

DELEGATED REPORT

SUBJECT: DEPARTMENT OF HOUSING AND PUBLIC WORKS - RECONFIGURING A LOT - DIVISION BY LEASE (LEASES I TO P) - LOT 279 ON NR7210 - 154 OAK FOREST ROAD, KURANDA - RAL/20/0002

DATE: 4 June 2020

REPORT OFFICER'S TITLE: Senior Planner

DEPARTMENT: Corporate and Community Services

APPLICATION DETAILS

APPLICATION		PREMISES	
APPLICANT	Department of Housing and Public Works	ADDRESS	154 Oak Forest Road, Kuranda
DATE LODGED	1 April 2020	RPD	Lot 279 on NR7210
TYPE OF APPROVAL	Development Permit		
PROPOSED DEVELOPMENT	Reconfiguring a Lot - Division by lease (Leases I to P) for a term exceeding 10 years		

FILE NO	RAL/20/0002	AREA	3.684 hectares
LODGED BY	GHD Pty Ltd	OWNER	Mantaka Aboriginal Land Trust
PLANNING SCHEME	Mareeba Shire Council Planning Scheme 2016		
ZONE	Low Density Residential zone		
LEVEL OF ASSESSMENT	Code Assessment		
SUBMISSIONS	n/a		

ATTACHMENTS:

1. Proposal Plan/s
2. Department of State Development, Manufacturing, Infrastructure and Planning Referral Agency Response (no requirements) dated 21 May 2020

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	
APPLICANT	Department of Housing and Public Works	ADDRESS	154 Oak Forest Road, Kuranda
DATE LODGED	1 April 2020	RPD	Lot 279 on NR7210
TYPE OF APPROVAL	Development Permit		
PROPOSED DEVELOPMENT	Reconfiguring a Lot - Division by lease (Leases I to P) for a term exceeding 10 years		

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 - Division by lease (Leases I to P) for a term exceeding 10 years

(B) APPROVED PLANS:

Plan/Document Number	Plan/Document Title	Prepared by	Dated
SP311023	Sheet 1 of 4	GE Hopkins	16.04.2019
SP311023	Sheet 2 of 4	GE Hopkins	16.04.2019
SP311023	Sheet 3 of 4	GE Hopkins	16.04.2019
SP311023	Sheet 4 of 4	GE Hopkins	16.04.2019

(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
 - 2.1 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 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.
 - 3.2 All payments or bonds required to be made to the Council pursuant to any condition of this approval must be made prior to the endorsement of the plan of survey and at the rate applicable at the time of payment.
 - 3.3 Where Council maintained 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.
 - 3.4 Any existing buildings or structures (pools/tennis courts or fences) and/or incidental works that straddle the new boundaries must be altered, demolished or removed, as required, to align with the new property boundaries unless approved by Council's delegated officer.
 - 3.5 All works must be designed, constructed and carried out in accordance with FNQROC Development Manual requirements (as amended) and to the satisfaction of Council's delegated officer.
 - 3.6 Security of access and services

The applicant must ensure that the lease agreement for each lease area secures the continuing right to access and use water, sewerage, stormwater, electricity, telecommunications and vehicular access infrastructure within Lot 279 on NR7210 and/or other lease areas, for the term of each lease.

3.7 Charges

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

(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) CONCURRENCE AGENCY CONDITIONS

Department of State Development, Manufacturing, Infrastructure and Planning conditions dated 21 May 2020.

(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 land is described as Lot 279 on NR7210, situated on the corner of Oak Forest Road and Hickory Road, Mantaka, approximately 5 kilometres west of the Kuranda Village.

The land has an area of 3.684 hectares with frontages of approximately 192 metres to Oak Forest Road and 230 metres to Hickory Road. Both roads are bitumen sealed for their entire frontage with the subject land. The northern boundary of the subject land adjoins railway corridor land, specifically, the Mareeba-Kuranda railway line.

The proposed leases are improved by eight (8) dwelling houses which were constructed by the Queensland Government in approximately 1986/87 as public housing. Four of the dwelling houses are accessed via individual driveways directly off Hickory Road. The remaining four dwelling houses are accessed off a sealed internal road which connects to Oak Forest Road.

The site is fairly regular in shape and retains a small pocket of remnant vegetation that is a least concern regional ecosystem in its south-eastern corner adjacent to Oak Forest Road. The remainder of the site contains a modest coverage of non-remnant vegetation around the established dwelling houses and internal road.

A detailed Flood, Overland Flow and Stormwater Study of the subject land was undertaken by Cardno (Qld) Pty Ltd as part of the 2013 development application. The measures identified by the study have been implemented and stormwater is effectively managed. The proposed development will not alter the established stormwater management measures.

All dwellings are connected to the existing rising sewer main. Reticulated power and telecommunications are also connected. Water is supplied by site bore and existing above ground water storage tanks located along the eastern site boundary.

Neighbouring properties appear to be developed primarily for rural and semi-rural purposes.



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.



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.

BACKGROUND AND CONTEXT

Nil

PREVIOUS APPLICATIONS & APPROVALS

On 14 June 2013, development approval DA/13/0030(M) was issued for an application for Reconfiguring a Lot - Division by lease (Leases A to G) on Lot 279 on NR7210.

This development approval has been finalised and public housing has been established on each lease.

DESCRIPTION OF PROPOSED DEVELOPMENT

The development application seeks a Development Permit for Reconfiguring a Lot - Division by lease (Leases I to P) for a term exceeding 10 years, in accordance with the plans shown in **Attachment 1**.

The Department of Housing and Public Works proposes to obtain Leases I to P in Lot 279 on NR7210 for a term of 30 years. Each of the lease areas are already developed for public housing in the form of detached dwelling houses.

The leases will be held by the State of Queensland and rented back to the Mantaka community under the Queensland Government's public housing policies.

All necessary services and infrastructure is already in place for each lease area.

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:

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

PLANNING SCHEME DESIGNATIONS

Strategic Framework:	<p>Land Use Categories</p> <ul style="list-style-type: none"> Residential Area <p>Natural Environment Elements</p> <ul style="list-style-type: none"> Biodiversity Areas <p>Transport Elements</p> <ul style="list-style-type: none"> Local Collector Road Principal Cycle Network <p>Other Elements</p> <ul style="list-style-type: none"> Major Waterbody (Barron R)
Zone:	Low Density Residential zone
Overlays:	<p>Bushfire hazard overlay</p> <p>Environmental significance overlay</p> <p>Hill and slope overlay</p> <p>Transport infrastructure overlay</p>

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:

- 6.2.6 Low density residential zone code
- 8.2.3 Bushfire hazard overlay code
- 8.2.4 Environmental significance 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 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
Low density residential zone code	The application can be conditioned to comply with the code's 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 code's 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 code's relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome is provided).
Hill and slope overlay code	The application can be conditioned to comply with the code's relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome is provided).
Transport infrastructure overlay code	The application can be conditioned to comply with the code's relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome is provided).
Landscaping code	The application can be conditioned to comply with the code's 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 code's 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 code's 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 code's 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

Whilst no works are required in order for this development to proceed, the development approval should include Council's standard condition as a matter of caution.

(f) Adopted Infrastructure Charges Notice

The application is proposing to create lease areas over eight (8) established dwelling houses on the subject land. The lease areas will allow for the issue on leases in excess of ten (10) years.

There will be no change to the demand placed on Council's trunk infrastructure.

Accordingly, no further infrastructure charges are required for this development.

REFERRALS

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

That Department advised in a letter dated 21 May 2020 that they have no requirements (**Attachment 2**).

The application also triggered referral to Ergon Energy as an Advice Agency.

No response was provided by Ergon Energy.

Internal Consultation

Technical Services

PLANNING DISCUSSION

Nil

Date Prepared: 4 June 2020

DECISION BY DELEGATE

DECISION

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

Dated the *4TH* day of *JUNE*, 2020



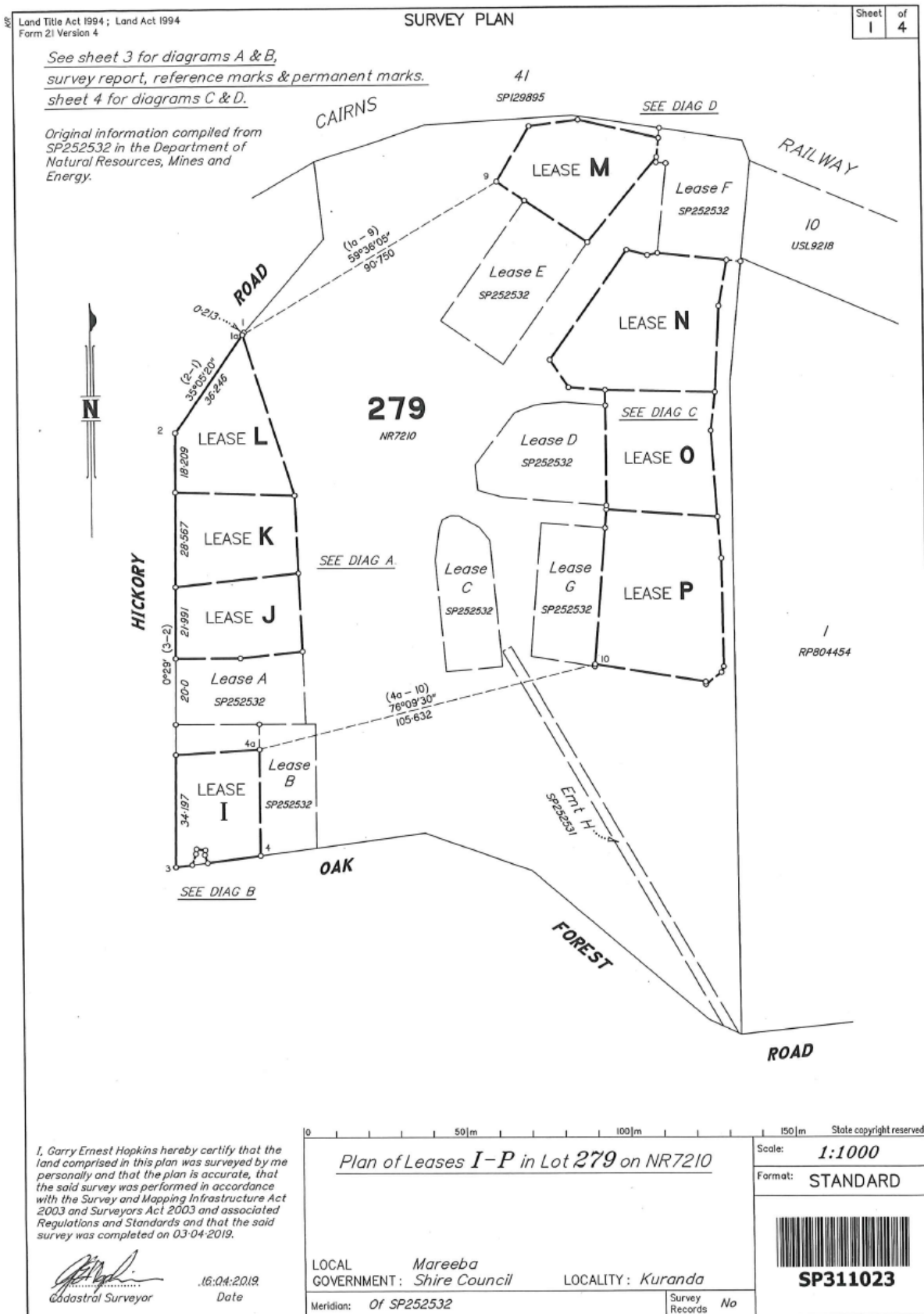
BRIAN MILLARD
SENIOR PLANNER



ANTHONY ARCHIE
MANAGER DEVELOPMENT & GOVERNANCE

MAREEBA SHIRE
AS A DELEGATE OF THE COUNCIL

PROPOSAL PLANS



Land Title Act 1994 ; Land Act 1994
Form 21B Version 1

Sheet 2 of 4

**WARNING : Folded or Mutilated Plans will not be accepted.
Plans may be rolled.
Information may not be placed in the outer margins.**

(Dealing No.)

5. Lodged by

(Include address, phone number, reference, and Lodger Code)

6. Existing Created

Title Reference	Description	New Lots	Road	Secondary Interests
50202965	Lot 279 on NR7210	-	-	Leases I-P

Leases I-P do not affect any other leases lodged or registered on title 50202965 as at 16-04-2019.

1. Certificate of Registered Owners or Lessees.


I/We Mantaka Aboriginal Land Trust trustee for the benefit of Aboriginal people particularly concerned with the land and their ancestors and descendants, and under the Aboriginal Land Act 1991.

(Names in full)

* as Registered Owners of this land agree to this plan and dedicate the Public Use Land as shown hereon in accordance with Section 50 of the Land Title Act 1994.

* as Lessees of this land agree to this plan:

[Signatures]
Signature of *Registered Owners *Lessees



* Rule out whichever is inapplicable

2. Planning Body Approval.

*
hereby approves this plan in accordance with the:
%

Dated this day of

..... #
..... #

* Insert the name of the Planning Body. % Insert applicable approving legislation.
Insert designation of signatory or delegation

3. Plans with Community Management Statement :
CMS Number :
Name :

4. References :
Dept File :
Local Govt :
Surveyor : 19/026

7. Orig Grant Allocation :

Lots	Orig
	Lot 279 on NR7210

8. Passed & Endorsed :
By: *[Signature]*
Date: 23 MAY 2019
~~16 April 2019~~
Signed: *[Signature]*
Designation: Cadastral Surveyor

9. Building Format Plans only.
I certify that:
* As far as it is practical to determine, no part of the building shown on this plan encroaches onto adjoining lots or road.
* Part of the building shown on this plan encroaches onto adjoining * lots and road

Cadastral Surveyor/Director * Date
*delete words not required

10. Lodgement Fees :
Survey Deposit \$
Lodgement \$
..... New Titles \$
Photocopy \$
Postage \$
TOTAL \$

11. Insert Plan Number
SP311023

SURVEY REPORT

Plans used:
NR7210, SP252531 and SP252532.

Datum:
Stns 2 to 3 as defined by original marks
with deed distance available.

Survey:
All dimensions and reference mark
connections agree with previous surveys.

The small area of Lot 279 excluded from
Lease I contains a Bus Shelter.

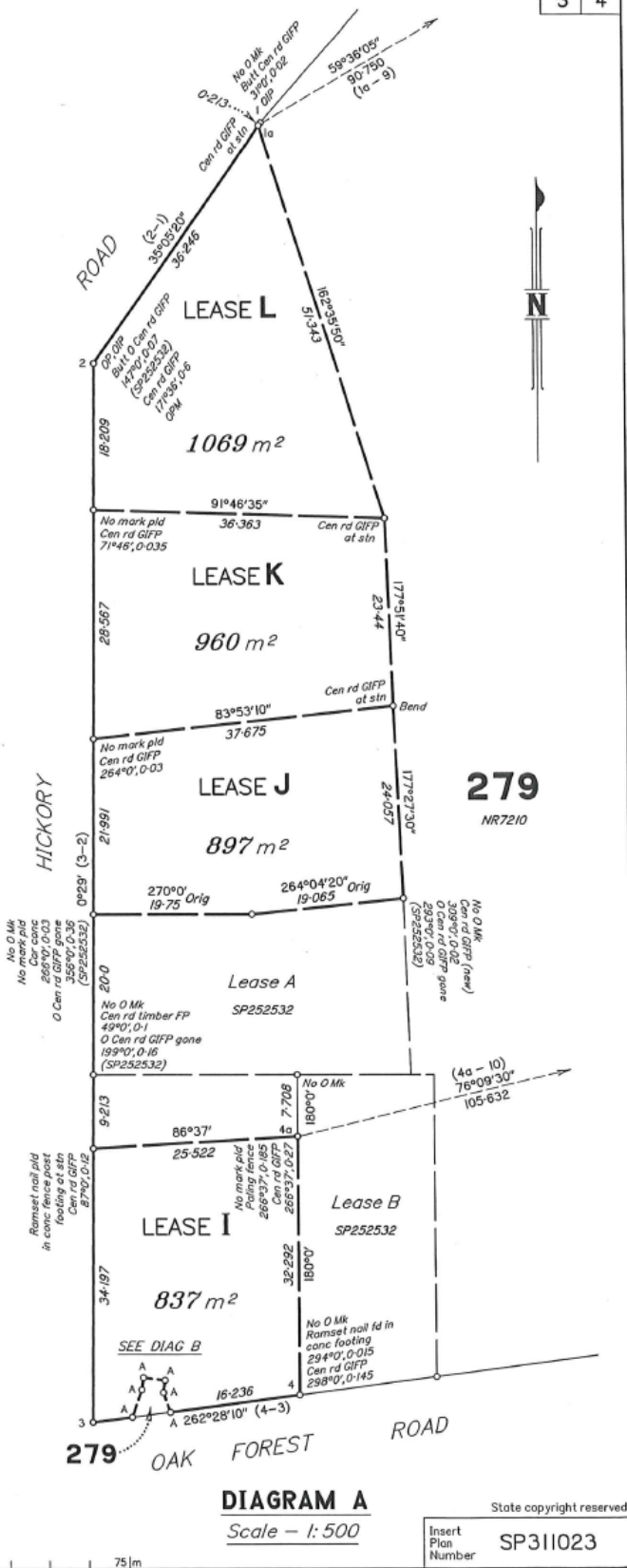
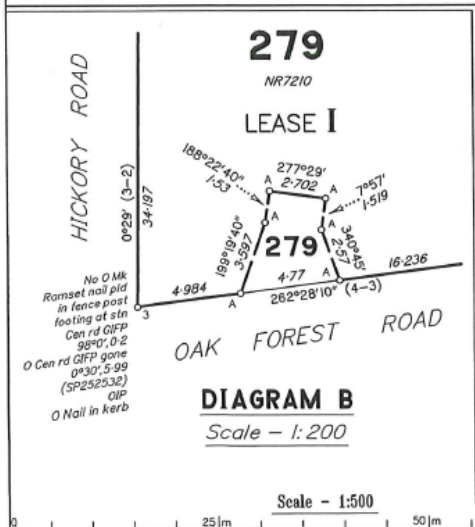
Reference Marks

Stn	To	Origin	Bearing	Dist
1	OIP	10/NR7210	308°10'50"	1-0
2	OIP	9/NR7210	180°29'	1-0
3	OIP	7/NR7210	156°39'	1-0
3	O Nail in kerb	2/SP252532	333°39'	17-845
5	O GI Nail in bitum gone	8/SP252532	10°09'45"	19-97
6	O GI Nail in bitumen (not searched)	9/SP252532	103°07'	6-71
7	O Nail in kerb	11/SP252532	182°17'	16-415
8	Ramsset nail in kerb		236°33'10"	16-638
8	Ramsset nail in conc		221°31'05"	62-67

Permanent Marks

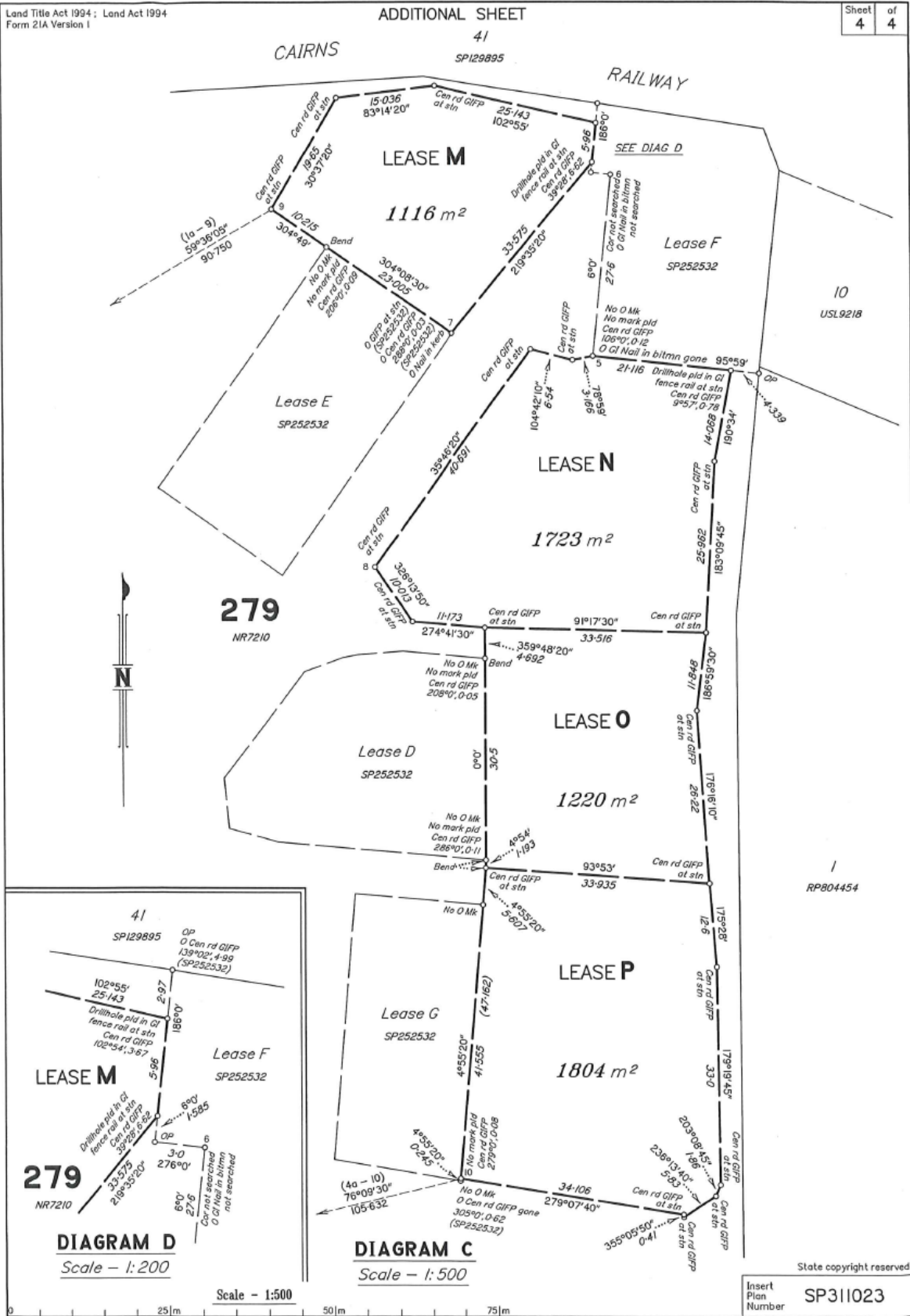
PM	Origin	Bearing	Dist	Nº
2-OPM	9/NR7210	224°53'30"	1-518	92843

Cen rd GIFF at stations marked A



State copyright reserved.

Insert Plan Number SP311023



Referral Agency Response

RA9-N



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

SARA reference: 2004-16459 SRA
 Council reference: RAL/20/0002
 Applicant reference: 4131955-83

21 May 2020

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

Attention: Brian Millard

Dear Sir/Madam

SARA response—154 Oak Forest Road, Kuranda

(Referral agency response given under section 58 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 24 April 2020.

Response

Outcome:	Referral agency response - No requirements Under section 58(1)(a) of the <i>Planning Act 2016</i> , the department advises it has no requirements relating to the application.
Date of response:	21 May 2020
Advice:	Advice to the applicant is in Attachment 1 .
Reasons:	The reasons for the referral agency response are in Attachment 2 .

Development details

Description:	Development permit	Reconfiguring a lot - Division by lease exceeding 10 years (Leases I to P)
SARA role:	Referral Agency.	
SARA trigger:	Schedule 10, Part 9, Division 4, Subdivision 2, Table 1, Item 1 (Planning Regulation 2017)	
	Development application for a reconfiguring a lot within 25m of a railway corridor	

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

Page 1 of 5

2004-16459 SRA

SARA reference: 2004-16459 SRA
Assessment Manager: Mareeba Shire Council
Street address: 154 Oak Forest Road, Kuranda
Real property description: Lot 279 on NR7210
Applicant name: Queensland Government, Department of Housing and Public Works
C/- GHD Pty Ltd
Applicant contact details: 145 Ann Street
Brisbane City QLD 4000
stephanie.munns@ghd.com

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 Joanne Manson, Principal Planning Officer, SARA Far North QLD on 40373228 or via email CairnsSARA@dsgmip.qld.gov.au who will be pleased to assist.

Yours sincerely



Brett Nancarrow
Manager (Planning)

cc Queensland Government, Department of Housing and Public Works C/- GHD Pty Ltd,
stephanie.munns@ghd.com

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

Attachment 1—Advice to the applicant

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) [v2.6]. If a word remains undefined it has its ordinary meaning.

Attachment 2 —Reasons for referral agency response

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

The reasons for the department's decision are:

- The premises is located within 25m of the Cairns Railway.
- The department carried out an assessment against the State Development Assessment Provisions, State code 2 and found the proposed development complies with the relevant provisions.
- The proposed development does not require vehicular access via the railway corridor.
- Vehicular access to the premises is via Oak Forest Road and Hickory Road, both local government-controlled roads.
- The proposed development does not propose works within the railway corridor.
- The proposed development is unlikely to impact on the operation, safety or efficiency of the railway.

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

Attachment 3 —Change representation provisions

(page left intentionally blank – attached separately)

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*¹ regarding representations about a referral agency response (concurrency).

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

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.²
- 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.

¹ Pursuant to Section 68 of the *Planning Act 2016*

² 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.³

³ 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.