



16 October 2019

M & T Samanes  
C/- U&i Town Plan  
PO Box 71  
MAREEBA QLD 4880

Planning Officer: Carl Ewin  
Direct Phone: 4086 4656  
Our Reference: RAL/19/0019  
Your Reference: RP-19

Dear Applicant/s

## Decision Notice

### *Planning Act 2016*

I refer to your application and advise that on 16 October 2019 under delegated authority, Council decided to approve the application in full subject to conditions.

Details of the decision are as follows:

#### APPLICATION DETAILS

Application No: RAL/19/0019  
Street Address: 336 Fichera Road, Mareeba  
Real Property Description: Lots 2 & 3 on RP717083 and Lot 4 on SP160172  
Planning Scheme: Mareeba Shire Council Planning Scheme 2016

#### DECISION DETAILS

Type of Decision: Approval  
Type of Approval: Development Permit for Reconfiguration of a Lot Boundary Realignment  
Date of Decision: 16 October 2019

#### CURRENCY PERIOD OF APPROVAL

The currency period for this development approval is four (4) years starting the day that this development approval takes effect. (Refer to Section 85 "Lapsing of approval at end of currency period" of the *Planning Act 2016*.)

**INFRASTRUCTURE**

Where conditions relate to the provision of infrastructure, these are non-trunk infrastructure conditions unless specifically nominated as a “*necessary infrastructure condition*” for the provision of trunk infrastructure as defined under Chapter 4 of the *Planning Act 2016*.

**ASSESSMENT MANAGER CONDITIONS**

## (A) ASSESSMENT MANAGER’S CONDITIONS (COUNCIL)

(a) Development assessable against the Planning Scheme

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 Stormwater Drainage

- 4.1.1 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.
- 4.1.2 All stormwater drainage must be discharged to an approved legal point of discharge.

**REFERRAL AGENCIES**

The referral agencies applicable to this application are:

Reconfiguring a lot that is assessable development under s21 (clearing native vegetation)		
Development application for reconfiguring a lot that is assessable development under section 21, if—	Schedule 10, Part 3, Division 4, Table 2	State Assessment & Referral Agency (SARA)
(a) a lot that the application relates to is 5ha or larger; and		Department of State Development, Manufacturing, Infrastructure and Planning PO Box 2358

<p>(b) the size of any lot created is 25ha or less; and</p> <p>(c) either—</p> <p>(i) the reconfiguration involves operational work that is assessable development under section 5, other than operational work that is only the clearing of regulated regrowth vegetation;</p> <p>or</p> <p>(ii) on any lot created, accepted operational work, other than operational work that is only the clearing of regulated regrowth vegetation, may be carried out</p>		<p>Cairns Qld 4870</p> <p><a href="mailto:CairnsSARA@dmdmp.qld.gov.au">CairnsSARA@dmdmp.qld.gov.au</a></p>
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A copy of any referral agency conditions are attached.

#### APPROVED PLANS

The following plans are Approved plans for the development:

Plan/Document Number	Plan/Document Title	Prepared by	Dated
R9-19(1)	Proposed Development Plans - Existing Lot Configuration	U&i Town Plan	21.06.19
R9-19(1)	Proposed Development Plans - Boundary Realignment (Property Boundaries & Easements)	U&i Town Plan	05.08.19
R9-19(2)	Proposed Development Plans - Boundary Realignment (Zoomed in plan)	U&i Town Plan	05.08.19

#### ADVISORY NOTES

The following notes are included for guidance and information purposes only and do not form part of the assessment manager conditions:

(A) 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) Easement Documents

Council has developed standard easement documentation to assist in the drafting of formal easement documents for Council easements. Please contact the Planning

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Section for more information regarding the drafting of easement documents for Council easements.

(c) 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.

(d) 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.

(e) Notation on Rates Record

A notation will be placed on Council's Rate record with respect to each lot regarding the following conditions:

- a registered easement over the subject site
- Prior to the construction of a dwelling house or any outbuilding on Lot 3, access to Lot 3 must be constructed/upgraded (from the edge of Fichera Road to the property boundary) in accordance with FNQROC Development Manual standards, to the satisfaction of Council's delegated officer.

(f) 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](http://www.environment.gov.au).

(g) 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](http://www.datsip.qld.gov.au).



**(B) CONCURRENCE AGENCY CONDITIONS**

Department of State Development, Manufacturing, Infrastructure and Planning conditions dated 2 October 2019.

**PROPERTY NOTES**

Not Applicable.

**FURTHER DEVELOPMENT PERMITS REQUIRED**

Not Applicable.

**SUBMISSIONS**

Not Applicable.

**RIGHTS OF APPEAL**

You are entitled to appeal against this decision. A copy of the relevant appeal provisions from the *Planning Act 2016* is attached.

During the appeal period, you as the applicant may suspend your appeal period and make written representations to council about the conditions contained within the development approval. If council agrees or agrees in part with the representations, a "negotiated decision notice" will be issued. Only one "negotiated decision notice" may be given. Taking this step will defer your appeal period, which will commence again from the start the day after you receive a "negotiated decision notice".

**OTHER DETAILS**

If you wish to obtain more information about Council's decision, electronic copies are available on line at [www.msc.qld.gov.au](http://www.msc.qld.gov.au), or at Council Offices.

Yours faithfully



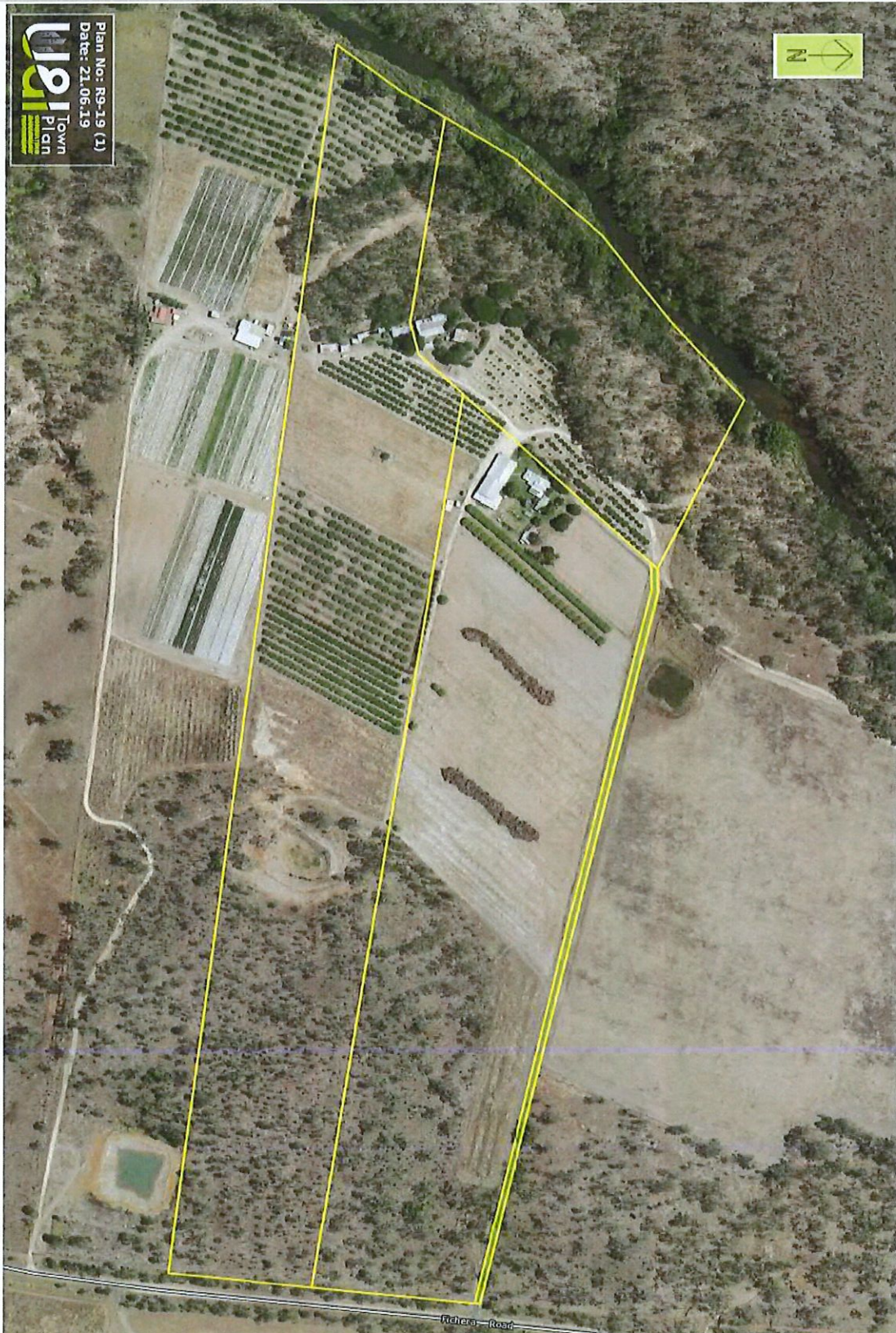
**BRIAN MILLARD**  
**SENIOR PLANNER**

Enc: Approved Plans/Documents  
Referral Agency Response  
Appeal Rights

Copy: Department of State Development, Manufacturing, Infrastructure and Planning  
[CairnsSARA@dsdmip.qld.gov.au](mailto:CairnsSARA@dsdmip.qld.gov.au)



Approved Plans/Documents



Proposed Development Plans - Existing Lot Configuration

This plan is conceptual and for discussion purposes only. All areas, dimensions and land uses are preliminary, subject to investigation, survey, engineering, and local authority and agency approvals.

16/10/2019  
B. W. [Signature]

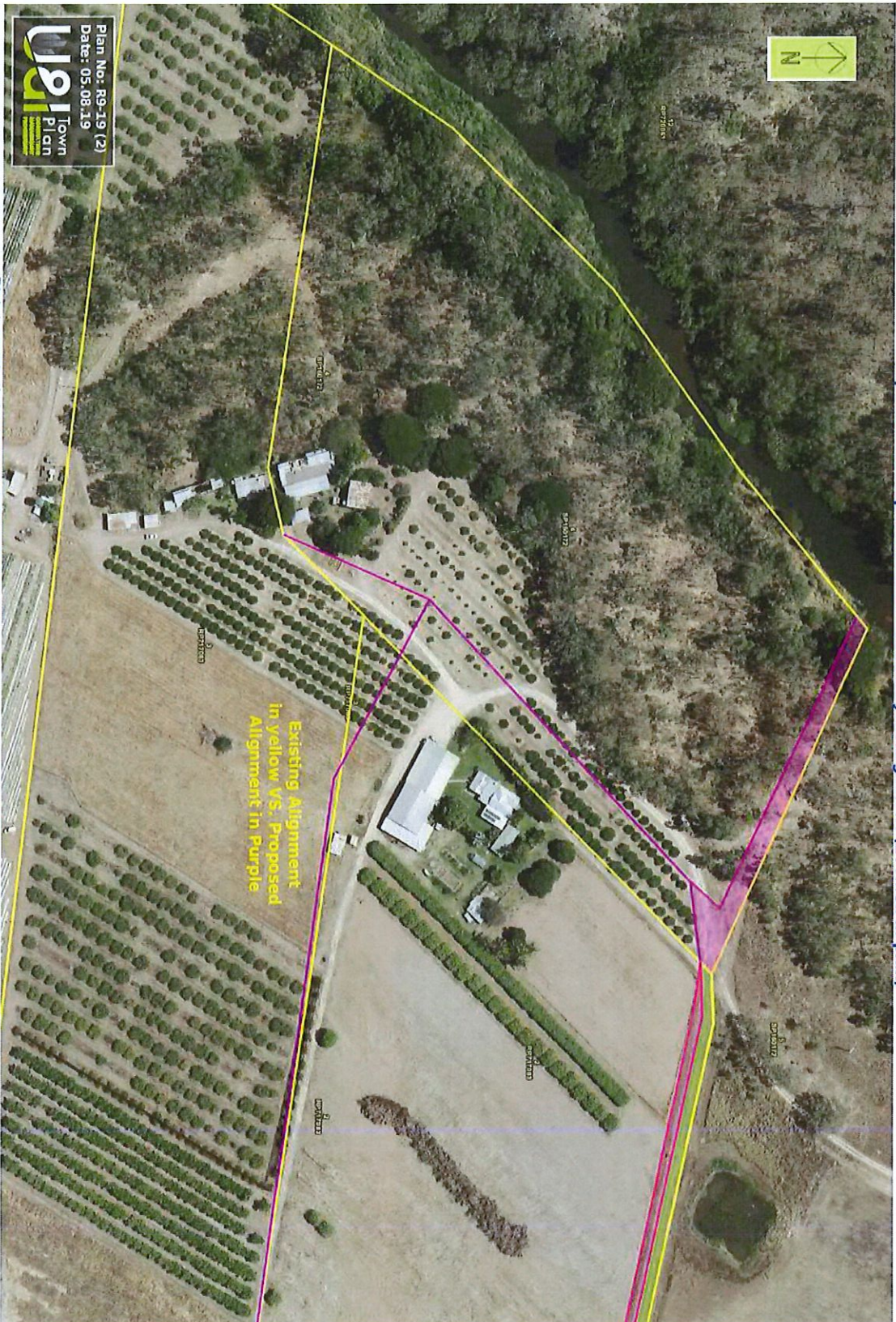




This plan is confidential and for discussion purposes only. All rights, directions and laws apply as presently, subject to investigation, survey, engineering and local authority and agency approvals. Includes material © The State of Queensland, all rights reserved, 2018 | © State of Queensland (Department of Natural Resources, Mines and Energy) 2018 | © State of Queensland (Department of Natural Resources, Mines and Energy) 2019 | © State of Queensland (Department of Natural Resources and Mines), 2018.



Proposed Development Plans - Boundary Realignment (Zoomed in plan)



16/10/2019  
B. Will



	<b>Referral Agency Response</b>
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RA6-N



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

SARA reference: 1908-12892 SRA  
Council reference: RAL/19/0019  
Applicant reference: R9-19

###Secondary1###

Chief Executive Officer  
Mareeba Shire Council  
PO Box 154  
MAREEBA QLD 4880  
Email: [planning@msc.qld.gov.au](mailto:planning@msc.qld.gov.au)

Attention: Mr Brian Millard

Dear Brian

**SARA response—336 Fichera Road, MAREEBA QLD 4880**

(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 27 August 2019.

**Response**

Outcome:	Referral agency response – with conditions.
Date of response:	2 October 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**

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)	
	Reconfiguration of a lot containing category Category B native vegetation	

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



1908-12892 SRA

SARA reference: 1908-12892 SRA  
Assessment Manager: Mareeba Shire Council  
Street address: 336 Fichera Road, MAREEBA QLD 4880  
Real property description: Lots on 2 and 3 on RP717083 and Lot 4 on SP160172  
Applicant name: M & T Samanes  
c/- U&i Town Plan  
Applicant contact details: PO Box 426  
COOKTOWN QLD 4895  
Email: 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 4**.

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

For further information please contact Brittany Hughes, Planning Officer, on (07) 4616 7332 or via email CairnsSARA@dsmip.qld.gov.au who will be pleased to assist.

Yours sincerely



Andrew Foley  
Manager

cc M & T Samanes c/- U&i Town Plan, ramon@uitownplan.com.au

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

1908-12892 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 for - Boundary Realignment</b>		
<b>Schedule 10, Part 3, Division 4, Table 2, Item 1</b> —The chief executive administering the <i>Planning Act 2016</i> 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 conditions:		
1.	The clearing of vegetation under this development approval is limited to the area identified as Area A (Part A <sup>1</sup> ) as shown on Technical Agency Response Plan (TARP) 1908-12892 SRA dated 19 September 2019.	At all times.
2.	No built structure, other than for fences, roads and underground services, is to be established, constructed or located within area identified as Area A (Part A <sup>1</sup> ) as shown on attached TARP 1908-12892 SRA dated 19 September 2019.	At all times.
3.	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.



1908-12892 SRA

**Attachment 2—Advice to the applicant**

<b>General advice</b>	
1.	Terms and phrases used in this document are defined in the <i>Planning Act 2016</i> its regulation or the State Development Assessment Provisions (SDAP) (2.5). If a word remains undefined it has its ordinary meaning.

1908-12892 SRA

**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 development has reasonably avoided, and reasonably minimised the impacts of the development by utilising the existing road as the new boundary.
- The proposed development area is not subject to any enforcement notices, compliance actions, exchange areas or shown as a Category A area on a PMAV
- The development has been conditioned to comply with the relevant performance benchmarks of State Code 16 of the SDAP.

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

- The development application material and submitted plans
- *Planning Act 2016*
- *Planning Regulation 2017*
- The SDAP (2.5), as published by the department
- The Development Assessment Rules
- SARA DA Mapping system



1908-12892 SRA

**Attachment 4—Representations provisions**

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1908-12892 SRA

**Attachment 5—Approved plans and specifications**

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## Development Assessment Rules—Representations about a referral agency response (concurrency)

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 (concurrency).

### Part 6: Changes to the application and referral agency responses and Part 7: Miscellaneous

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#### 28 Concurrency agency changes its response or gives a late response

- 28.1. Despite part 2, a concurrency 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 concurrency 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 concurrency 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 concurrency 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 concurrency agency proposes to change its referral agency response under section 28.2(a), the concurrency 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 concurrency agency has 10 days from the day of giving notice under paragraph (a), or a further period agreed between the applicant and the concurrency 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 concurrency agency under section 30, and the concurrency agency agrees to make the change included in the representations, section 28.2(c) is taken to have been satisfied.

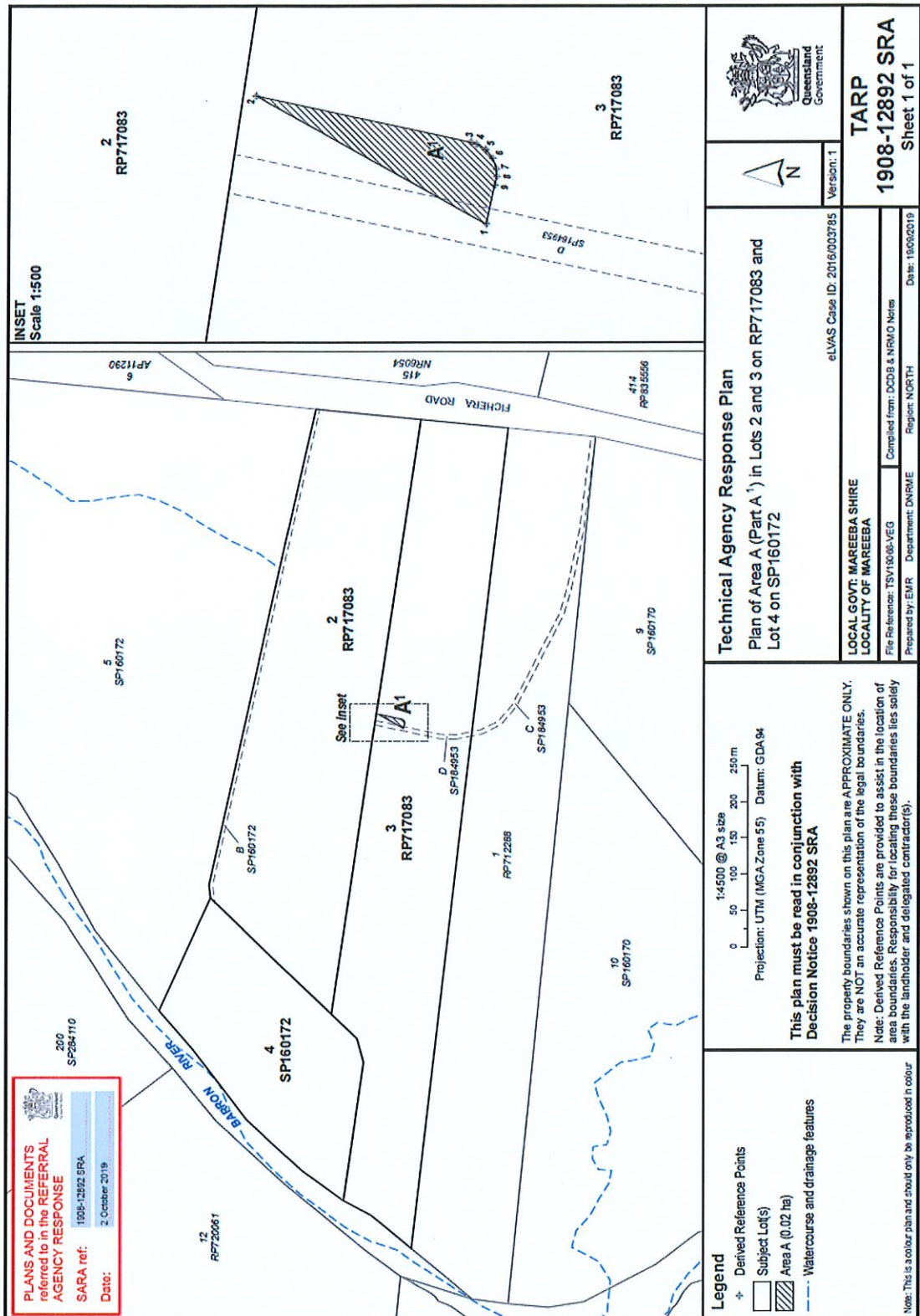


### **30 Representations about a referral agency response**

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.



## Appeal Rights

PLANNING ACT 2016 & THE PLANNING REGULATION 2017

### Chapter 6 Dispute resolution

#### Part 1 Appeal rights

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

- (1) Schedule 1 of the *Planning Act 2016* 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.

(Refer to Schedule 1 of the Planning Act 2016)

- (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 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 –
  - (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, table 1, item 1 – each principal submitter for the development application; and
  - (d) for and appeal about a change application under schedule 1, table 1, item 2 – each principal submitter for the change application; and
  - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); 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 has 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 by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

### 231 Other appeals

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