



21 October 2021

Planning Officer: Carl Ewin
Direct Phone: 4086 4656
Our Reference: RAL/21/0010

Dean Martin
PO Box 785
KURANDA QLD 4881

Dear Applicant

Decision Notice

Planning Act 2016

I refer to your application and advise that on 20 October 2021, Council decided to approve the application in full subject to conditions.

Details of the decision are as follows:

APPLICATION DETAILS

Application No:	RAL/21/0010
Street Address:	2850 Kennedy Highway & 116 Kanervo Road, Koah
Real Property Description:	Lot 2 on SP176556 & Lot 202 on RP843530
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:	20 October 2021

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, and subject to any alterations:
 - found necessary by the 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 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.
 - 3.4 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.
 - 3.5 Where approved existing buildings and structures are to be retained, setbacks to new property boundaries are to be in accordance with Planning Scheme requirements for the relevant structure and/or Queensland Development Code. A plan demonstrating compliance must be submitted prior to endorsement of the plan of survey.
 - 3.6 Charges

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

REFERRAL AGENCIES

The referral agencies applicable to this application are:

Table 2 - Reconfiguring a lot that is assessable development under s21		
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) PO Box 2358 Cairns QLD 4870 CairnsSARA@dsgmip.qld.gov.au
(a) a lot that the application relates to is 5ha or larger; and		
(b) the size of any lot created is 25ha or less; and		
(b) either —		
(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; or		
(ii) <u>on any lot created, accepted operational work, other than operational work that is only the clearing of regulated regrowth vegetation, may be carried out</u>		

A copy of the State Assessment and Referral Agency conditions dated 2 August 2021 are attached.

APPROVED PLANS

The following plans are Approved plans for the development:

Plan/Document Number	Plan/Document Title	Prepared by	Dated
-	Proposed Boundary Realignment of Lot 202 on RP843530 and Lot 2 on SP176556	-	-

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) 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.

FURTHER DEVELOPMENT PERMITS REQUIRED

Not Applicable.

SUBMISSIONS

There was one (1) properly made submission about the application.

Name of Principal submitter	Address
1. T Chapman	130 Kanervo Road, Koah

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, 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@dsmip.qld.gov.au

	<h2>Approved Plans/Documents</h2>
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**Proposed Boundary Realignment of Lot 202
on RP843530 and Lot 2 on SP176556**



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Print date: 30/4/2021
Datum: Geocentric Datum of Australia 1984
Projection: Web Mercator EPSG:31466
For more information, visit <http://dls.qld.gov.au/infocentre> and public.help@qld.gov.au



21/10/2021
B. N. [Signature]

	Referral Agency Response
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RA6-N



SARA reference: 2106-23262 SRA
 Council reference: RAL/21/0010

2 August 2021

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—Boundary Realignment (2 Lots into 2 Lots) at Kanervo Road and Kennedy Highway, Koah

(Referral agency response given under section 56 of the Planning Act 2016)

The development application described below was confirmed as properly referred by the State Assessment and Referral Agency (SARA) on 28 June 2021.

Response

Outcome:	Referral agency response – with conditions.
Date of response:	2 August 2021
Conditions:	The conditions in Attachment 1 must be attached to any development approval.
Advice:	Advice to the applicant is in Attachment 2 .
Reasons:	The reasons for the referral agency response are in Attachment 3 .

Development details

Description:	Development permit	Reconfiguring a Lot (Boundary Realignment – 2 Lots into 2 Lots)
SARA role:	Referral Agency	
SARA trigger:	Schedule 10, Part 3, Division 4, Table 2, Item 1 (Planning Regulation 2017) – Reconfiguring a lot involving vegetation clearing	

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

2106-23262 SRA

SARA reference: 2106-23262 SRA
Assessment Manager: Mareeba Shire Council
Street address: 116 Kanervo Road and 2850 Kennedy Highway, Koah
Real property description: Lot 202 on RP843530 and Lot 2 on SP176556
Applicant name: Mr Dean Martin
Applicant contact details: C/- Planning Plus
PO Box 398
Redlynch QLD 4870
info@planningplusqld.com.au

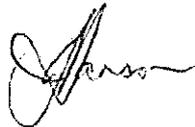
Representations

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 Ruth Creffield, A/ Senior Planning Officer, on 5352 9775 or via email CairnsSARA@dSDLGP.qld.gov.au who will be pleased to assist.

Yours sincerely



Joanne Manson
A/Manager (Planning)

cc Mr Dean Martin, info@planningplusqld.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

2106-23262 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
Reconfiguring a lot		
Schedule 10, Part 3, Division 4, Table 2, Item 1 – Reconfiguring a lot involving native vegetation clearing— The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of the Department of Resources to be the enforcement authority for the development to which this development approval relates for the administration and enforcement of any matter relating to the following condition(s):		
1.	Clearing of vegetation must: <ul style="list-style-type: none"> (a) only occur within Area A ^(A1) as shown on the attached: <ul style="list-style-type: none"> i. Vegetation Management Plan, prepared by Queensland Government, reference VMP 2106-23262 SRA, sheet 1, version 2, dated 2 August 2021, and ii. Attachment to Vegetation Management Plan VMP 2106-23262 SRA Derived Reference Points for GPS. (b) not exceed 0.11 ha. 	At all times.
2.	Clearing of vegetation must not occur within the areas identified as Area B ^(B1-B6) as shown on the attached: <ul style="list-style-type: none"> (a) Vegetation Management Plan, prepared by Queensland Government, reference VMP 2106-23262 SRA, sheet 1, version 2, dated 2 August 2021, and (b) Attachment to Vegetation Management Plan VMP 2106-23262 SRA Derived Reference Points for GPS. Note: This condition is not applicable where clearing of vegetation is an exempt clearing activity for essential management items (a), (b), (c), (d) and (e) under Schedule 21 of the <i>Planning Regulation 2016</i> .	At all times.
3.	Built infrastructure, other than for fences, roads and underground services must not be established, constructed or located within Area C ^(C1-C5) as shown on the attached: <ul style="list-style-type: none"> (a) Vegetation Management Plan, prepared by Queensland Government, reference VMP 2106-23262 SRA, sheet 1, version 2, dated 2 August 2021, and (c) Attachment to Vegetation Management Plan VMP 2106-23262 SRA Derived Reference Points for GPS. Note: Schedule 21 of the <i>Planning Regulation 2016</i> provides where exempt clearing work can occur.	At all times.
4.	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.

2106-23262 SRA

Attachment 2—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.
2.	Native vegetation clearing To request an electronic file of the Derived Points (Attached to Plan: VMP 2105-22687 SRA) as contained in this technical agency response, email a request to the Department of Resources (formerly DNRME) at northvegetation@dnrme.qld.gov.au and include application reference (2105-22687 SRA).
3.	Despite this development approval, other permits or approvals may be required for the clearing of vegetation. To determine if the proposed clearing requires other approvals under other local, State or federal laws go to www.qld.gov.au (search 'vegetation clearing requirements').
4.	Clearing vegetation to the extent the clearing is within an area mapped as a category C area on the regulated vegetation management map is not a relevant purpose under the <i>Vegetation Management Act 1999</i> . Accordingly clearing of vegetation in areas cannot be approved under a development approval. If the proposed development includes clearing vegetation in any category C area under Queensland's vegetation management framework, the clearing can only be undertaken if it is exempt clearing work or in accordance with an Accepted Development Vegetation Clearing Code (ADVCC). Clearing vegetation in any category C area that is not exempt or in accordance with an ADVCC is prohibited development. Information on exempt clearing work or ADVCCs is available online at www.qld.gov.au (search 'exempt clearing work' or 'accepted development vegetation clearing codes').

2106-23262 SRA

Attachment 3—Reasons for referral agency response

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

The reasons for the SARA decision are:

- Part of the realigned boundary will pass through an area of category B regulated vegetation containing a regional ecosystem of least concern.
- A future dwelling for proposed Lot 2 will be located in a category X vegetation area.
- Clearing will not occur in or near watercourses or drainage features.
- Clearing will retain sufficient vegetation in the subject lot and adjacent landscape to maintain ecological connectivity.
- No clearing of endangered or of concern regional ecosystems, or clearing within essential habitat, will occur.
- Vegetation clearing has been reasonably avoided where possible, and the impacts of clearing have been minimised by using existing clearing exemptions when locating the boundary.
- The proposed development complies with the relevant provisions of State code 18: Native vegetation clearing.

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)*
- The Development Assessment Rules
- SARA DA Mapping system
- State Planning Policy mapping system

2106-23262 SRA

Attachment 4—Change representation provisions

(page left intentionally blank – attached separately)

2106-23262 SRA

Attachment 5—Approved plans and specifications

(page left intentionally blank - attached separately)

Development Assessment Rules—Representations about a referral agency response

The following provisions are those set out in sections 28 and 30 of the Development Assessment Rules¹ regarding representations about a referral agency response

Part 6: Changes to the application and referral agency responses

28 Concurrence 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 28.1; 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.²
- 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.

¹ Pursuant to Section 68 of the *Planning Act 2018*

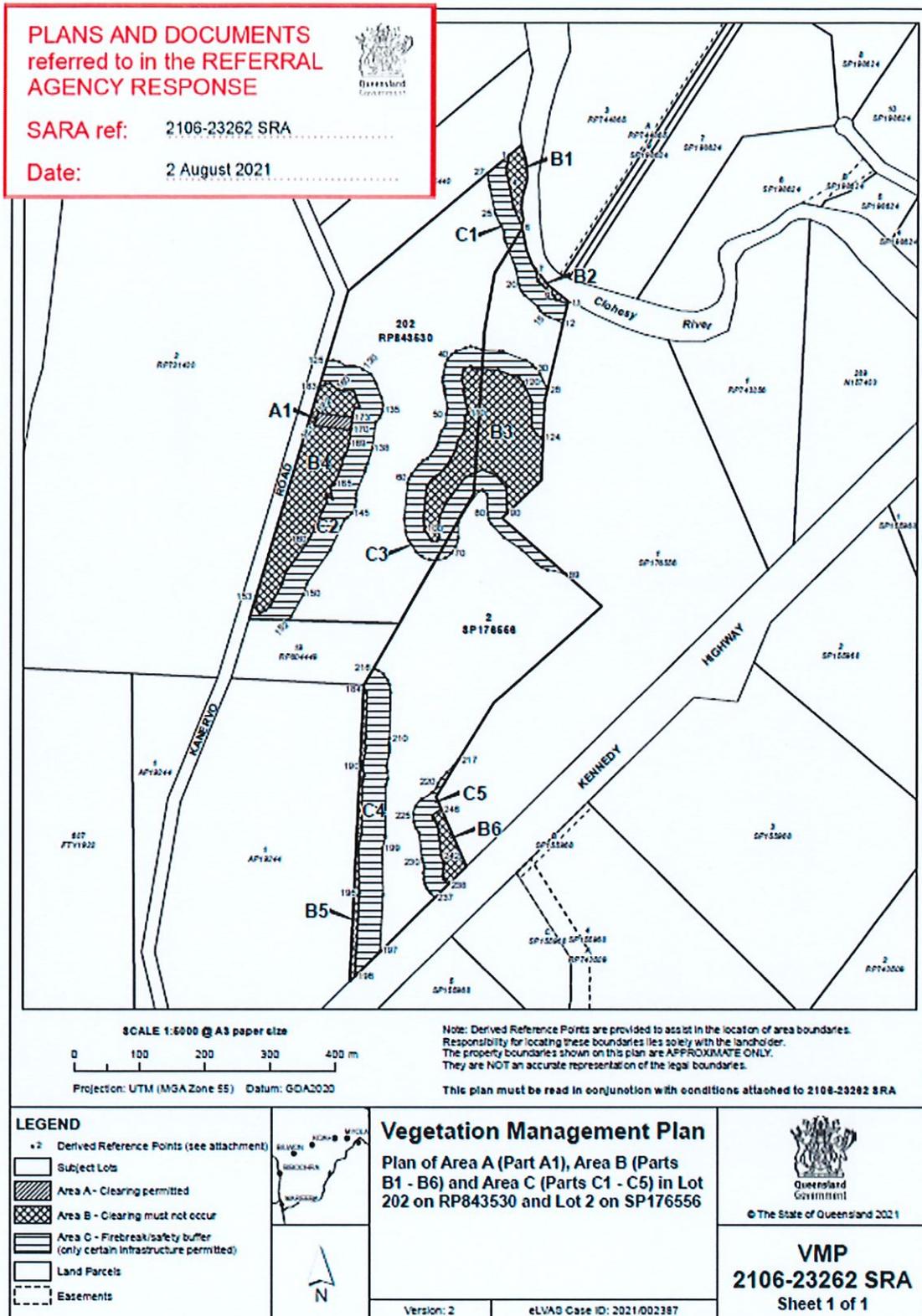
² In the instance an applicant has made representations to the concurrence agency under section 30, and the concurrence agency agrees to make the change included in the representations, section 28.2(c) is taken to have been satisfied.

Part 7: Miscellaneous

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.



**PLANS AND DOCUMENTS
referred to in the REFERRAL
AGENCY RESPONSE**



SARA ref: 2106-23262 SRA
Date: 2 August 2021

**Attachment to Plan: 2106-23262 SRA
Derived Reference Points for GPS**

Datum: GDA 2020 Projection: Transverse Mercator MGA Zone 55

Note: Derived Reference Points are provided to assist in the location of area boundaries only.
All GPS points continue sequentially when labels are not shown.
Responsibility for locating these boundaries lies solely with the landholder.

Area	Point	Easting	Northing	Area	Point	Easting	Northing
B1	1	346264	8130153	C3	46	346167	8129793
B1	2	346258	8130134	C3	47	346166	8129789
B1	3	346260	8130126	C3	48	346167	8129784
B1	4	346262	8130111	C3	49	346171	8129763
B1	5	346270	8130073	C3	50	346169	8129753
B1	6	346284	8130043	C3	51	346168	8129737
B2	7	346303	8129979	C3	52	346162	8129727
B2	8	346307	8129958	C3	53	346159	8129721
B2	9	346332	8129937	C3	54	346155	8129705
B2	10	346335	8129931	C3	55	346152	8129700
B2	11	346353	8129924	C3	56	346141	8129685
C1	12	346346	8129893	C3	57	346134	8129682
C1	13	346340	8129898	C3	58	346127	8129675
C1	14	346325	8129903	C3	59	346117	8129661
C1	15	346318	8129907	C3	60	346113	8129654
C1	16	346312	8129913	C3	61	346111	8129646
C1	17	346308	8129919	C3	62	346105	8129593
C1	18	346288	8129937	C3	63	346107	8129573
C1	19	346282	8129944	C3	64	346112	8129560
C1	20	346279	8129953	C3	65	346124	8129542
C1	21	346274	8129977	C3	66	346133	8129534
C1	22	346258	8130019	C3	67	346144	8129530
C1	23	346256	8130026	C3	68	346156	8129530
C1	24	346256	8130034	C3	69	346168	8129533
C1	25	346242	8130063	C3	70	346178	8129541
C1	26	346234	8130106	C3	71	346184	8129550
C1	27	346230	8130125	C3	72	346188	8129565
C3	28	346322	8129792	C3	73	346188	8129588
C3	29	346311	8129817	C3	74	346191	8129596
C3	30	346304	8129826	C3	75	346196	8129604
C3	31	346299	8129831	C3	76	346217	8129634
C3	32	346289	8129837	C3	77	346224	8129637
C3	33	346254	8129850	C3	78	346226	8129636
C3	34	346249	8129851	C3	79	346231	8129630
C3	35	346222	8129853	C3	80	346232	8129600
C3	36	346214	8129856	C3	81	346234	8129592
C3	37	346206	8129857	C3	82	346238	8129584
C3	38	346198	8129856	C3	83	346257	8129564
C3	39	346184	8129851	C3	84	346284	8129545
C3	40	346176	8129846	C3	85	346308	8129522
C3	41	346171	8129838	C3	86	346315	8129517
C3	42	346167	8129830	C3	87	346323	8129515
C3	43	346164	8129812	C3	88	346348	8129510
C3	44	346163	8129804	C3	89	346351	8129508
C3	45	346165	8129796	B3	90	346261	8129601

PLANS AND DOCUMENTS
referred to in the REFERRAL
AGENCY RESPONSE

SARA ref: 2106-23262 SRA
Date: 2 August 2021



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Area	Point	Easting	Northing	Area	Point	Easting	Northing
B3	91	346260	8129641	C2	136	346067	8129749
B3	92	346244	8129660	C2	137	346061	8129741
B3	93	346224	8129668	C2	138	346056	8129701
B3	94	346199	8129658	C2	139	346049	8129678
B3	95	346168	8129615	C2	140	346046	8129671
B3	96	346159	8129594	C2	141	346045	8129666
B3	97	346159	8129565	C2	142	346031	8129630
B3	98	346155	8129559	C2	143	346032	8129620
B3	99	346148	8129558	C2	144	346030	8129611
B3	100	346136	8129576	C2	145	346025	8129602
B3	101	346134	8129594	C2	146	346018	8129594
B3	102	346140	8129643	C2	147	346014	8129592
B3	103	346150	8129658	C2	148	345992	8129545
B3	104	346160	8129662	C2	149	345956	8129493
B3	105	346176	8129684	C2	150	345951	8129477
B3	106	346182	8129694	C2	151	345932	8129442
B3	107	346187	8129713	C2	152	345929	8129437
B3	108	346197	8129727	B4	153	345878	8129472
B3	109	346198	8129751	B4	154	345879	8129454
B3	110	346202	8129757	B4	155	345884	8129448
B3	111	346198	8129776	B4	156	345893	8129451
B3	112	346195	8129790	B4	157	345901	8129459
B3	113	346197	8129793	B4	158	345919	8129492
B3	114	346192	8129806	B4	159	345924	8129509
B3	115	346196	8129824	B4	160	345960	8129560
B3	116	346206	8129828	B4	161	345987	8129619
B3	117	346215	8129824	B4	162	345986	8129629
B3	118	346247	8129822	B4	163	345996	8129623
B3	119	346279	8129810	B4	164	345992	8129641
B3	120	346284	8129805	B4	165	345998	8129644
B3	121	346299	8129774	B4	166	346010	8129676
B3	122	346299	8129734	B4	167	346011	8129683
B3	123	346307	8129722	B4	168	346015	8129689
B3	124	346316	8129715	B4	169	346021	8129709
C2	125	345987	8129837	A1	170	346023	8129729
C2	126	345996	8129837	A1	171	345967	8129736
C2	127	346006	8129834	A1	172	345973	8129756
C2	128	346015	8129828	A1	173	346026	8129749
C2	129	346029	8129829	B4	174	346027	8129757
C2	130	346042	8129824	B4	175	346029	8129763
C2	131	346054	8129815	B4	176	346036	8129767
C2	132	346061	8129803	B4	177	346028	8129790
C2	133	346070	8129779	B4	178	346023	8129793
C2	134	346072	8129769	B4	179	346013	8129790
C2	135	346071	8129759	B4	180	346003	8129792

**PLANS AND DOCUMENTS
referred to in the REFERRAL
AGENCY RESPONSE**



SARA ref: 2106-23262 SRA

Date: 2 August 2021

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B4	181	345992	8129801	C5	226	346121	8129126
B4	182	345984	8129801	C5	227	346124	8129117
B4	183	345975	8129796	C5	228	346129	8129110
B5	184	346044	8129330	C5	229	346134	8129070
B5	185	346048	8129329	C5	230	346135	8129065
B5	186	346049	8129326	C5	231	346137	8129058
B5	187	346047	8129256	C5	232	346136	8129047
B5	188	346045	8129249	C5	233	346137	8129038
B5	189	346047	8129239	C5	234	346138	8129031
B5	190	346042	8129211	C5	235	346141	8129023
B5	191	346045	8129198	C5	236	346147	8129016
B5	192	346042	8129187	C5	237	346153	8129010
B5	193	346041	8129106	B6	238	346174	8129031
B5	194	346036	8129090	B6	239	346166	8129037
B5	195	346038	8129017	B6	240	346165	8129044
B5	196	346031	8128889	B6	241	346167	8129062
C4	197	346069	8128927	B6	242	346162	8129075
C4	198	346074	8129015	B6	243	346157	8129121
C4	199	346072	8129085	B6	244	346150	8129130
C4	200	346077	8129101	B6	245	346149	8129137
C4	201	346077	8129106	B6	246	346163	8129146
C4	202	346078	8129183				
C4	203	346081	8129194				
C4	204	346080	8129204				
C4	205	346079	8129211				
C4	206	346083	8129233				
C4	207	346083	8129238				
C4	208	346083	8129243				
C4	209	346082	8129248				
C4	210	346083	8129255				
C4	211	346085	8129325				
C4	212	346083	8129337				
C4	213	346080	8129345				
C4	214	346074	8129354				
C4	215	346065	8129360				
C4	216	346059	8129363				
C5	217	346188	8129221				
C5	218	346170	8129201				
C5	219	346162	8129193				
C5	220	346158	8129186				
C5	221	346155	8129177				
C5	222	346148	8129171				
C5	223	346133	8129161				
C5	224	346124	8129151				
C5	225	346120	8129138				

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 us 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.