

**DELEGATED REPORT**

**SUBJECT:** M RUTHERFORD - RECONFIGURING A LOT - CREATING AN ACCESS EASEMENT - LOT 1 ON NR7544 & LOT 12 ON SP146289 - 1302 KENNEDY HIGHWAY, KURANDA - RAL/21/0027

**DATE:** 28 February 2022

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

**DEPARTMENT:** Corporate and Community Services

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**APPLICATION DETAILS**

APPLICATION		PREMISES	
<b>APPLICANT</b>	M Rutherford	<b>ADDRESS</b>	1302 Kennedy Highway, Kuranda
<b>DATE LODGED</b>	17 December 2021	<b>RPD</b>	Lot 1 on NR7544 & Lot 12 on SP146289
<b>TYPE OF APPROVAL</b>	Development Permit		
<b>PROPOSED DEVELOPMENT</b>	Reconfiguring a Lot - Creating an Access Easement		

<b>FILE NO</b>	RAL/21/0027	<b>AREA</b>	Lot 1 - 4,629m2 Lot 12 - 2.419ha
<b>LODGED BY</b>	M Rutherford	<b>OWNER</b>	M Rutherford
<b>PLANNING SCHEME</b>	Mareeba Shire Council Planning Scheme 2016		
<b>ZONE</b>	Rural zone		
<b>LEVEL OF ASSESSMENT</b>	Code Assessment		
<b>SUBMISSIONS</b>	n/a		

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**ATTACHMENTS:**

1. Proposal Plan/s
2. CairnsSARA Referral Agency Response dated 1 February 2022

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**EXECUTIVE SUMMARY**

Council is in receipt of a development application described in the above application details.

The application is code assessable and was not required to undergo public notification.

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

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

**OFFICER'S RECOMMENDATION**

1. That in relation to the following development application:

APPLICATION		PREMISES	
<b>APPLICANT</b>	M Rutherford	<b>ADDRESS</b>	1302 Kennedy Highway, Kuranda
<b>DATE LODGED</b>	17 December 2021	<b>RPD</b>	Lot 1 on NR7544 & Lot 12 on SP146289
<b>TYPE OF APPROVAL</b>	Development Permit		
<b>PROPOSED DEVELOPMENT</b>	Reconfiguring a Lot - Creating an Access Easement		

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 - Creating an Access Easement

(B) APPROVED PLANS:

Plan/Document Number	Plan/Document Title	Prepared by	Dated
6295-MR	Proposed Access Easement Emt A in Lot 1 on NR7544	RPS	2/02/21

(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, 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 Charges

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

### 4. Infrastructure Services and Standards

- 4.1 The access driveway within proposed Easement A must be constructed to a minimum 150mm thickness compacted gravel suitable for all weather, and dust free, in accordance with Table 9.4.3.3C of the Parking and Access Code, to the satisfaction of Council's delegated officer.

## (D) ASSESSMENT MANAGER'S ADVICE

### (a) 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.

### (b) 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.

### (c) Environmental Protection and Biodiversity Conservation Act 1999

The applicant is advised that referral may be required under the *Environmental Protection and Biodiversity Conservation Act 1999* if the proposed activities are likely to have a significant impact on a matter of national environmental significance. Further information on these matters can be obtained from [www.environment.gov.au](http://www.environment.gov.au).

(d) Cultural Heritage

In carrying out the activity the applicant must take all reasonable and practicable measures to ensure that no harm is done to Aboriginal cultural heritage (the “cultural heritage duty of care”). The applicant will comply with the cultural heritage duty of care if the applicant acts in accordance with gazetted cultural heritage duty of care guidelines. An assessment of the proposed activity against the duty of care guidelines will determine whether or to what extent Aboriginal cultural heritage may be harmed by the activity. Further information on cultural heritage, together with a copy of the duty of care guidelines and cultural heritage search forms, may be obtained from [www.datsip.qld.gov.au](http://www.datsip.qld.gov.au).

(E) CONCURRENCE AGENCY CONDITIONS

SARA Referral Agency response dated 1 February 2022.

(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

- Access approval arising from condition number 4.1

## THE SITE

The subject site comprises the following allotments:

- Lot 1 on NR7544, area of 4,629m<sup>2</sup>, approximately 185 metres of frontage to the Kennedy Highway. Improved by a dwelling house in the north-eastern corner, with the remainder of the site being densely vegetated;
- Lot 12 on SP146289, area of 2.419 hectares, approximately 87 metres of frontage to the Kennedy Highway. Densely vegetated with no improvements.

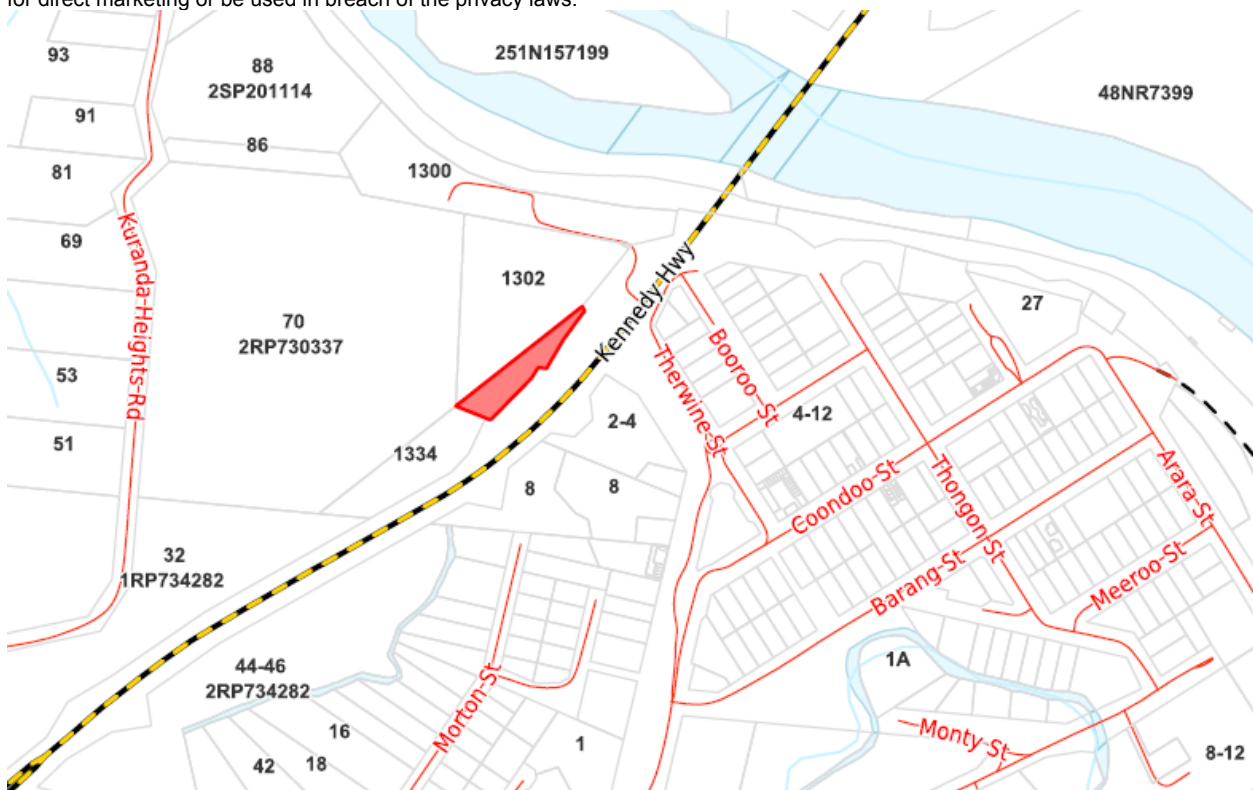
Despite both lots having extensive frontage to the Kennedy Highway, most of this frontage is unusable due to topographical constraints. The application proposes the creation of an access easement to facilitate practical access to each lot.

Both lots are zoned Rural and are likely to be developed for rural living purposes. The Kuranda Cemetery adjoins the northern boundary of Lot 12.



Map Disclaimer:

Based on or contains data provided by the State of Queensland (Department of Environment and Resource Management) (2009). In consideration of the State permitting use of this data you acknowledge and agree that the State gives no warranty in relation to the data (including accuracy, reliability, completeness, currency or suitability) and accepts no liability (including without limitation, liability in negligence) for any loss, damage or costs (including consequential damage) relating to any use of the data. Data must not be used for direct marketing or be used in breach of the privacy laws.



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## BACKGROUND AND CONTEXT

Nil

## PREVIOUS APPLICATIONS & APPROVALS

Nil

## DESCRIPTION OF PROPOSED DEVELOPMENT

The development application seeks a Development Permit for Reconfiguring a Lot - Creating an Access Easement in accordance with the plans shown in **Attachment 1**.

Proposed Easement A (96m<sup>2</sup>) will be located over the north-eastern tip of Lot 1 on NR7544 and will be in favour of adjoining Lot 12 on SP146289. The easement will be for access purposes and will allow the owners of Lot 12 to cross Lot 1 to enter and exit the Kennedy Highway.

The proposed easement has been sited in this location as it is considered to offer the most practical access to Lot 12.

## 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:	<b>Land Use Categories</b> <ul style="list-style-type: none"> <li>• <i>Rural Area</i> <ul style="list-style-type: none"> <li>▪ <i>Rural Other</i></li> </ul> </li> </ul> <b>Natural Environment Elements</b> <ul style="list-style-type: none"> <li>• <i>Biodiversity Area</i></li> </ul> <b>Transport Elements</b> <ul style="list-style-type: none"> <li>• <i>State Controlled Road</i></li> <li>• <i>Principal Cycle Route</i></li> </ul>
Zone:	Rural zone
Overlays:	Airport Environs Overlay Environmental Significance Overlay Flood Hazard Overlay Hill and Slope Overlay Scenic Amenity Overlay Transport Infrastructure Overlay

## RELEVANT PLANNING INSTRUMENTS

Assessment of the proposed development against the relevant planning instruments is summarised as follows:-

**(a) Far North Queensland Regional Plan 2009-2031**

Separate assessment against the Regional Plan is not required because the Mareeba Shire Council Planning Scheme appropriately advances the Far North Queensland Regional Plan 2009-2031, as it applies to the planning scheme area.

**(b) State Planning Policy**

Separate assessment against the State Planning Policy (SPP) is not required because the Mareeba Shire Council Planning Scheme appropriately integrates all relevant aspects of the SPP.

**(c) Mareeba Shire Council Planning Scheme 2016**

**Relevant Development Codes**

The following Development Codes are considered to be applicable to the assessment of the application:

- 6.2.9 Rural zone code
- 7.2.1 Kuranda local plan code
- 8.2.4 Environmental significance overlay code
- 8.2.6 Flood hazard overlay code
- 8.2.8 Hill and slope overlay code
- 8.2.11 Scenic amenity 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 did not include 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.

<b>Relevant Codes</b>	<b>Comments</b>
Rural zone code	The application can be conditioned to comply with the relevant acceptable outcomes contained within the code.
Kuranda local plan code	The application can be conditioned to comply with the relevant acceptable outcomes contained within the code.
Environmental significance overlay code	The application can be conditioned to comply with the relevant acceptable outcomes contained within the code.
Flood hazard overlay code	The application can be conditioned to comply with the relevant acceptable outcomes contained within the code.
Hill and slope overlay code	The application can be conditioned to comply with the relevant acceptable outcomes contained within the code.
Scenic amenity overlay code	The application can be conditioned to comply with the relevant acceptable outcomes contained within the code.

Landscaping code	The application can be conditioned to comply with the relevant acceptable outcomes contained within the code.
Parking and access code	The application can be conditioned to comply with the relevant acceptable outcomes contained within the code.
Reconfiguring a lot code	The application can be conditioned to comply with the relevant acceptable outcomes contained within the code.
Works, services and infrastructure code	The application can be conditioned to comply with the relevant acceptable outcomes contained within the code.

### (e) Planning Scheme Policies/Infrastructure Charges Plan

The following planning scheme policies are relevant to the application:

Planning Scheme Policy 4 - FNQROC Regional Development Manual

A condition will be attached to any approval requiring all development works be designed and constructed in accordance with FNQROC Development Manual standards.

### REFERRALS

The application triggered referral to State Assessment and Referral Agency as a Concurrence Agency (State transport infrastructure).

CairnsSARA advised in a letter dated 1 February 2022 that they require the conditions to be attached to any approval (**Attachment 2**).

### Internal Consultation

Not applicable.

### PLANNING DISCUSSION

Nil

**Date Prepared:** 28 February 2022



## DECISION BY DELEGATE

## DECISION

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

Dated the 28<sup>th</sup> day of FEBRUARY 2022



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

MAREEBA SHIRE  
AS A DELEGATE OF THE COUNCIL

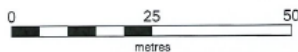
PROPOSAL PLANS



**IMPORTANT NOTE**

- This plan was prepared for the sole purpose of the client for the specific purpose of providing a valid plan. The plan is strictly limited to the purpose and does not apply directly or indirectly and will not be used for any other application, purpose, use or matter. The plan is prepared without the assumption of a duty of care to any other person (other than the Client (Third Party)) and may not be relied on by Third Party.
- RPS Australia East Pty Ltd will not be liable (in negligence or otherwise) for any direct or indirect loss, damage, liability or claim arising out of or incidental to:
  - The Third Party publishing, using or relying on this plan;
  - RPS Australia East Pty Ltd relying on information provided to it by the Client or a Third Party where the information is incorrect, incomplete, unreliable, outdated data or unverifiable;
  - any measurements or other facts with information or data sourced from a Third Party;
  - RPS Australia East Pty Ltd relying on surface indicators that are inconsistent to the actual.
- The Client or any Third Party not verifying information in this plan where recommended by RPS Australia East Pty Ltd;
- judgement of this plan with any loss or liability against the recommendation of RPS Australia East Pty Ltd;
- the accuracy, reliability, suitability or completeness of any equipment or software made or referred to by RPS Australia East Pty Ltd in this plan;

- Where suitable parameters 1 or 2 above, this plan may not be relied, distributed, or reproduced in any process unless the scale is clearly displayed on the plan.
- Scale when is correct for the original plan and any copies of the plan shall be verified by checking against the bar scale.
- The file boundaries as shown herein were not marked at the time of survey and have been determined by plan dimensions only and not by field survey.
- Proposed plan prepared by aerial imagery and other dimensions. Final line position, dimensions and area will be determined by field survey.



SCALE 1:750 IS APPLICABLE ONLY TO THE ORIGINAL SHEET SIZE (A3).

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Version: 1, Version Date: 17/12/2021

AMENDMENTS		PROJECT MANAGER	
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**MATT RUTHERFORD**

**Proposed Access Easement**

**Emt A in Lot 1 on NR7544**

**Benefitting Lot 12 on SP146289**

**Kennedy Highway/Kuranda Cemetery Access**

**Kuranda, Mareeba Shire**

**rps**

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SCALE 1:750 DATE 2/02/21 DRAWING NO. **6295-MR** ISSUE

## ATTACHMENT 2

RA6-N



SARA reference: 2201-26732 SRA  
 Council reference: RAL/21/0027

1 February 2022

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—Kuranda Heights Road and 1302 Kennedy Highway, Kuranda

(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 10 January 2022.

### Response

Outcome:	Referral agency response – with conditions.
Date of response:	1 February 2022
Conditions:	The condition in <b>Attachment 1</b> must be attached to any development approval.
Advice:	Advice to the applicant is in <b>Attachment 2</b> .
Reasons:	The reasons for the referral agency response are in <b>Attachment 3</b> .

### Development details

Description:	Development permit    Reconfiguring a Lot (Access Easement)
SARA role:	Referral Agency.
SARA trigger:	Schedule 10, Part 9, Division 4, Subdivision 2, Table 1 (Planning Regulation 2017)
	Development application for an access easement within 25m of a

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

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2201-26732 SRA

SARA reference: State-controlled road  
2201-26732 SRA

Assessment Manager: Mareeba Shire Council

Street address: Kuranda Heights Road, Kuranda and  
1302 Kennedy Highway, Kuranda

Real property description: Lot 12 on SP146289 and Lot 1 on NR7544

Applicant name: Mr Matthew Rutherford

Applicant contact details: 29 Warril Drive  
Kuranda QLD 4881  
mattrford@rocketmail.com

## Representations

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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 Mary McCarthy, Senior Planning Officer, on 47583404 or via email CairnsSARA@dsdilgp.qld.gov.au who will be pleased to assist.

Yours sincerely



Joanne Manson  
A/Manager (Planning)

cc Mr Matthew Rutherford, mattrford@rocketmail.com

enc Attachment 1 - Referral agency condition  
Attachment 2 - Advice to the applicant  
Attachment 3 - Reasons for referral agency response  
Attachment 4 - Representations provisions

### Attachment 1—Referral agency conditions

(Under section 56(1)(b)(i) of the *Planning Act 2016* the following condition must be attached to any development approval relating to this application)

No.	Conditions	Condition timing
<b>Reconfiguring a lot</b>		
<b>Vehicular access to a State-controlled road</b>		
10.9.4.2.4.1 – State transport corridors and future State transport corridors —The chief executive administering the <i>Planning Act 2016</i> nominates the Department of Transport and Main Roads 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:		
1.	<p>(a) The applicant must register an access easement on the title of Lot 1 on NR7544 for the shared access to Lot 12 on SP146289.</p> <p>(b) The applicant must provide to Cairns Corridor Management Unit (Far.North.Queensland.IDAS@tmr.qld.gov.au) of the Department of Transport and Main Roads a copy of Registration Confirmation Statement/s and easement registration dealing number/s as evidence of the registration of the easement/s referred to in part (a) of this condition.</p>	<p>(a) At the time of survey plan registration.</p> <p>(b) Within 20 business days of registration of the easements.</p>

**Attachment 2—Advice to the applicant**

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<b>General advice</b>	
1.	Terms and phrases used in this document are defined in the <i>Planning Act 2016</i> its regulation or the State Development Assessment Provisions (SDAP) [v2.6]. If a word remains undefined it has its ordinary meaning.

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

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

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**The reasons for SARA's decision are:**

The proposed development complies with State code 1: Development within a State-controlled road environment of the SDAP. Specifically, the development achieves the purpose of the code as it is appropriately designed and located that it does not:

- require an upgrade to the existing State-controlled road access
- create a safety hazard for users of a State-controlled road
- result in a worsening of the physical condition or operating performance of the State-controlled road and the surrounding road network; and
- compromise the State's ability to construct, maintain and operate State-controlled roads.

**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 SARAt
- The Development Assessment Rules
- SARA DA Mapping system

**Attachment 4—Change representation provisions**

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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.