



10 January 2024

Senior Officer: Carl Ewin  
Direct Phone: 07 4086 4656  
Our Reference: RAL/23/0011  
Your Reference: F23/26

Rembern Pty Ltd  
C/ - Freshwater Planning  
17 Barronview Drive  
FRESHWATER QLD 4870

Dear Applicants,

## **Decision Notice**

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

I refer to your application and advise that on 9 January 2024 under delegated authority, Council decided to approve the application in full subject to conditions.

Details of the decision are as follows:

#### **APPLICATION DETAILS**

Application No:	RAL/23/0011
Street Address:	28 Reynolds Street, Mareeba
Real Property Description:	Lot 1 on M356124
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 lot into 7 lots) in two (2) stages
Date of Decision:	9 January 2024



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**CURRENCY PERIOD OF APPROVAL**

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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**

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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**

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(C) ASSESSMENT MANAGER'S CONDITIONS (COUNCIL)

(a) Development assessable against the Planning Scheme

1. Development must be carried out generally in accordance with the approved plans and the facts and circumstances of the use as submitted with the application, subject to any alterations:
  - found necessary by Council's delegated officer at the time of examination of the engineering plans or during construction of the development because of particular engineering requirements; and
  - to ensure compliance with the following conditions of approval.
2. Timing of Effect
  - 2.1 The conditions of the development permit must be complied with for each stage to the satisfaction of Council's delegated officer prior to the endorsement of the plan of survey for the respective 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 within the conditions of approval.
  - 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 must be made prior to the endorsement of the plan of survey and at the rate applicable at the time of payment.



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- 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 otherwise 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 Where approved existing buildings and structures are to be retained, setbacks to any new property boundaries are to be in accordance with Planning Scheme requirements for the relevant structure and/or Queensland Development Code. A plan demonstrating compliance of any existing buildings or structures that are in close proximity to any new property boundary must be submitted prior to endorsement of the plan of survey.
- 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 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

A **Commercial** access crossover must be constructed to each of proposed Lots 1 and 2 (from the edge of the Costin Street road pavement to the property boundary of the subject lot) in accordance with the FNQROC Development Manual, to the satisfaction of Council's delegated officer.

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 applicant/developer must construct the stormwater drainage infrastructure in accordance with the approved Stormwater Management Plan and/or Stormwater Quality Management Plan and Report.
- (f) 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.
- (g) 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.
- (h) All stormwater drainage collected from the site must be discharged to an approved legal point of discharge.
- (i) The applicant (at their cost) must video all stormwater lines and submit the video for inspection by Council's delegated officer prior to the development being taken "off maintenance" to ensure that no defects have occurred during the 12 month maintenance period.
- (j) All drainage easements must be constructed to prevent erosion. Construction may be in the form of a concrete invert, with outlet protection.

#### 4.3 Frontage Works - Costin Street – Stage 1

The developer is required to construct the following works, designed in accordance with FNQROC Development Manual standards (as amended) to the satisfaction of Council's delegated officer:

- (a) The developer is to construct kerb and channel on the development side of Costin Street for the full frontage of the subject land. The alignment for the kerb and channel shall be 6 metres from the existing Costin Street centreline;



- (b) The applicant is to widen the existing bitumen seal on Costin Street to the kerb and channel required by Condition 4.3(a);
- (c) Signage and line marking as per the Department of Transport and Main Roads Manual of Uniform Traffic control Devices (MUTCD);
- (d) Footpath earthworks, topsoiling and turfing reinstatement of all disturbed footpath areas;
- (e) Adjustments and relocations necessary to public utility services resulting from these works;

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

#### 4.4 Internal roads – Stage 2

- (a) The internal roads must be designed and constructed to Industrial Access Street standard in accordance with Council's FNQROC Development Manual.
- (b) The extension of Sales Floor Street must be marked with a "No Exit" sign to prevent vehicles exiting the development via Sales Floor Street onto Reynolds Street.

#### 4.5 Water Supply

- 4.5.1 The developer must connect the proposed development to Council's reticulated water supply in accordance with FNQROC Development Manual standards (as amended) to the satisfaction of Council's delegated officer.
- 4.5.2 Where the existing reticulated water supply 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).
- 4.5.3 A water service connection is to be provided to each lot.

#### 4.6 Sewerage Connection

The developer must connect the proposed development to Council's reticulated sewerage system in accordance with FNQROC Development Manual standards (as amended) to the satisfaction of Council's delegated officer.



Where sewerage connections are not available to the site, or where existing connections are not satisfactory for the proposed development, the developer is required to extend or upgrade the reticulated sewerage 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).

#### 4.7 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.

#### 4.8 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.

### REFERRAL AGENCIES

The referral agencies applicable to this application are:

Table 1 - Reconfiguring a lot near a State transport corridor		
Development application for reconfiguring a lot that is assessable development under section 21, if-	Schedule 10, Part 9, Division 4, Subdivision 2, Table 1	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) all or part of the premises are within 25m of a State transport corridor; and		
(b) 1 or more of the following apply-		
(i) the total number of lots is increased;		
(ii) the total number of lots adjacent to the State transport corridor is increased;		
(iii) there is a new or changed		



<p>access between the premises and the State transport corridor;</p> <p>(iv) an easement is created adjacent to a railway as defined under the Transport Infrastructure Act, schedule 6; and</p> <p>(c) the reconfiguration does not relate to government supported transport infrastructure</p>		
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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
9180-LL1 Rev A	Proposed Reconfiguration of a Lot (1 Lot into 7 Lots) Staged Development	Twine Surveys	08.08.2013

#### 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.



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(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:

- a registered easement over the subject site

(g) 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).

(h) 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).



(i) 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](#) or contact Biosecurity Queensland 13 25 23.

#### 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”.

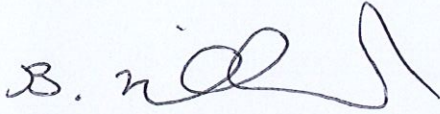


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<b>OTHER DETAILS</b>
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If you wish to obtain more information about Council's decision, electronic copies are available on line at [www.msc.qld.gov.au](http://www.msc.qld.gov.au), or at Council Offices.

Yours faithfully

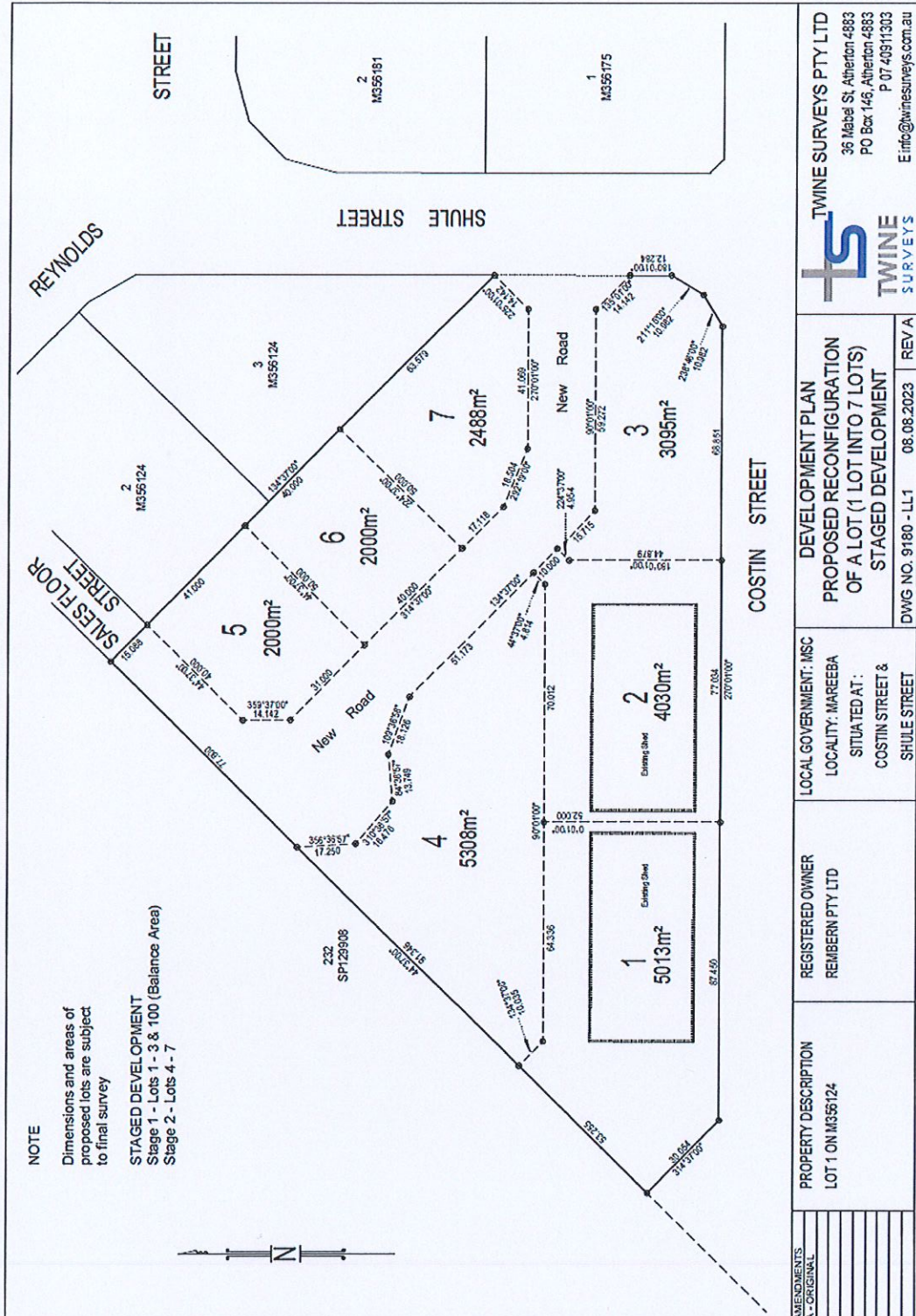


**BRIAN MILLARD**  
**COORDINATOR PLANNING SERVICES**

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



## Approved Plans/Documents



10/1/2024  
B. n. [Signature]



## Referral Agency Response

RA6-N



SARA reference: 2309-36951 SRA  
Council reference: RAL/23/0011  
Applicant reference: F23/26

16 November 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 – Industrial Subdivision at 28 Reynolds Street, Mareeba

(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 9 October 2023.

#### Response

Outcome:	Referral agency response – with conditions
Date of response:	16 November 2023
Conditions:	The conditions 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 (one lot into seven lots and new road)
SARA role:	Referral agency	
SARA triggers:	Schedule 10, Part 9, Division 4, Subdivision 2, Table 1 (Planning	



2309-36951 SRA

Regulation 2017) – Reconfiguring a lot near a state-controlled road  
**Schedule 10, Part 9, Division 4, Subdivision 1, Table 1** (Planning  
Regulation 2017) – Development impacting on State transport  
infrastructure

SARA reference: 2309-36951 SRA  
Assessment manager: Mareeba Shire Council  
Street address: 28 Reynolds Street, Mareeba  
Real property description: Lot 1 on M356124  
Applicant name: REMBERN Pty Ltd  
Applicant contact details: C/- Freshwater Planning Pty Ltd  
17 Barron View Drive  
FRESHWATER QLD 4870  
freshwaterplanning@outlook.com

*Human Rights Act 2019*  
considerations:

A consideration of the 23 fundamental human rights protected under the Human Right Act 2019 has been undertaken as part of this decision. It has been determined that this decision does not limit human rights.

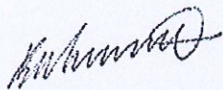
### Representations

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



Brett Nancarrow  
Manager (Planning)

cc REMBERN Pty Ltd, freshwaterplanning@outlook.com  
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



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**Attachment 1—Referral agency conditions**

(Under section 56(1)(b)(i) of the *Planning Act 2016* the following conditions must be attached to any development approval relating to this application) (Copies of the documents referenced below are found at Attachment 5)

No.	Conditions	Condition timing
<b>Reconfiguring a lot</b>		
Schedule 10, Part 9, Division 4, Subdivision 2, Table 1 – Reconfiguring a lot near a state-controlled road, and Schedule 10, Part 9, Division 4, Subdivision 1, Table 1 – Development impacting on State transport infrastructure - The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of 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 conditions:		
<b>Fencing</b>		
1.	Provide fencing along the site boundary with the railway corridor, in accordance with Queensland Rail drawing number QR-C-S3230 – 1.8m High Chain Link Security Fence Without Rails using 50mm Diamond Mesh General Arrangement.	Prior to submitting the Plan of Survey to the local government for approval for the relevant stage.
<b>Filling and excavation</b>		
2.	Any excavation, filling/backfilling/compaction, retaining structures, stormwater management measures, batters and other works involving ground disturbance must not encroach upon or de-stabilise the railway corridor, including all transport infrastructure or the land supporting this infrastructure, or cause similar adverse impacts.	At all times.
<b>Stormwater management</b>		
3.	<p>(a) The stormwater management of the development must not cause worsening to the operating performance of the railway corridor such that any works on the land must not:</p> <ul style="list-style-type: none"> <li>(i) create any new discharge points for stormwater runoff onto the railway corridor;</li> <li>(ii) concentrate or increase the velocity of flows to the railway corridor;</li> <li>(iii) interfere with and/or cause damage to the existing stormwater drainage on the railway corridor;</li> <li>(iv) surcharge any existing culvert or drain on the railway corridor;</li> <li>(v) reduce the quality of stormwater discharge onto the railway corridor.</li> </ul> <p>(b) Submit RPEQ certification, with supporting documentation, to the Program Delivery and Operations Branch, Far North Queensland Region (<a href="mailto:Far.North.Queensland.IDAS@tmr.qld.gov.au">Far.North.Queensland.IDAS@tmr.qld.gov.au</a>) within the Department of Transport and Main Roads, confirming that the development has been constructed in accordance with part (a) of this condition.</p>	<p>(a) At all times.</p> <p>(b) Within 20 business days of the completion of works.</p>
<b>Vehicle Barrier</b>		
4.	(a) Provide a vehicle barrier sufficient to prevent the maximum design vehicle colliding with the boundary fence and into the	(a) Prior to submitting the Plan of Survey



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	railway corridor at the location shown on the Development Plan, prepared by Twine Surveys Pty Ltd, dated 08.08.2023, drawing number 9180 – LL1 and revision A (as amended in red).	to the local government for approval for the relevant stage.
(b)	Submit RPEQ certification, with supporting documentation, to the Program Delivery and Operations Branch, Far North Queensland Region ( <a href="mailto:Far.North.Queensland.IDAS@tmr.qld.gov.au">Far.North.Queensland.IDAS@tmr.qld.gov.au</a> ) within the Department of Transport and Main Roads, confirming that the development has been constructed in accordance with part (a) of this condition.	(b) Within 20 business days of the completion of works.



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**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) (version 3.0). If a word remains undefined it has its ordinary meaning.
Railway Corridor	
2.	As per the Memorandum of Understanding between the Local Government Association of Queensland and Queensland Rail and the Department of Transport and Main Roads with respect to the Management and Funding Responsibility for Level Crossing Safety, the local government is responsible for any safety upgrades to a level crossing if the change in risk to the level crossing is due to changes in nearby land uses which have been authorised by local government.
3.	<p>Pursuant to section 255 of the <i>Transport Infrastructure Act 1994</i>, the railway manager's written approval is required to carry out works in or on a railway corridor or otherwise interfere with the railway or its operations.</p> <p>In particular, the applicant should consult with Queensland Rail prior to constructing retaining walls and prior to removing existing fencing or installing new fencing along the site boundary with the railway corridor. All fencing and works (including retaining walls) including footings, should be located within the site and not in the railway corridor.</p> <p>Please be advised that this referral agency response does not constitute an approval under section 255 of the <i>Transport Infrastructure Act 1994</i> and that such approvals need to be separately obtained from the relevant railway manager.</p> <p>The applicant should contact the Queensland Rail Property Team at <a href="mailto:QRPropertyWayleaves@qr.com.au">QRPropertyWayleaves@qr.com.au</a> in relation to this matter.</p>



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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 SARA's decision are:**

- The proposed development is unlikely to compromise the safety, function, and efficiency on the adjoining railway corridor.
- No direct vehicular access is proposed between the subject site and the adjoining railway corridor.
- The development has been conditioned to ensure that stormwater and drainage does not cause worsening to the operating performance of the adjoining railway corridor.
- Required connections to council services, essential utilities and infrastructure for the proposed development can be obtained via the existing infrastructure located within close proximity to the subject site.
- The proposed development will not impact on the ability or cost to plan, construct, maintain or operate state transport corridors.
- The proposed application does not include noise sensitive development.
- SARA has carried out an assessment of the development application against State Code 2: Development in a railway environment and State Code 6: Protection of state transport networks and has found that with conditions, the proposed development complies with relevant performance outcomes.

**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*

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**Attachment 4—Representations about a referral agency response provisions**

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*(page left intentionally blank – attached separately)*



2309-36951 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**

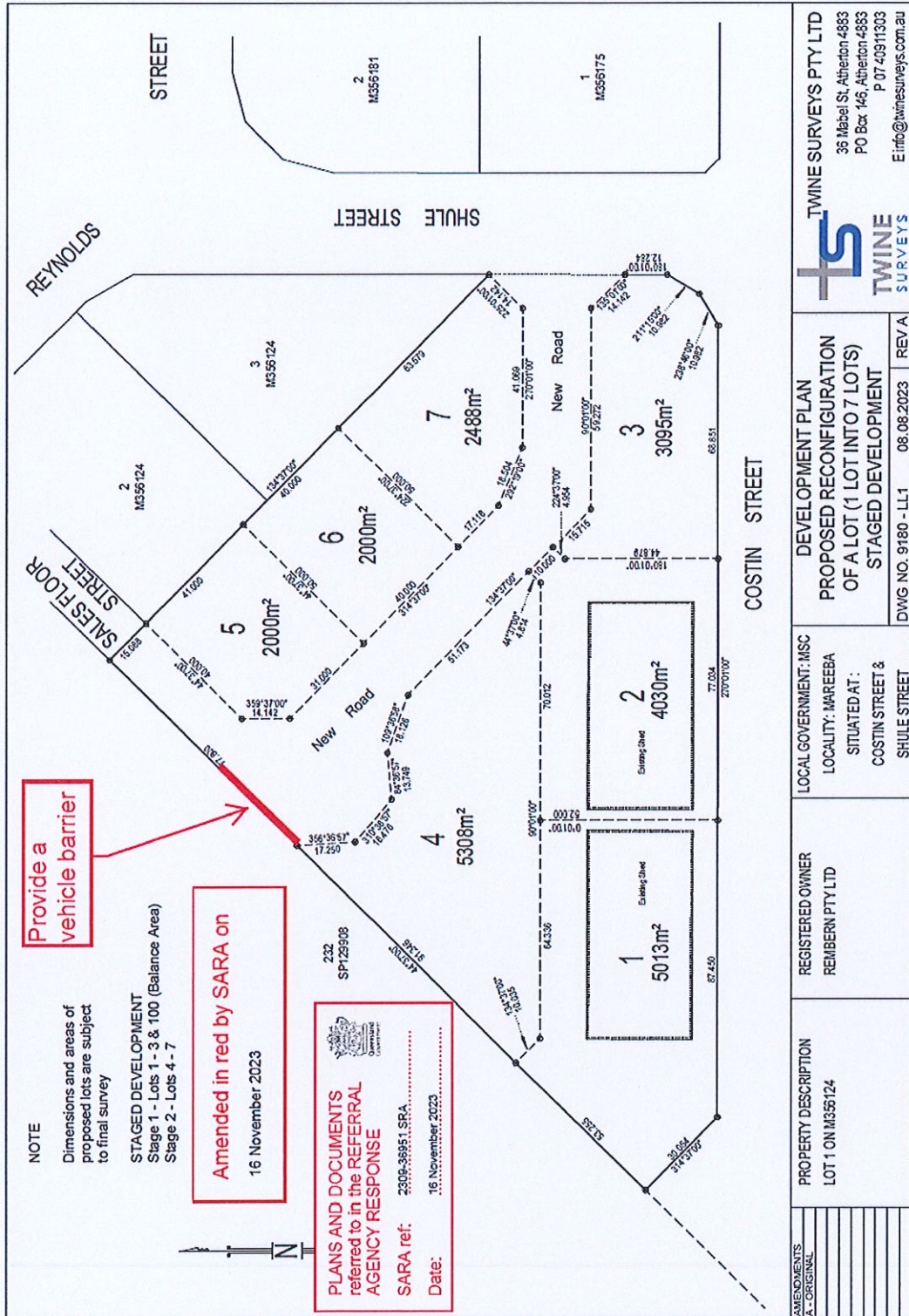
### **30 Representations about a referral agency response**

- 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>

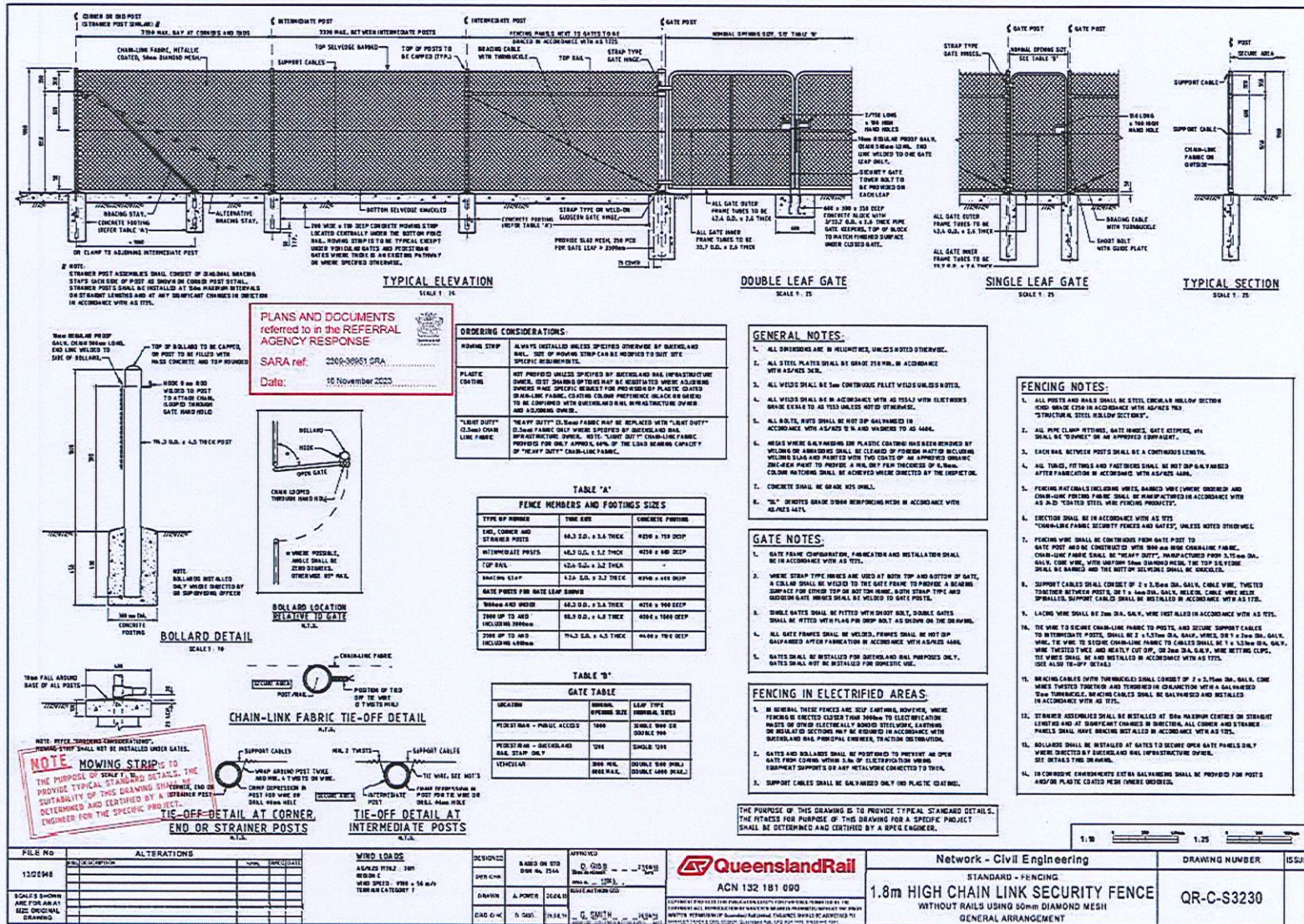
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<sup>3</sup> An applicant may elect, under section 32, to stop the assessment manager's decision period in which to take this action. If a concurrence agency wishes to amend their response in relation to representations made under this section, they must do so in accordance with section 28.











## 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.