

**DELEGATED REPORT**

**SUBJECT:** M & T SAMANES - RECONFIGURING A LOT - BOUNDARY REALIGNMENT - LOTS 2 & 3 ON RP717083 AND LOT 4 ON SP160172 - 336 FICHERA ROAD, MAREEBA - RAL/19/0019

**DATE:** 16 October 2019

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

**DEPARTMENT:** Corporate and Community Services

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**APPLICATION DETAILS**

APPLICATION		PREMISES	
APPLICANT	M & T Samanes	ADDRESS	336 Fichera Road, Mareeba
DATE LODGED	26 August 2019	RPD	Lots 2 & 3 on RP717083 and Lot 4 on SP160172
TYPE OF APPROVAL	Development Permit		
PROPOSED DEVELOPMENT	Reconfiguring a Lot - Boundary Realignment		

FILE NO	RAL/19/0019	AREA	Lot 2 - 13.11 ha Lot 3 - 14.03 ha Lot 4 - 5.74 ha
LODGED BY	U&i Town Plan	OWNER	M & T Samanes
PLANNING SCHEME	Mareeba Shire Council Planning Scheme 2016		
ZONE	Rural zone		
LEVEL OF ASSESSMENT	Code Assessment		
SUBMISSIONS	n/a		

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**ATTACHMENTS:**

1. Proposal Plan/s
2. Department of State Development, Manufacturing, Infrastructure and Planning Referral Agency Response dated 2 October 2019

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**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.*

*It has been assessed against the relevant statutory planning instruments, including the Regional Plan and the Planning Scheme and does not conflict with any relevant planning instrument.*

*Draft conditions were provided to the Applicant/ care of their consultant and have been agreed.*

*It is recommended that the application be approved in full with conditions.*

## OFFICER'S RECOMMENDATION

1. That in relation to the following development application:

APPLICATION		PREMISES	
<b>APPLICANT</b>	M & T Samanes	<b>ADDRESS</b>	336 Fichera Road, Mareeba
<b>DATE LODGED</b>	26 August 2019	<b>RPD</b>	Lots 2 & 3 on RP717083 and Lot 4 on SP160172
<b>TYPE OF APPROVAL</b>	Development Permit		
<b>PROPOSED DEVELOPMENT</b>	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), concurrence agency conditions in (E), relevant period in (F), further permits in (G), and further approvals from Council listed in (H);

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
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

(C) 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.

(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) Easement Documents

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

(E) CONCURRENCE AGENCY CONDITIONS

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

(F) RELEVANT PERIOD

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

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

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

- Nil

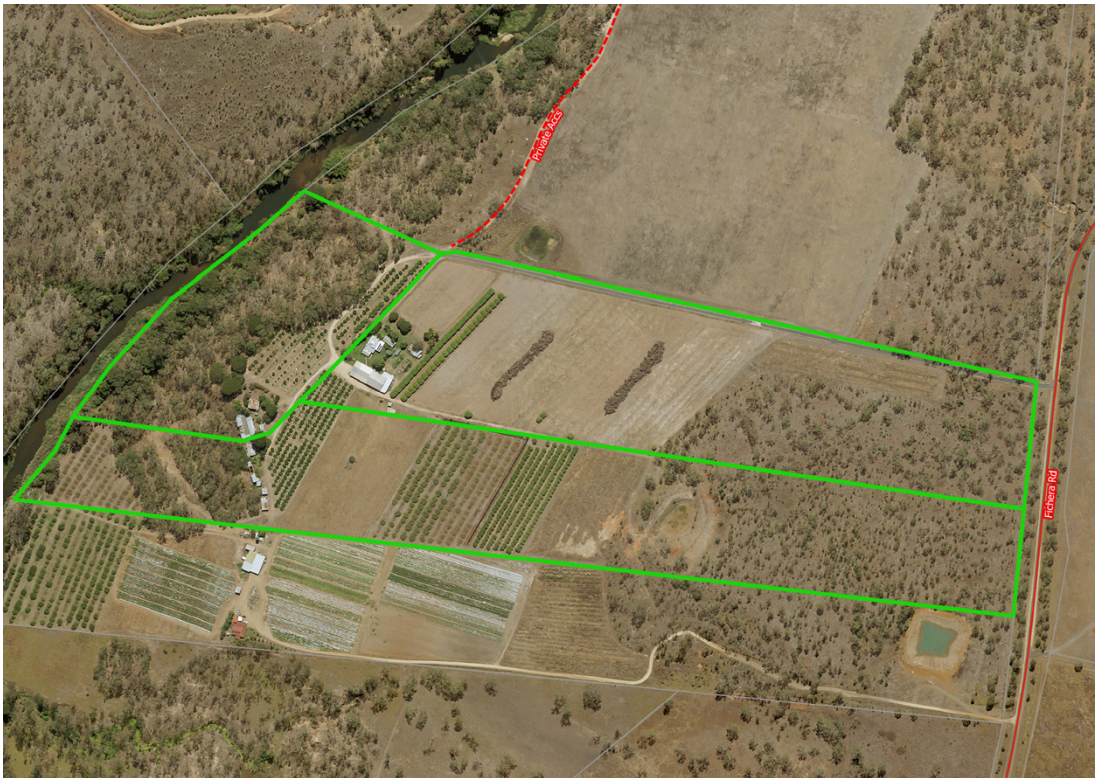
(H) OTHER APPROVALS REQUIRED FROM COUNCIL

- Nil

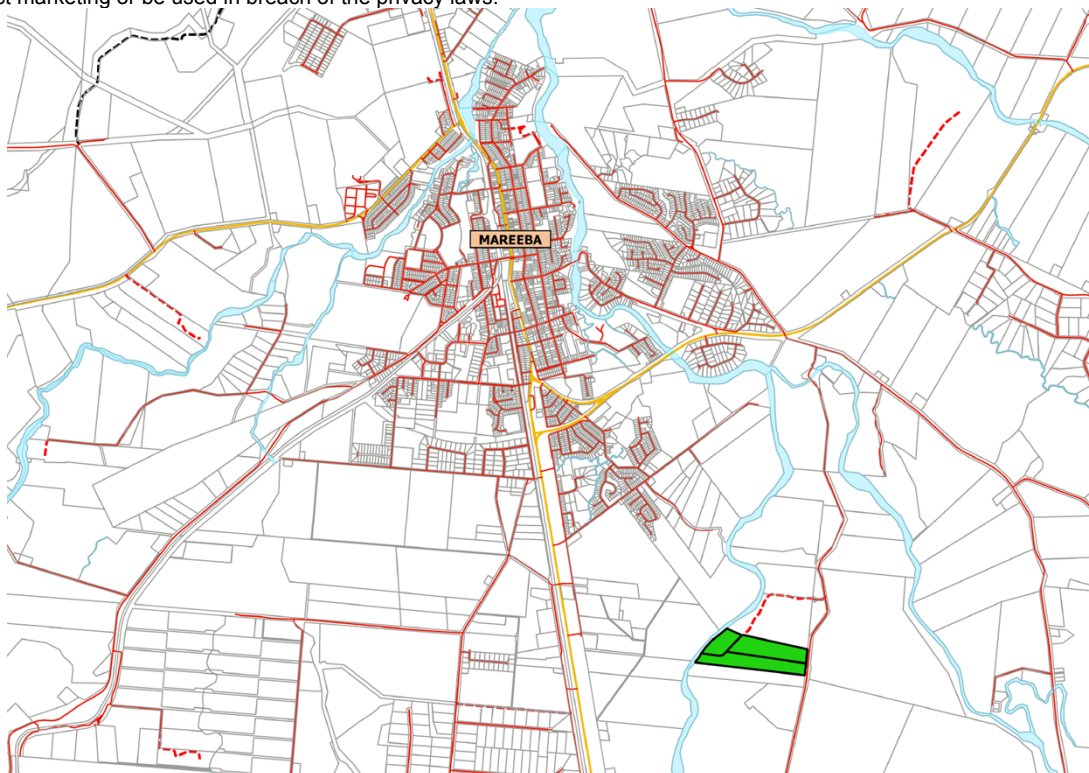
## THE SITE

The subject site comprises the following allotments:

- Lot 2 on RP717083, area of 13.119 hectares, frontage of approximately 145 metres to Fichera Road;
- Lot 3 on RP717083, area of 14.0388 hectares, frontage of approximately 120 metres to Fichera Road;

**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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- Lot 4 on SP160172, area of 5.741 hectares, access via existing access easement to Fichera Road.

Access to all lots is provided off Fichera Road which is constructed to bitumen sealed for the relevant length.

All lots have most recently been used for horticultural production. Lot 2 contains an existing dwelling house and associated outbuildings. Lot 3 & 4 contain various farm structures. The Barron River adjoins the western boundaries of Lots 3 and 4.

The subject site is entirely surrounded by Rural zoned allotments which are developed for various rural pursuits.

## **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 proposed allotments are generally in accordance with the following:

- Lot 2 - area of 13.38 hectares, frontage of approximately 145 metres to Fichera Road;
- Lot 3 - area of 13.08 hectares, frontage of approximately 120 metres to Fichera Road;
- Lot 4 - area of 5.22 hectares, access via existing access easement to Fichera Road.

The proposed realignment of the boundaries and access easement are proposed to rectify the boundaries between the properties including the easements to allow each property to be serviced and sold separately. This will also improve current buffers from the existing dwelling on Lot 2 to reduce any potential dust impacts.

It is also proposed to extend Lot 2 into Lot 3 along the water main easement to include the existing pump shed infrastructure along the main line which services Lot 2, and to ensure suitable access to this infrastructure.

It is also proposed to widen the access easement along the northern boundary from five (5) metres to nine (9) metres to ensure it covers the full width of the existing driveway infrastructure in place. This easement will be either extended, or another will be created along the northern boundary of Lot 4 to provide access to the river for water for Lot 2.

## **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:

- *Local Conservation Corridors*
- *Wetland Area of General Ecological Significance*
- *Terrestrial Area of High Ecological Significance*
- *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>
Zone:	<b>Natural Environment Elements</b> <ul style="list-style-type: none"> <li>▪ Biodiversity Areas</li> <li>▪ Habitat Linkage</li> </ul>
Overlays:	Rural zone <ul style="list-style-type: none"> <li>▪ Agricultural Land Overlay</li> <li>▪ Airport Environs Overlay</li> <li>▪ Bushfire Hazard Overlay</li> <li>▪ Environmental Significance Overlay</li> <li>▪ Flood Hazard Overlay</li> <li>▪ Hill and Slope Overlay</li> <li>▪ Transport Infrastructure Overlay</li> </ul>

## 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
- 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 outcomes (or performance outcome where no acceptable outcome 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 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 can be conditioned to comply with the codes relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome is provided).
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).
Flood 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).
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).

### (e) Planning Scheme Policies

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 relevant development works be designed and constructed in accordance with FNQROC Development Manual Standards.

#### **(f) Adopted Infrastructure Charges Notice**

The subject land is located outside the identified Priority Infrastructure Area (PIA).

Section 130 of the *Planning Act 2016* allows Council to condition additional trunk infrastructure outside the PIA.

As the proposed development is for boundary realignment only, no infrastructure charges/contributions are applicable.

#### **REFERRALS**

The application triggered referral to the Department of State Development, Manufacturing, Infrastructure and Planning as a referral agency (clearing of regulated vegetation).

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

#### **Internal Consultation**

Technical Services.

#### **PLANNING DISCUSSION**

Nil

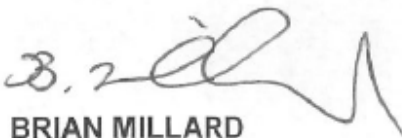
**Date Prepared:** 16 October 2019

## 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 *16TH* day of *OCTOBER* 2019



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

MAREEBA SHIRE  
AS A DELEGATE OF THE COUNCIL



Plan No: R9-19 (1)  
Date: 21.06.19

U21 Town Plan

Fichens Road

### 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.











## ATTACHMENT 2

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

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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@dsdmip.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

### 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 ( <b>Part A<sup>1</sup></b> ) 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 <b>fences, roads and underground services</b> , is to be established, constructed or located within area identified as Area A ( <b>Part A<sup>1</sup></b> ) as shown on attached TARP 1908-12892 SRA dated <b>19 September 2019</b> .	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.

**Attachment 2—Advice to the applicant**

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<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.

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

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

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**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

## **Attachment 4—Representations provisions**

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## **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 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.

### 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.

