



# Mareeba

## SHIRE COUNCIL

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23 September 2022

Senior Planner: Brian Millard  
Direct Phone: 4086 4657  
Our Reference: RAL/21/0016

Emerald Creek Heights Pty Ltd  
C/- McPeake Town Planning  
PO Box 5829  
CAIRNS QLD 4870

Dear Applicants,

## Decision Notice

### *Planning Act 2016*

I refer to your application and advise that on 21 September 2022, Council decided to approve the application in full subject to conditions.

Details of the decision are as follows:

#### APPLICATION DETAILS

Application No:	RAL/21/0016
Street Address:	Godfrey Road, Mareeba
Real Property Description:	Lot 219 on NR378
Planning Scheme:	Mareeba Shire Council Planning Scheme 2016

#### DECISION DETAILS

Type of Decision:	Approval
Type of Approval:	Development Permit for Reconfiguring a Lot - Subdivision (1 into 49 lots)
Date of Decision:	21 September 2022

#### 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 substantially 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 this development permit relevant to each Stage of the development must be complied with, to the satisfaction of Council’s delegated officer prior to the endorsement of the plan of survey for that Stage, 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 within the conditions of approval or the Adopted Infrastructure Charges Notice.
  - 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 or bonds required to be made to the Council pursuant to any condition of this approval or the Adopted Infrastructure Charges Notice must be made prior to 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 Any existing buildings or structures and/or incidental works that straddle the new boundaries must be altered, demolished or removed, as required, to align with the new property boundaries and/or be wholly contained within a new allotment, unless approved by Council's delegated officer.

- 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 Flood Immunity

All new buildings must be located such that the freeboard of the floor levels of all habitable rooms are a minimum of 300mm above the 100 ARI year level.

- 3.9 No filling is to occur below the 100 ARI flood level unless approved as part of a subsequent development permit for operational works.

3.10 Open Space/Parkland (Stage 3)

At the time of endorsement of the survey plan for Stage 3 or any survey plan creating Lot 904, Lot 904 is to be created as a Reserve (not freehold) for the purposes of parks/open space/public use land. The applicant/developer shall be solely responsible for all costs involved.

3.11 Bushfire Management

- (a) The applicant/developer must ensure all works are carried out so that the development complies with *Part 4. Bushfire Management Plan* of the *Bushfire Hazard Assessment and Management Plan* prepared by *Firecraft Environmental* dated 13 June 2022, to the satisfaction of Council's delegated officer.

Given the high risk of future bushfire incursion on the development site, a statement of Compliance must be provided demonstrating compliance with the entirety of *Part 4. Bushfire Management Plan* (including all relevant subsections) prior to Council endorsing a Survey Plan or Form 18B creating any proposed Lot.

- (b) Future landowners must ensure ongoing compliance with section 4.2 *Responsibilities of the owner/occupier of Lots* contained within the *Bushfire Hazard Assessment and Management Plan* prepared by *Firecraft Environmental* dated 13 June 2022. Future landowners are encouraged to prepare a bushfire survival plan as recommended by the Queensland Fire and Rescue Service.

- (c) At time of dwelling construction, all rear access lots, and for any lot where the dwelling is sited more than 30 metres away from any fire hydrant on the internal access roads, must be provided with 10,000 litres of on-site water supply via:

- A separate tank; or
- A reserve section in the bottom part of the main water supply tank; or

- A dam; or
- A swimming pool.

Where a tank water supply is provided for fire-fighting purposes it must be fitted with standard rural fire brigade fittings and provided with a hardstand area for heavy vehicles.

#### 3.12 Charges

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

#### 3.13 Access and Services Easement/s

Reciprocal access easements must be established over adjoining access handles where a shared driveway arrangement is proposed. If the co-location of underground services is also proposed, the easement/s must be for the purposes of access and services. Easement documents must be submitted to Council for review prior to the endorsement of a plan of survey.

#### 3.14 All rear access allotment must be serviced by an access handle with a minimum width of 6 metres, maintained for the entire length of the access handle.

### 4. Infrastructure Services and Standards

#### 4.1 Access

An access crossover must be constructed (from the edge of the road pavement of the proposed new internal roads, to the property boundary of each allotment) in accordance with the FNQROC Development Manual, to the satisfaction of Council's delegated officer.

A bitumen sealed driveway shall be provided within each battle-axe lot access handle. The driveways must:

- have a minimum formation width of 3 metres.
- be constructed for the full length of the access handle and include an access crossover.
- be formed with one-way cross fall to cater for stormwater drainage such that any stormwater runoff is contained within the access strip.
- include service and utility conduits provided for the full length of the access handle.

Shared access driveways are permitted in instances where 2 rear access handles sit adjacent each other. Reciprocal access easements are required in these instances (refer to condition 3.13).

#### 4.2 Stormwater Drainage

- (a) The applicant/developer must take all necessary steps to ensure a non-worsening effect on surrounding land as a consequence of the development.
- (b) Prior to works commencing the applicant must submit a Stormwater Management Plan and Report prepared and certified by a suitably qualified design engineer (RPEQ) that meets or exceeds the standards

of design and construction set out in the Queensland Urban Drainage Manual (QUDM) and the FNQROC Development Manual to the satisfaction of Council's delegated officer.

- (c) Prior to works commencing the applicant must submit a Stormwater Quality Management Plan and Report prepared and certified by a suitably qualified design engineer (RPEQ) that meets or exceeds the standards of design and construction set out in the Urban Stormwater Quality Planning Guideline and the Queensland Water Quality Guideline to the satisfaction of Council's delegated officer.
- (d) The Stormwater Quality Management Plan must include an Erosion and Sediment Control Plan that meets or exceeds the Soil Erosion and Sedimentation Control Guidelines (Institute of Engineers Australia) to the satisfaction of Council's delegated officer.
- (e) The Stormwater Management Plan and Stormwater Quality Management Plan must take into account the staging of the development.
- (f) The applicant/developer must construct the stormwater drainage infrastructure in accordance with the approved Stormwater Management Plan and/or Stormwater Quality Management Plan and Report.
- (g) Temporary drainage is to be provided and maintained during the construction phase of the development, discharged to a lawful point and not onto the construction site.
- (h) All stormwater channels through private property must be registered, with the easement for drainage purposes in favour of Council. All documentation leading to the registration of the easement must be completed at no cost to Council.
- (i) All stormwater drainage must be discharged at a lawful point of discharge.

#### 4.3 Pedestrian Access - Lot 904

Pedestrian access must be provided along the access handle of Lot 904 to the main body of the allotment. This pedestrian pathway must be constructed, at minimum, to a compact gravel standard and any watercourse crossings must be concrete sealed including culverts to provide all weather pedestrian access.

#### 4.4 Roadworks – Internal

- (a) The main internal access road servicing the entire development (from its intersection with Godfrey Road to the point in which it terminates at the western boundary of the site (labelled "Future Proposed Road Connection") must be constructed the 100-999 VPD road standard outlined in Table D1.4 Rural Road Elements of the FNQROC Development Manual (as amended).

A compacted gravel temporary turn-around area must be constructed at the end of the "Future Proposed Road Connection" and must be appropriately drained.

- (b) The internal access road servicing Stage 1 must be constructed the 100-999 VPD road standard outlined in Table D1.4 Rural Road Elements of the FNQROC Development Manual (as amended).
- (c) The internal access roads servicing Lots 24-28, 38-43 and 904, and 34-37 must be constructed to <100 VPD road standard outlined in Table D1.4 Rural Road Elements of the FNQROC Development Manual (as amended). A 4.5m wide seal must be maintained in all instances (at minimum).

The aforementioned works are required to be approved as part of a subsequent application to Council for Operational Works.

#### 4.5 Roadworks – External

- (a) Godfrey Road, from its intersection with Emerald End Road, to a point 10 metres past the intersection of the internal access road servicing the development must be constructed to a 6.5m wide bitumen sealed standard with kerb and channel on the northern side of the road only. The road alignment must be offset to the northern side of the road reserve to allow the future widening (to 10 metres) and installation of kerb and channel on the southern side of the road when development demands.
- (b) The intersection of Emerald End Road and the new section of Godfrey Road must be upgraded/constructed to comply with the FNQROC Development Manual (as amended), to the satisfaction of Council's delegated officer.
- (c) Bollards/barrier must be installed at the eastern end of the road required under a to prevent vehicles turning eastwards along the gravel section of Godfrey Road.

The aforementioned works are required to be approved as part of a subsequent application to Council for Operational Works.

#### 4.6 Water Supply

- (a) Where the existing reticulated water supply network does not currently service the site or is not at an adequate capacity, the developer is required to extend or upgrade the reticulated water supply infrastructure to connect the site to Council's existing infrastructure at a point that has sufficient capacity to service the development in accordance with FNQROC Development Manual standards (as amended).
- (b) A water service connection must be provided to each proposed lot in accordance with FNQROC Development Manual standards (as amended) to the satisfaction of Council's delegated officer.

#### 4.7 On-Site Wastewater Management

At the time of construction of a new dwelling on any lot, any associated on-site effluent disposal system must be constructed in compliance with the latest version On-Site Domestic Wastewater Management Standard (ASNZ1547) to the satisfaction of the Council's delegated officer.



**4.8 Electricity provision/supply**

The applicant/developer must ensure that an appropriate level of electricity supply is provided to each allotment in accordance with FNQROC Development Manual standards (as amended) to the satisfaction of Council's delegated officer.

Written advice from an Electricity Service Provider is to be provided to Council indicating that an agreement has been made for the provision of power reticulation.

**4.9 Telecommunications**

The applicant/developer must enter into an agreement with a telecommunication carrier to provide telecommunication services to each allotment and arrange provision of necessary conduits and enveloping pipes.

**4.10 Lighting**

Street lighting must be provided to all roads in accordance with FNQROC Development Manual requirements (as amended) and to the satisfaction of Council's delegated officer.

**REFERRAL AGENCIES**

The referral agencies applicable to this application are:

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  <a href="mailto:CairnsSARA@dsdmip.qld.gov.au">CairnsSARA@dsdmip.qld.gov.au</a>
(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) on any lot created, accepted operational work, other than operational work that is only the clearing of regulated regrowth vegetation, may be carried out		

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
401302 ST-01 Issue E	Staging Plan - Lot 219 on NR378	Veris	14/06/2022

**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) An Adopted Infrastructure Charges Notice has been issued with respect to the approved development. The Adopted Infrastructure Charges Notice details the type of infrastructure charge/s, the amount of the charge/s and when the charge/s are payable.

(b) The Adopted Infrastructure Charges Notice does not include all charges or payments that are payable with respect to the approved development. 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.

**(c) 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.

**(d) 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.

**(e) 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.



(f) Notation on Rates Record

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

- conditions regarding bushfire management including compulsory water storage for firefighting purposes
- a registered easement over the subject site (for any rear access lots with shared driveways)
- conditions regarding on-site effluent disposal (at time of dwelling construction)
- vegetation clearing restrictions imposed by the Department of State Development, Infrastructure, Local Government and Planning (Lots 900 - 904 only)

(g) Transportation of Soil

All soil transported to or from the site must be covered to prevent dust or spillage during transport. If soil is tracked or spilt onto the road pavements as a result of works on the subject site, it must be removed prior to the end of the working day and within four (4) hours of a request from a Council Officer.

(h) 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.dcceew.gov.au](http://www.dcceew.gov.au)

(i) 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.dsdsatsip.qld.gov.au](http://www.dsdsatsip.qld.gov.au)

**PROPERTY NOTES**

Not Applicable.

**FURTHER DEVELOPMENT PERMITS REQUIRED**

- Development Permit for Operational Work

**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.

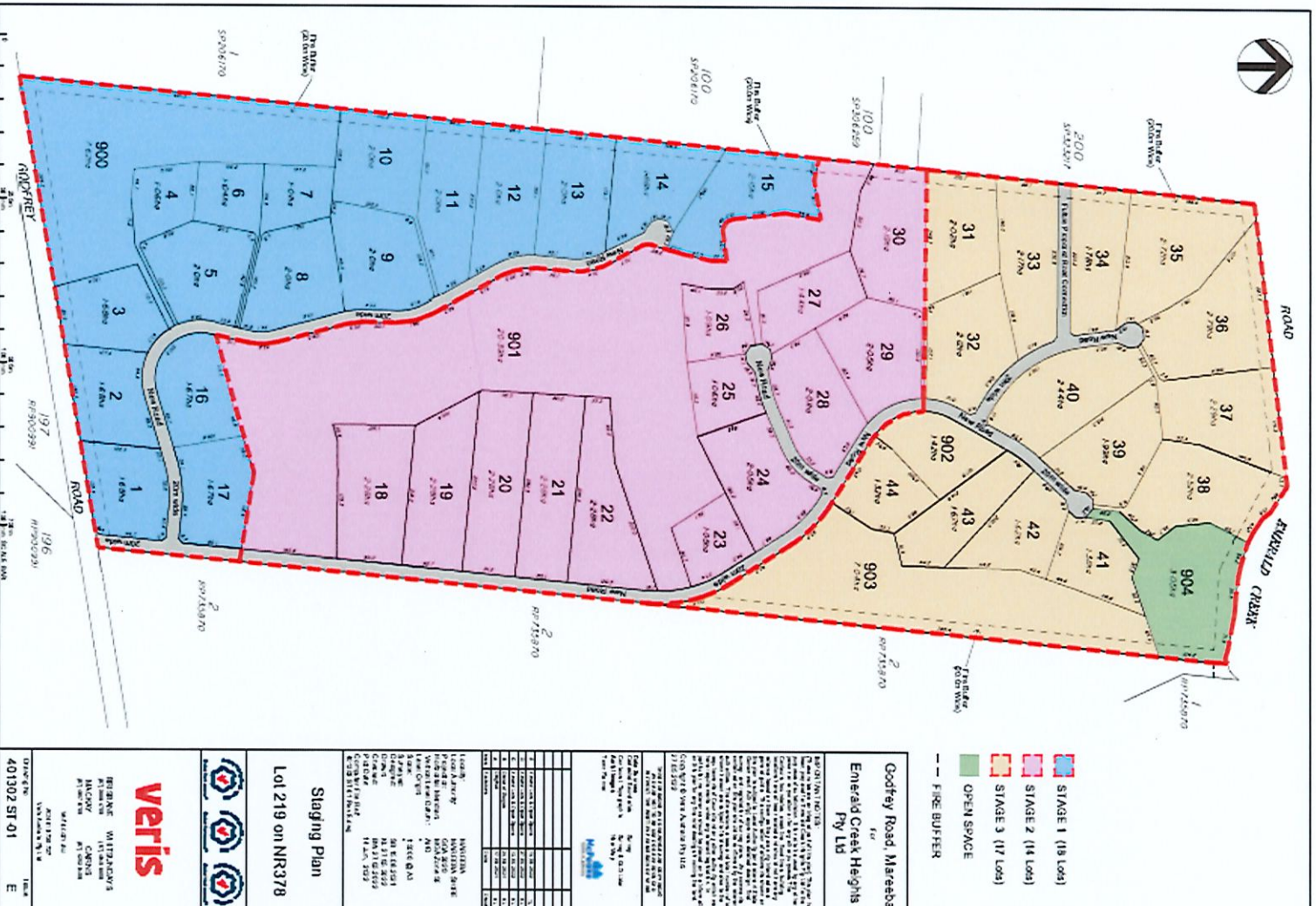
Yours faithfully



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

Enc:   Approved Plans/Documents  
      Referral Agency Response  
      Appeal Rights  
      Adopted Infrastructure Charge Notice

# Approved Plans/Documents



23/9/2022  
B. n. d.

## Referral Agency Response

RA6-N



SARA reference: 2110-25236 SRA  
Council reference: RAL/21/0016

22 July 2022

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

Attention: Carl Ewin

Dear Carl,

### SARA response—85 Godfrey Road, Mareeba

(Referral agency response given under section 58 of the *Planning Act 2016*)

The development application described below was confirmed as properly referred by the State Assessment and Referral Agency (SARA) on 19 October 2021.

### Response

Outcome:	Referral agency response – with conditions.
Date of response:	22 July 2022
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 for 1 into 49 lot rural residential subdivision
SARA role:	Referral Agency.	
SARA trigger:	Schedule 10, Part 3, Division 4, Table 2, Item 1 (Planning Regulation 2017) Clearing native vegetation	
SARA reference:	2110-25236 SRA	
Assessment Manager:	Mareeba Shire Council	

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DA Advisory Team (DAAT)  
Level 13, 1 William Street, Brisbane  
PO Box 15009 CITY EAST QLD 4002

2110-25236 SRA

Street address: 85 Godfrey Road, Mareeba  
Real property description: 219NR378  
Applicant name: Emerald Creek Heights Pty Ltd  
Applicant contact details: Level 2, Suite 2, 82 Grafton Street  
Cairns QLD 4870  
james@jamesmcpeake.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 Soraya Torrens, Senior Planner, on 07 3452 7695 or via email DAAT@dsdilgp.qld.gov.au who will be pleased to assist.

Yours sincerely



Christopher Aston  
State Planner

cc Emerald Creek Heights Pty Ltd, james@jamesmcpeake.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

2110-25236 SRA

**Attachment 1—Referral agency conditions**

(Under section 58(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</b>		
Schedule 10, Part 3, Division 4, Table 2, Item 1—The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of 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.	The development must be carried out generally in accordance with the following plan: Vegetation Management Plan on Lot 219 on NR378, reference 401302-CP01 and as amended in red by SARA.	At all times
2.	Clearing of vegetation must not occur on lots 900, 901, 902, 903 and 904 shown on the following plan: Vegetation Management Plan on Lot 219 on NR378, reference 401302-CP01 and as amended in red by SARA.  Note: This condition is not applicable where clearing of vegetation is exempt clearing work for essential management items (a), (b), (c), (d) and (e), under Schedule 21 of the Planning Regulation 2017.	At all times

2110-25238 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.



2110-25236 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 complies with State Code 16: Native vegetation clearing of SDAP. Specifically, the development:

- avoids impacts on vegetation that are matters of state environmental significance and where it cannot be avoided, the development minimises and mitigates impacts
- minimises clearing to conserve vegetation within the watercourse, avoids land degradation and maintains ecological processes.

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
- Technical agency advice
- SARA DA Mapping system

2110-25238 SRA

**Attachment 4—Change representation provisions**

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2110-25238 SRA

**Attachment 5—Approved plans and specifications**

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## 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 Rules<sup>1</sup> regarding representations about a referral agency response

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

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#### 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 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.

## **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.<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 an 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.