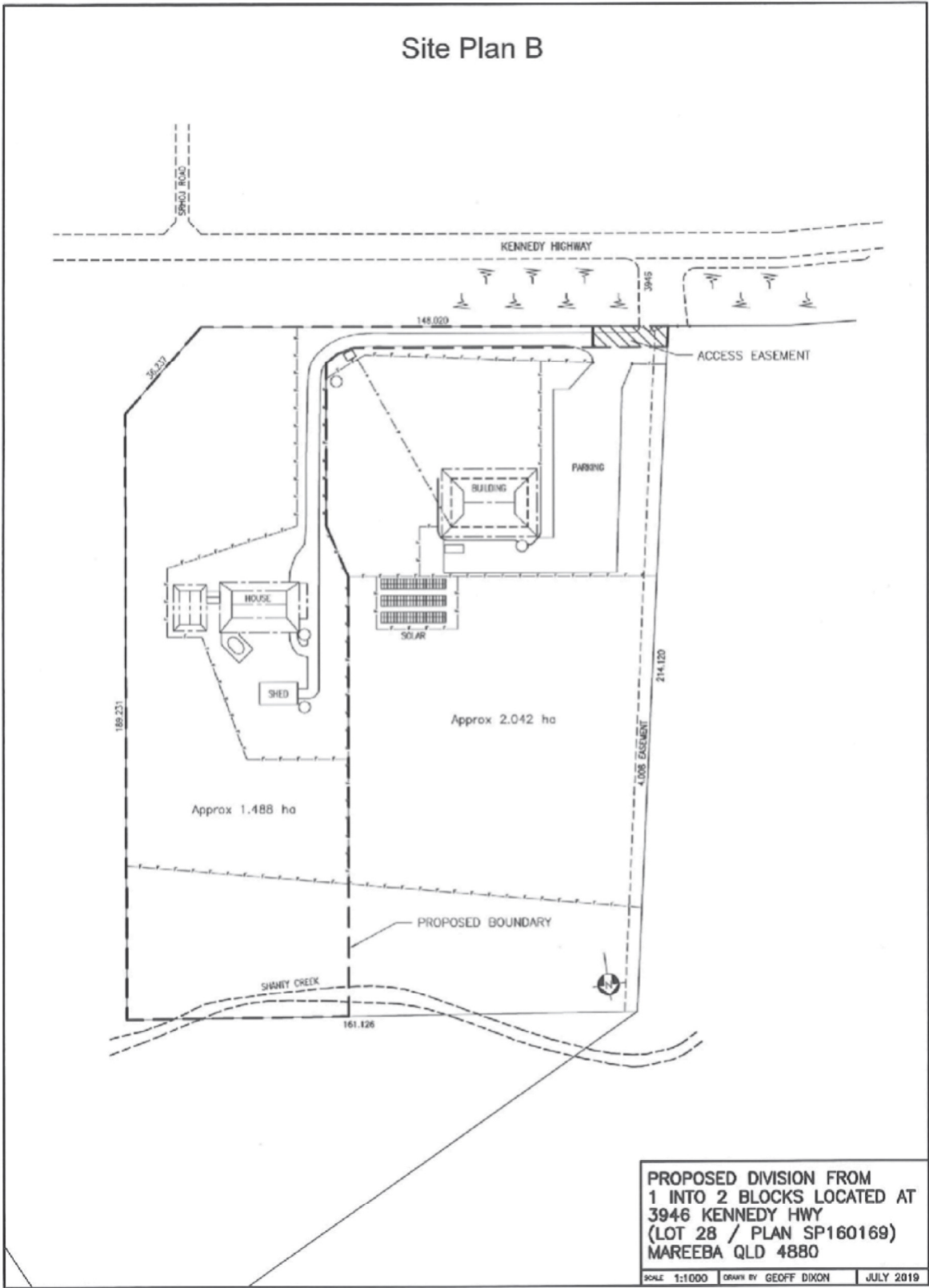
- (a) improves agricultural efficiency;
- (b) facilitates agricultural activity; or
- (c) facilitates conservation outcomes; or
- (d) resolves boundary issues where a structure is built over the boundary line of two lots.

**Comment**

The purpose of the reconfiguration is to separate the applicant's business (Emerald Creek Ice Creamery) from the applicant's dwelling house/s. Once on individual allotments, the applicant will have the financial flexibility to dispose of one or both allotments.

Notwithstanding the obvious financial flexibility benefits, the reconfiguration does not satisfy PO6 as it fails to meet any of the criteria in (a) to (d).







RA6-N



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

SARA reference: 1908-12469 SRA  
Council reference: RAL/19/0018

27 August 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—3946 Kennedy Highway, Mareeba**

(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 2 August 2019.

### **Response**

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Outcome:	Referral agency response – with conditions.
Date of response:	27 August 2019
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      Reconfiguring a lot (1 lot into 2 lots)
SARA role:	Referral Agency.
SARA trigger:	Schedule 10, Part 9, Division 4, Subdivision 2, Table 1 – Reconfiguring a lot near a State transport corridor (Planning Regulation 2017)
SARA reference:	1908-12469 SRA
Assessment Manager:	Mareeba Shire Council

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

1908-12469 SRA

Street address: 3946 Kennedy Highway, Mareeba  
Real property description: Lot 28 on SP160169  
Applicant name: Geoff Dixon  
Applicant contact details: PO Box 2393  
Mareeba QLD 4880  
sharonwil@iinet.net.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 4**.

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

For further information please contact Tony Croke, Principal Planning Officer, on 40373205 or via email CairnsSARA@dsdmip.qld.gov.au who will be pleased to assist.

Yours sincerely



Brett Nancarrow  
Manager (Planning)

cc Geoff Dixon, sharonwil@iinet.net.au

enc Attachment 1 - Referral agency conditions  
Attachment 2 - Advice to the applicant  
Attachment 3 - Reasons for referral agency response  
Attachment 4 - Change representation provisions  
Attachment 5 - Approved plans and specifications

1908-12469 SRA

### 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>Reconfiguring a lot (1 lot into 2 lots)</b>		
Schedule 10, Part 9, Division 4, Subdivision 2, Table 1 – Reconfiguring a lot near a State transport corridor—The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of the <b>Department of Transport and Main Roads</b> 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 conditions:		
1.	The road access location is to be located generally in accordance with Site Plan B: Proposed Division from 1 into 2 Blocks Located at 3946 Kennedy Hwy, prepared by Geoff Dixon, dated July 2019, (as amended by SARA in red).	At all times
2.	<p>(a) The applicant must register an access easement on the title of Proposed Lot 1 for providing access for Proposed Lot 2.</p> <p>(b) The applicant must provide to Cairns Corridor Management Unit (Far.North.Queensland.IDAS@tmr.qld.gov.au) of the Department of Transport and Main Roads a copy of Registration Confirmation Statement and easement registration dealing number as evidence of the registration of the easement referred to in part (a) of this condition.</p>	<p>(a) At the time of survey plan registration.</p> <p>(b) Within 20 business days of registration of the easements.</p>

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**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) version 2.5. If a word remains undefined it has its ordinary meaning.

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

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

**The reasons for the department's decision are:**

- The department carried out an assessment of the development application against the State Development Provisions, version 2.5, State code 1: Development in a state-controlled road environment and has found that with conditions, the proposed development complies with the relevant performance outcomes.
- The proposed reconfiguration does not involve any filling/ excavation or the construction of buildings on the premises.
- The proposed development will not change stormwater and/or drainage flows.
- The existing vehicular access to the premises via the Kennedy Highway has current approval under section 62 of the *Transport Infrastructure Act 1994*.
- The proposed development is not increasing traffic generation or changing the type of vehicles utilising the existing approved access.
- The reconfiguration includes an access easement to ensure that legal access can be obtained by both proposed allotments.
- The premises is not impacted by planned upgrades or future state transport corridors.

**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 2.5), as published by the department
- The Development Assessment Rules
- SARA DA Mapping system

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**Attachment 4—Change representation provisions**

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(page left intentionally blank – attached separately)

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### **Attachment 5—Approved plans and specifications**

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## ***Planning Act 2016 – Change representations provisions.***

### **Chapter 3    Development Assessment**

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#### **Division 2 Changing development approvals**

#### **Subdivision 1 Changes during appeal period**

##### **75 Making change representations**

- 1) The applicant may make representations (***change representations***) to the assessment manager, during the applicant's appeal period for the development approval, about changing—
  - (a) a matter in the development approval, other than—
    - i. a matter stated because of a referral agency's response; or
    - ii. a development condition imposed under a direction made by the Minister under chapter 3, part 6, division 2; or
  - (b) if the development approval is a deemed approval—the standard conditions taken to be included in the deemed approval under section 64(8)(c).
- 2) If the applicant needs more time to make the change representations, the applicant may, during the applicant's appeal period for the approval, suspend the appeal period by a notice given to the assessment manager.
- 3) Only 1 notice may be given.
- 4) If a notice is given, the appeal period is suspended—
  - (a) if the change representations are not made within a period of 20 business days after the notice is given to the assessment manager—until the end of that period; or
  - (b) if the change representations are made within 20 business days after the notice is given to the assessment manager, until—
    - i. the applicant withdraws the notice, by giving another notice to the assessment manager; or
    - ii. the applicant receives notice that the assessment manager does not agree with the change representations; or
    - iii. the end of 20 business days after the change representations are made, or a longer period agreed in writing between the applicant and the assessment manager.
- 5) However, if the assessment manager gives the applicant a negotiated decision notice, the appeal period starts again on the day after the negotiated decision notice is given.

**76 Deciding change representations**

- 1) The assessment manager must assess the change representations against and having regard to the matters that must be considered when assessing a development application, to the extent those matters are relevant.
- 2) The assessment manager must, within 5 business days after deciding the change representations, give a decision notice to—
  - (a) the applicant; and
  - (b) if the assessment manager agrees with any of the change representations—
    - i. each principal submitter; and
    - ii. each referral agency; and
    - iii. if the assessment manager is not a local government and the development is in a local government area—the relevant local government; and
    - iv. if the assessment manager is a chosen assessment manager—the prescribed assessment manager; and
    - v. another person prescribed by regulation.
- 3) A decision notice (*a **negotiated decision notice***) that states the assessment manager agrees with a change representation must—
  - (a) state the nature of the change agreed to; and
  - (b) comply with section 63(2) and (3).
- 4) A negotiated decision notice replaces the decision notice for the development application.
- 5) Only 1 negotiated decision notice may be given.
- 6) If a negotiated decision notice is given to an applicant, a local government may give a replacement infrastructure charges notice to the applicant.

