



21 September 2023

Senior Planner: Carl Ewin  
Direct Phone: (07) 4086 4656  
Our Reference: RAL/23/0004  
Your Reference: 2203 - Copland

Steven and Amanda Grist  
C/- Innovate Urban  
PO Box 8170  
CAIRNS QLD 4870

Dear Applicants,

## **Decision Notice**

### ***Planning Act 2016***

I refer to your application and advise that on 20 September 2023, Council decided to approve the application in full subject to conditions.

Details of the decision are as follows:

#### **APPLICATION DETAILS**

Application No:	RAL/23/0004
Street Address:	1 Copland Road, Koah
Real Property Description:	Lot 672 on SP295201
Planning Scheme:	Mareeba Shire Council Planning Scheme 2016

#### **DECISION DETAILS**

Type of Decision:	Approval
Type of Approval:	Development Permit for Reconfiguration of a Lot Subdivision (1 into 3 Lots)
Date of Decision:	20 September 2023



### 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

#### (C) ASSESSMENT MANAGER’S CONDITIONS (COUNCIL)

##### (a) Development assessable against the Planning Scheme

1. Development must be carried out generally in accordance with the approved plans and the facts and circumstances of the use as submitted with the application, subject to any alterations:

- found necessary by Council’s delegated officer at the time of examination of the engineering plans or during construction of the development because of particular engineering requirements; and
- to ensure compliance with the following conditions of approval.

2. Timing of Effect

The conditions of the development permit must be complied with to the satisfaction of Council’s delegated officer prior to the endorsement of the plan of survey, except where specified otherwise in these conditions of approval.

3. General

- 3.1 The development approval would not have been issued if not for the conditions requiring the construction of infrastructure or the payment of infrastructure charges 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 Lot Size

Lots 1 and 2 must achieve sizes of at least 1.5 hectares and 1.25 hectares respectively.

3.9 Slope Stability

For any new building work proposed on a slope of 15% or greater, the applicant/developer must provide Council with a site specific geotechnical report prepared by a suitably qualified Registered Professional Engineer of Queensland (RPEQ) that certifies:

- the long-term stability of the development site; and
- that the development site will not be adversely affected by land slide/slip activity originating on sloping land above the development site.

3.10 Flood Immunity

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

3.11 Bushfire Hazard Management

3.11.1 Any new dwelling erected on the proposed allotments must:



- (i) Achieve a setback from hazardous vegetation of 1.5 times the predominant mature canopy tree height or 10 metres, whichever is greater.
- (ii) Include on-site water storage of not less than 5,000 litres, with a 50mm male camlock fire brigade fitting where necessary, to be provided at the same time the dwelling is constructed.

3.11.2 A Bushfire Hazard Management Plan must be prepared for each lot to the satisfaction of Council's delegated officer. The future use of each lot must comply with the requirements of the Management Plan at all times.

### 3.12 Charges

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

## 4. Infrastructure Services and Standards

### 4.1 Access

4.1.1 New or existing access crossovers must be upgraded/constructed (from the edge of Koah Road to the property boundaries of Lots 1 and 2) in accordance with the FNQROC Development Manual, to the satisfaction of Council's delegated officer.

Given the location of the access handle for Lot 3 adjacent the Koah/Copland Road intersection and given the construction standard and geometry of the intersection, access crossover works are not required for Lot 3.

4.1.2 The access handle driveway for Lot 3 is to be constructed to a two (2) coat bitumen, asphalt or concrete sealed standard for the full length of the access handle, to the satisfaction of Council's delegated officer. The driveway will:

- have a minimum sealed width of 3 metres; and
- be formed with one-way cross fall to cater for stormwater drainage such that any stormwater runoff is contained within the access handle.

### 4.2 Frontage Works - Koah Road

4.2.1 Prior to the endorsement of a plan of survey, the applicant/developer must widen the development side of Koah Road only by a total of two (2) metres (1.25 metre bitumen seal, 0.75 metre gravel shoulder) in accordance with Table D1.4 (Road Class 100 - 999) of the FNQROC Development Manual, to the satisfaction of Council's delegated officer. The road must be widened for a length of 140 metres only starting from the western corner of the site (adjacent the access crossover of Lot 671 on SP295201 and extending south-east).



Prior to works commencing, plans for the works described above must be approved as part of a subsequent application for Operational Works.

4.2.2 In lieu of undertaking the abovementioned operational works, the applicant/developer may elect to provide a monetary contribution to Council equal to the cost of undertaking the works required by condition 4.2.1. A written itemised quote from a civil contractor to determine the cost of the works must first be provided to Council and accepted by Council's delegated officer. The monetary contribution must be paid prior to the endorsement of the plan of survey.

#### 4.3 Stormwater Drainage

4.3.1 The applicant/developer must take all necessary steps to ensure a non-worsening effect on surrounding land, as a consequence of the development and must take all reasonable and practical measures to ensure discharge occurs in compliance with the Queensland Urban Drainage Manual (QUDM) and the FNQROC Development Manual, to the satisfaction of Council's delegated officer.

4.3.2 All stormwater drainage must be discharged at a lawful point of discharge.

#### 4.4 Water Supply

At the time of construction of a new dwelling on any lot, a water supply must be provided via:

- (a) a bore or bores are provided in accordance with the Design Guidelines set out in the Planning Scheme Policy 4 – FNQROC Regional Development Manual; or
- (b) on-site water storage tank/s:
  - (i) with a minimum capacity of 90,000L; and
  - (ii) which are installed and connected prior to the occupation of the dwelling.
- (c) Water access rights to a perennial watercourse.

#### 4.5 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 (AS/NZ1547) to the satisfaction of the Council's delegated officer.

#### 4.6 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.

#### 4.7 Telecommunications

The applicant/developer must demonstrate that a connection to the national broadband network is available for each allotment, or alternatively, enter into an agreement with a telecommunication carrier to provide telecommunication services to each lot and arrange provision of necessary conduits and enveloping pipes.

### 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 <a href="mailto:CairnsSARA@dsdilgp.qld.gov.au">CairnsSARA@dsdilgp.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		
(c) 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
DA-001	Plan of Development 1 Copland Road, Koah	Innovate Urban	28/07/2023

**ADVISORY NOTES**

The following notes are included for guidance and information purposes only and do not form part of the assessment manager conditions:

(D) 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) Endorsement Fees
- Council charges a fee for the endorsement of a Survey Plan, Community Management Statements, easement documents, and covenants. The fee is set out in Council's Fees & Charges Schedule applicable for each respective financial year.
- (d) Compliance with applicable codes/policies
- The development must be carried out to ensure compliance with the provisions of Council's Local Laws, Planning Scheme Policies, Planning Scheme and Planning Scheme Codes to the extent they have not been varied by a condition of this approval.
- (e) Notation on Rates Record
- A notation will be placed on Council's Rate record with respect to each lot regarding the following conditions:
- Conditions regarding on-site water supply applicable at time of new dwelling construction of each lot.



- Conditions regarding on-site effluent disposal applicable at time of new dwelling construction on each lot.
- Conditions relevant to any future building works on sloping land
- Conditions regarding bushfire management/bushfire management plan
- A registered easement over the subject site (Lot 2 Only)
- Conditions regarding flood immunity

(f) Environmental Protection and Biodiversity Conservation Act 1999

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

(g) Cultural Heritage

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

(h) Electric Ants

Electric ants are designated as restricted biosecurity matter under the *Biosecurity Act 2014*.

Certain restrictions and obligations are placed on persons dealing with electric ant carriers within the electric ant restricted zone. Movement restrictions apply in accordance with Sections 74–77 of the *Biosecurity Regulation 2016*. Penalties may be imposed on movement of electric ant carriers and electric ants in contravention of the legislated restrictions. It is the responsibility of the applicant to check if the nominated property lies within a restricted zone.

All persons within and outside the electric ant biosecurity zone have an obligation (a **general biosecurity obligation**) to manage biosecurity risks and threats that are under their control, they know about, or they are expected to know about. Penalties may apply for failure to comply with a general biosecurity obligation.

For more information please visit the electric ant website at [Electric ants in Queensland | Business Queensland](http://ElectricantsinQueensland.com.au) or contact Biosecurity Queensland 13 25 23.



**PROPERTY NOTES**

Not Applicable.

**FURTHER DEVELOPMENT PERMITS REQUIRED**

- Development Permit for Operational Work
- Access approval arising from condition number 4.1 (Please contact Planning Section to obtain application form and applicable fee)

**SUBMISSIONS**

There were six (6) properly made submissions about the application. In accordance with the *Planning Act 2016*, the name, residential or business address, and electronic address of the principal submitter for each properly made submission is provided below:

Name of Principal Submitter	Address
1. Vickram Singh	1153 Koah Road, Koah QLD 4881 <a href="mailto:sales@koahrealty.com.au">sales@koahrealty.com.au</a>
2. Julie Brunt (Fruitful Farm)	922 Koah Road, Koah QLD 4881
3. Craig Thomas (Fruitful Farm)	922 Koah Road, Koah QLD 4881
4. Daniel Merretz & Natalie Waller	525 Koah Road, Koah QLD 4881
5. Danial & Jaide Stronggrove	1058 Koah Road, Koah QLD 4881
6. Miira Kostava	<a href="mailto:miirakostava@skymesh.com.au">miirakostava@skymesh.com.au</a>

**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”.

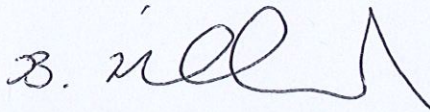


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<b>OTHER DETAILS</b>
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If you wish to obtain more information about Council's decision, electronic copies are available on line at [www.msc.qld.gov.au](http://www.msc.qld.gov.au), or at Council Offices.

Yours faithfully

A handwritten signature in black ink, appearing to read 'B. Millard', with a stylized flourish at the end.

**BRIAN MILLARD**  
**COORDINATOR PLANNING SERVICES**

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

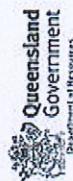


## Approved Plans/Documents

Product of  
Queensland Globe



For more information, visit [www.qld.gov.au/development](http://www.qld.gov.au/development)  
 or call 13 23 23  
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Plan of Development - 1 Copland Road, Koah  
 DA-00128 July 2023



21/9/2023  
 B. M. O.



## Referral Agency Response

RA6-N



SARA reference: 2305-34912 SRA  
Council reference: RAL/23/0004  
Applicant reference: 2203-Copland

17 August 2023

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

Attention: Brian Millard

Dear Sir / Madam

### SARA referral agency response – 1 Copland Road, 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 7 June 2023.

### Response

Outcome:	Referral agency response – with conditions
Date of response:	17 August 2023
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 - Subdivision (1 into 3 lots)
SARA role:	Referral agency	
SARA trigger:	Schedule 10, Part 3, Division 4, Table 2 (Planning Regulation 2017)	– Reconfiguring a lot involving clearing native vegetation



2305-34912 SRA

SARA reference: 2305-34912 SRA  
Assessment manager: Mareeba Shire Council  
Street address: 1 Copland Road, Koah  
Real property description: Lot 672 on SP295201  
Applicant name: Amanda Grist and Steve Grist  
Applicant contact details: C/- Innovate Urban Pty Ltd  
PO Box 8170  
CAIRNS QLD 4870  
peter@innovateurban.com.au

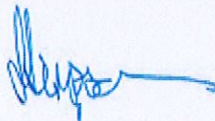
### Representations

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 Charlton Best, Senior Planning Officer, on 07 4037 3200 or via email CairnsSARA@dsdilgp.qld.gov.au who will be pleased to assist.

Yours sincerely



Leanne Simpson  
Acting Manager (Planning)

cc Innovate Urban Pty Ltd, peter@innovateurban.com.au

enc Attachment 1 - Referral agency conditions  
Attachment 2 - Advice to the applicant  
Attachment 3 - Reasons for referral agency response  
Attachment 4 - Representations about a referral agency response  
Attachment 5 - Approved plan and derived reference points



2305-34912 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)

No.	Conditions of Development Approval	Condition Timing
<b>Reconfiguring a Lot</b>		
Schedule 10, Part 3, Division 4, Table 2 – Clearing native vegetation — 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 conditions:		
1.	Built infrastructure, other than for fences, roads or underground services, must not be established, constructed or located within Area C (C <sup>1</sup> and C <sup>2</sup> ) as shown on the attached: (a) Vegetation Management Plan, prepared by Queensland Government, reference VMP 2305-34912 SRA, Sheet 1 of 1, version 2; and (b) Attachment to Vegetation Management Plan VMP 2305-34912 SRA Derived Reference Points for GPS.	At all times.
2.	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.	At all times.



2305-34912 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) v3.0. If a word remains undefined it has its ordinary meaning.



2305-34812 SRA

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**Attachment 3—Reasons for referral agency response***(Given under section 56(7) of the Planning Act 2016)*

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The reasons for the department's decision are:

The proposed development, with conditions, complies with the relevant provisions of State code 16 of the SDAP in that:

- The proposed development avoids clearing, or where avoidance is not reasonably possible, minimises clearing to conserve vegetation, avoid the loss of biodiversity and maintain ecological processes
- Clearing is limited to 0.481ha along the north-western side boundary and south-eastern corner of the site to allow for firebreak/safety buffer, essential management, driveway access to Lot 3 and provision of an easement for water rights from the Clohesy River to service proposed Lots 1 and 2.
- The proposed development retains sufficient vegetation to maintain ecological processes and ensure the regional ecosystem remains in the landscape.

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 3.0)
- The Development Assessment Rules
- SARA DA Mapping system
- *Human Rights Act 2019*



2305-34912 SRA

#### **Attachment 4— Change representation provisions**

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(page left intentionally blank – attached separately)



2305-34912 SRA

**Attachment 5—Documents referenced in conditions**

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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**

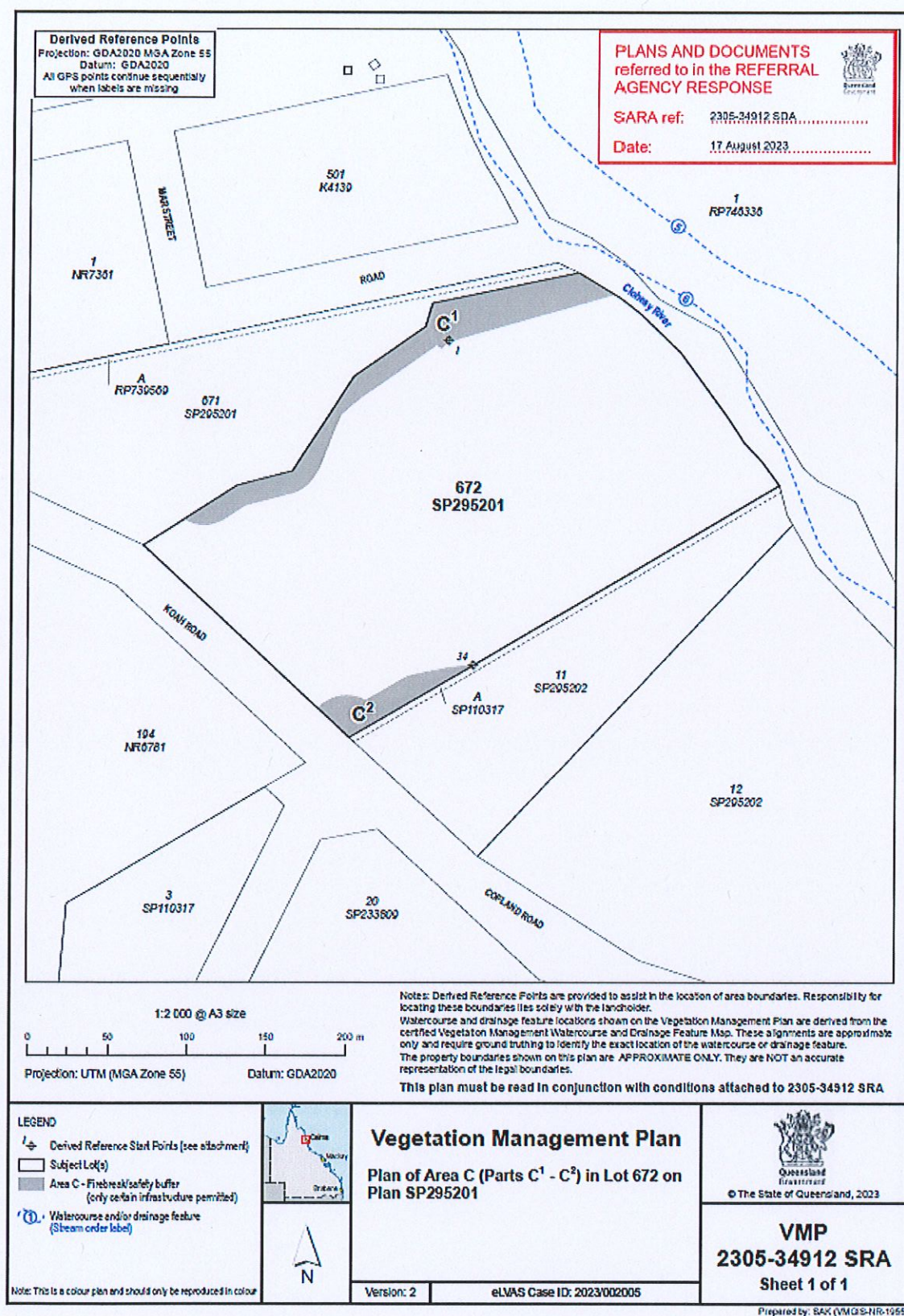
### **30 Representations about a referral agency response**

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.







**Attachment to Plan: 2305-34912 SRA**  
**Derived Reference Points**  
**Datum: GDA2020, Projection: MGA Zone 55**

Notes: Derived Reference Points are provided to assist in the location of area boundaries.  
 Responsibility for locating these boundaries lies solely with the landholder and designated contractor(s).  
 Coordinates start at a point indicated on the accompanying plan and proceed in a clockwise direction.

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



SARA ref: 2305-34912 SRA.....

Date: 17 August 2023.....

Part ID	Unique ID	Easting	Northing	Part ID	Unique ID	Easting	Northing	Part ID	Unique ID	Easting	Northing
C1	1	341873	8133821								
C1	2	341888	8133827								
C1	3	341885	8133829								
C1	4	341883	8133827								
C1	5	341824	8133800								
C1	6	341819	8133896								
C1	7	341835	8133885								
C1	8	341801	8133873								
C1	9	341894	8133854								
C1	10	341882	8133851								
C1	11	341889	8133846								
C1	12	341887	8133843								
C1	13	341885	8133840								
C1	14	341882	8133838								
C1	15	341879	8133835								
C1	16	341875	8133825								
C1	17	341848	8133820								
C1	18	341832	8133819								
C1	19	341829	8133817								
C1	20	341825	8133816								
C1	21	341821	8133815								
C1	22	341817	8133816								
C1	23	341813	8133816								
C1	24	341810	8133818								
C1	25	341808	8133819								
C1	26	341841	8133840								
C1	27	341870	8133849								
C1	28	341814	8133839								
C1	29	341858	8133840								
C1	30	341863	8133845								
C1	31	341855	8133878								
C1	32	341873	8133881								
C1	33	341875	8133881								
C2	34	341889	8133872								
C2	35	341810	8133881								
C2	36	341893	8133890								
C2	37	341893	8133890								
C2	38	341896	8133893								
C2	39	341899	8133895								
C2	40	341903	8133896								
C2	41	341907	8133897								
C2	42	341911	8133898								
C2	43	341815	8133897								
C2	44	341819	8133896								
C2	45	341820	8133895								
C2	46	341848	8133878								
C2	47	341850	8133870								
C2	48	341853	8133871								
C2	49	341872	8133875								
C2	50	341879	8133876								
C2	51	341875	8133875								
C2	52	341889	8133877								



## 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.