

Our Ref: LM: tt:DA/4601 AD2023/0006726

Your Ref: Nil

04 December 2023

Gene Lawrence Brookes & Chloe Michele Brookes  
c/-Kelly Reaston Development and Property Services

51 Sheridan Street

Cairns QLD 4870

E-mail: [kelly@kellyreaston.com.au](mailto:kelly@kellyreaston.com.au)

Attention: Kelly Reaston

Dear Ms Reaston

**Decision Notice - Approval**

Given under section 63 of the *Planning Act 2016*

With reference Development Application (DA/4601), please find attached the relevant Decision Notice, which was approved by Cook Shire Council in full subject to conditions.

Details of the decision are as follows:

**Decision Details**

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Date of Decision: Council approved the Development Application by delegation on 28 November 2023.

Approval Details: **Approved in full** with conditions. These conditions are set out in Attachment 1 and are clearly identified to indicate whether the assessment manager or concurrence agency imposed them.

**Variation approval details**

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Not Applicable

**Application Details**

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Application Number: DA/4601

Approval Sought: Development Permit for Reconfiguration of a Lot

Description of the Development: Reconfiguration of a Lot one (1) into two (2)

Category of Development: Assessable Development

Category of Assessment: Code Assessment

Planning Scheme: Cook Shire Council Planning Scheme 2017 v2.0

### Location Details

Street Address: 122 Railway Avenue West COOKTOWN 4895

Real Property Description: Lot 3 on RP907664

Local Government Area: Cook Shire

### Assessment Manager Conditions

This approval is subject to the conditions in **Attachment 1**.

### Further Development Permits

Not Applicable.

### Properly Made Submissions

Not applicable - no part of the application required public notification.

### Referral Agencies

The referral agencies for the application are:

Referral Agency	Referral Matter
State Assessment and Referral Agency (SARA)  Far North Queensland Regional Office PO Box 2358 CAIRNS QLD 4870 Ph: 07 4037 3214  E-mail: <a href="mailto:CairnsSARA@dasilgp.qld.gov.au">CairnsSARA@dasilgp.qld.gov.au</a> MyDAS2 online referrals: <a href="https://prod2.dev-assess.qld.gov.au/suite/">https://prod2.dev-assess.qld.gov.au/suite/</a>	Schedule 10, Part 3, Division 4, Table 2, Item 1 ( <i>Planning Regulation 2017</i> ) – Reconfiguring a lot that involves clearing native vegetation.

### Other requirements under section 43 of the *Planning Regulation 2017*

Not Applicable.

### Approved Plans and Specifications

Copies of the approved plans, specifications and/or drawings are enclosed in **Attachment 2**.

## Currency Period for the Approval

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This approval lapses if a plan for the reconfiguration that, under the *Land Title Act 1994*, is required to be given to a local government for approval is not given within *four (4) years*.

## Lapsing of approval if development started but not completed

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In accordance with section 88(1) of the *Planning Act 2016*, a development approval, other than a variation approval, for development lapses to the extent the development is not completed within any period or periods required under a development condition.

## Rights of Appeal

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You are entitled to appeal against this decision. A copy of the relevant appeal provisions from the *Planning Act 2016* are provided in Attachment 4 of this Decision Notice.

## Other Details

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Council relies on the accuracy of information included in the application documentation when assessing and deciding applications.

If you find an inaccuracy in any of the information provided above, have a query, or need to seek clarification about any of these details, please contact Cook Shire Council's Planning and Environment Department on 07 4082 0500 or E-mail: [mail@cook.qld.gov.au](mailto:mail@cook.qld.gov.au).

Yours sincerely



Lisa Miller  
Manager  
Planning and Environment  
Cook Shire Council

cc: State Assessment Referral Agency (SARA) [CairnsSARA@dsdilgp.qld.gov.au](mailto:CairnsSARA@dsdilgp.qld.gov.au)

enc: **Attachment 1 (A)** – Conditions imposed by the assessment manager  
**Attachment 1 (B)** – Conditions imposed by a concurrence agency (D23/34696)  
**Attachment 2** – Approved Plans (D23/35162)  
**Attachment 3** – Notice of Decision – Statement of Reasons (AD2023/0006730)  
**Attachment 4** – Extract of Appeal Provisions (Chapter 6 part 1 of the *Planning Act 2016*)

**Attachment 1 (A) - Conditions imposed by the assessment manager (Cook Shire Council)**

## A. Assessment Manager (Council) Conditions

No.	Condition	Timing
<b>GENERAL</b>		
1.	<p><b>COMPLIANCE WITH CONDITIONS</b></p> <p>The Developer is responsible for ensuring compliance with this development approval and the conditions of the approval by an employee, agent, contractor, or invitee of the Developer.</p>	At all times
2.	<p><b>WORKS – DEVELOPER’S EXPENSE</b></p> <p>The cost of all works associated with the development and construction of the development, including services, facilities and/or public utility alterations required are met at no cost to the Council or relevant utility provider, unless otherwise stated in a development condition.</p>	At all times
3.	<p><b>WORKS - DAMAGE TO INFRASTRUCTURE</b></p> <p>The Developer must repair any damage to existing infrastructure (e.g. kerb and channel, footpath, or roadway) that may have occurred during any works undertaken as part of the development. Any damage that is deemed to create a hazard to the community, must be repaired immediately.</p>	At all times
4.	<p><b>WORKS – DESIGN &amp; STANDARD</b></p> <p>Unless otherwise stated, all works must be designed, constructed, and maintained in accordance with the relevant Council policies, guidelines, and standards.</p>	At all times
5.	<p><b>WORKS – SPECIFICATION &amp; CONSTRUCTION</b></p> <p>All engineering drawings/specifications, design and construction works must comply with the requirements of the relevant Australian Standards and must be approved, supervised, and certified by a Registered Professional Engineer of Queensland (RPEQ).</p>	At all times
6.	<p><b>COMMENCEMENT OF USE</b></p> <p>The use must not commence until the conditions of the approval relevant to each stage have been complied with.</p>	At all times
7.	<p><b>INFRASTRUCTURE CONDITIONS</b></p> <p>All development conditions contained in this development approval about infrastructure under Chapter 4 of the Planning Act 2016 (the Act), should be read as being non-trunk infrastructure conditioned under section 145 of the Act, unless otherwise stated.</p>	At all times



APPROVED PLANS & DOCUMENTS														
8.	<b>APPROVED PLANS &amp; DOCUMENTS</b>			At all times										
	Undertake the approved development generally in accordance with the approved plans and documents, including any amendments made in red on the approved plan(s) or document(s):													
	<table border="1"> <thead> <tr> <th>Title</th> <th>Sheet No.</th> <th>Date</th> <th>Prepared By</th> </tr> </thead> <tbody> <tr> <td>Vegetation Management Plan, prepared</td> <td>VMP 2303-33946 SRA, Sheet 1 of 1</td> <td>31/10/23</td> <td>Queensland Government</td> </tr> <tr> <td>Proposed Reconfiguration 1 into 2</td> <td>ARO0115-SK23</td> <td>16/05/23</td> <td>ARO Industries Pty Ltd</td> </tr> </tbody> </table>	Title	Sheet No.		Date	Prepared By	Vegetation Management Plan, prepared	VMP 2303-33946 SRA, Sheet 1 of 1	31/10/23	Queensland Government	Proposed Reconfiguration 1 into 2	ARO0115-SK23	16/05/23	ARO Industries Pty Ltd
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Proposed Reconfiguration 1 into 2	ARO0115-SK23	16/05/23	ARO Industries Pty Ltd											
9.	<b>CONDITIONS OF APPROVAL &amp; APPROVED PLANS</b>			At all times										
Where there is a conflict between the conditions of this approval and the details shown on the approved plans and documents, the conditions of approval take precedence.														

WATER SUPPLY	
10.	A separate source of water supply must be provided to proposed Lot 1 and Lot 2 at the time of construction of a dwelling house. This would be satisfied by the provision of a rainwater tank with a minimum capacity of 50,000 litres. Where an alternative source of supply is available within the allotment, the applicant can provide certified evidence as to the flow rates and water quality of the bore water or other supply to eliminate or reduce the requirement of on-site water storage.

EFFLUENT DISPOSAL	
11.	An on-site wastewater system must be provided on proposed Lot 1 at the time of construction of a dwelling house. Any application for wastewater treatment and disposal must include details of the proposed wastewater disposal systems and calculation demonstrating compliance with the Queensland Plumbing and Wastewater Code and AS/NZS 1547:2000 – 'On-site domestic wastewater management'. Details are to be provided at the time of lodgement of a plumbing and building application.

<b>BUILDING ENVELOPE</b>		
12.	All buildings or structures within proposed Lot 1 must be located within the identified building envelope. Should the owner wish to locate any building or structure outside the identified building envelope, approval must be obtained from the Director Planning and Environment Services at the time of Building application.	At all times

<b>ACCESS</b>		
13.	Access to proposed Lot 1 must be provided in accordance with the approved plans of development and constructed prior to the commencement of building work and maintained to a rural crossover standard in accordance with the FNQROC Development Manual Standard Drawing S1105.	At all times

<b>FIREMANAGEMENT</b>		
14.	The development must be maintained at all times to a standard so as not to create a fire hazard.	At all times
15.	Private driveway to Lot 1;  (i) Do not exceed a gradient of 12.5%; and (ii) Have a minimum width of 3.5 metres; and (iii) Have a minimum of 4.8 metres vertical clearance; and (iv) Serve no more than 3 dwellings or buildings.	At all times
16.	Any new building (other than a class 10a) erected on any of the proposed lots shall:  (i) Achieve setbacks from fire hazardous vegetation of 1.5 times the predominant mature canopy tree height or ten (10) metres, whichever is greater; and (ii) Be provided with a source of water for fire-fighting purposes of not less than 10,000 litres. This must be satisfied by the provision of an accessible dam, swimming pool, or water tank. In the case of a tank supply, delivery of the water should be provided through a 50mm male Camlock fitting. The outlet from the tank water supply or the dam/pool shall be located within an accessible position within forty (40) metres from the habitable buildings.	At all times

<b>VEGETATION CLEARING</b>		
17.	Vegetation clearing must be limited to that required for firebreaks, dwelling houses, and associated infrastructure. Any regulated vegetation not required for building works or bushfire management purposes must be retained.	At all times

<b>STORMWATER</b>		
18.	Stormwater drainage must be directed to a legal point of discharge.	At all times
19.	Site works must not adversely affect flooding or drainage characterises of properties that are upstream, downstream, or adjacent to the development site.	At all times

<b>SEDIMENT CONTROL</b>		
20.	The developer must ensure that effective measures are put in place to ensure construction activity does not cause erosion.	At all times
21.	The developer must ensure that no soil or silt runoff occurs from the site during the construction and operational phase of the development.	At all times

<b>ELECTRICITY SUPPLY</b>		
22.	Proposed Lot 1 must be connected to the reticulated electricity supply at the time of application for a development permit to carry out building works. If the development is proposed to be connected to another means of electricity supply, details of this supply must be provided for Council approval at the time of building application.	At the time of construction of a dwelling house

<b>COMPLIANCE</b>		
23.	All conditions of this development permit must be complied with prior to Council endorsement of the Plan of Survey.	Prior to Council endorsement of the Plan of Survey



**B. Assessment Manager (Council) Advice**

1. The reconfiguring a lot approval authorised under this Development Permit must be completed and the Plan of Survey submitted to Council for endorsement within **four (4) years** from the commencement of this approval or the approval will lapse.
2. A development permit is required for carrying out Building Works, and a Plumbing and Drainage Approval/compliance permit is required for Plumbing and Drainage Works prior to construction of any buildings associated with this development.
3. The applicant/owner is to ensure compliance with the requirements of the *Aboriginal Cultural Heritage Act* and in particular ‘the duty of care’ that it imposes on all landowners.
4. Property Notation for proposed Lot 1 – All buildings or structures must be located within the existing building envelope (Council file reference DA/4601). Should the owner wish to locate any building or structure outside the identified building envelope, approval must be obtained from the Director of Planning and Environment Services at the time of Building application.
5. Removal of Protected Vegetation

This development approval does not approve or authorize the removal of vegetation that is otherwise protected under separate State or Federal legislation, including under the following:

- A. *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*;
- B. *Nature Conservation Act 1999 (Qld)*;
- C. *Vegetation Management Act 1999 (Qld)*.

**Attachment 1 (B) – Conditions imposed by a concurrence agency (D23/34696)**



SARA reference: 2303-33946 SRA  
 Council reference: DA/4601  
 Applicant reference: -

31 October 2023

Chief Executive Officer  
 Cook Shire Council  
 PO Box 3  
 Cooktown QLD 4895  
 mail@cook.qld.gov.au

Attention: Lisa Miller

Dear Sir / Madam

## SARA referral agency response – 122 Railway Avenue, Cooktown

(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 27 March 2023.

### Response

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Outcome:	Referral agency response – with conditions
Date of response:	31 October 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

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Description:	Development permit    Reconfiguring a Lot (one lot into two 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

SARA reference: 2303-33946 SRA

Assessment manager: Cook Shire Council

Street address: 122 Railway Avenue, West Cooktown

Real property description: Lot 3 on RP907664

Applicant name: Gene Lawrence Brookes and Chloe Michele Brookes

Applicant contact details: C/- Kelly Reaston Development & Property Services  
51 Sheridan Street  
CAIRNS QLD 4870  
kelly@kellyreaston.com.au

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

Yours sincerely



Brett Nancarrow  
Manager (Planning)

cc Kelly Reaston Development & Property Services, kelly@kellyreaston.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

## 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.	Clearing of vegetation must: <ul style="list-style-type: none"> <li>(a) only occur within Area A (Parts A1 – A5) as shown on the attached:               <ul style="list-style-type: none"> <li>(i) Vegetation Management Plan, prepared by Queensland Government, reference VMP 2303-33946 SRA, Sheet 1 of 1, version 1; and</li> <li>(ii) Attachment to Vegetation Management Plan VMP 2303-33946 SRA Derived Reference Points for GPS.</li> </ul> </li> <li>(b) not exceed 1.44 hectares.</li> </ul>	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.

## Attachment 2—Advice to the applicant

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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.



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

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

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

- The extent of exempt clearing work resulting from the proposed development does not result in a significant residual impact.
- There are no wetlands within 100m of the proposed clearing area.
- Appropriate fire and safety buffers from existing remnant vegetation have been addressed to maintain the safety of persons and property that will be associated with the proposed development and future buildings and/or infrastructure being constructed upon the proposed lots.
- The applicant has reasonably avoided clearing where possible and reasonably minimised the adverse impacts of clearing where it cannot be reasonably avoided.
- SARA has carried out an assessment of the development application against State code 16: Native vegetation clearing 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*

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

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(page left intentionally blank – attached separately)

# Development Assessment Rules—Representations about a referral agency response

The following provisions are those set out in sections 28 and 30 of the Development Assessment 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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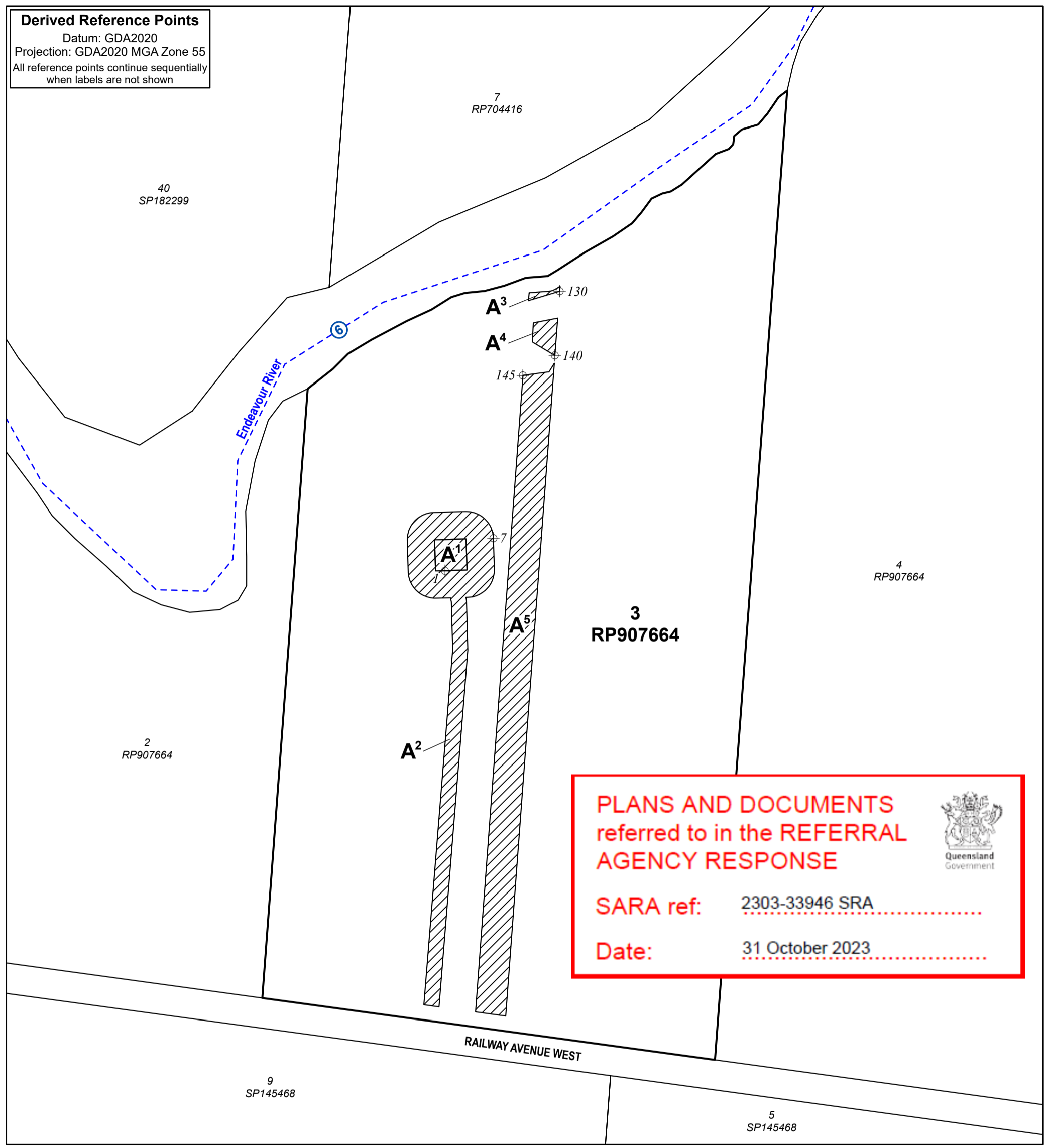
<sup>3</sup> An applicant may elect, under section 32, to stop the assessment manager's decision period in which to take this action. If a concurrence agency wishes to amend their response in relation to representations made under this section, they must do so in accordance with section 28.

## **Attachment 5—Documents referenced in conditions**

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**Derived Reference Points**  
 Datum: GDA2020  
 Projection: GDA2020 MGA Zone 55  
 All reference points continue sequentially when labels are not shown



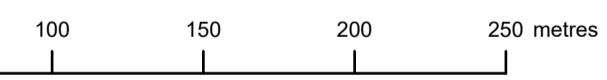
**PLANS AND DOCUMENTS referred to in the REFERRAL AGENCY RESPONSE**

**SARA ref:** 2303-33946 SRA

**Date:** 31 October 2023



1:2 500 @ A3 paper size



Projection: GDA2020 MGA Zone 55 Datum: GDA2020



Notes: Derived Reference Points are provided to assist in the location of area boundaries. Responsibility for locating these boundaries lies solely with the landholder.  
 Watercourse and drainage feature locations shown on the Vegetation Management Plan are derived from the certified Vegetation Management Watercourse and Drainage Feature Map. These alignments are approximate only and require ground truthing to identify the exact location of the watercourse or drainage feature.  
 The property boundaries shown on this plan are APPROXIMATE ONLY. They are NOT an accurate representation of the legal boundaries.

**This plan must be read in conjunction with conditions attached to 2303-33946 SRA**

**LEGEND**

- Derived Reference Start Points (see attachment)
- Subject Lot(s)
- Area A - Clearing Permitted
- Watercourse and/or drainage feature (Stream order label)

Note: This is a colour map and must be reproduced in colour

## Vegetation Management Plan

### Plan of Area A (Parts A<sup>1</sup> - A<sup>5</sup>) in Lot 3 on Plan RP907664

Version: 1 eLVAS Case ID: 2023/001290



© The State of Queensland, 2023

## VMP 2303-33946 SRA

Sheet 1 of 1



**Attachment to Plan: 2303-33946 SRA  
Derived Reference Points  
Datum: GDA2020, Projection: MGA Zone 55**

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



**SARA ref:** 2303-33946 SRA.....

**Date:** 31 October 2023.....

**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 delegated contractor(s).  
Coordinates start at a point indicated on the accompanying plan and proceed in a clockwise direction.

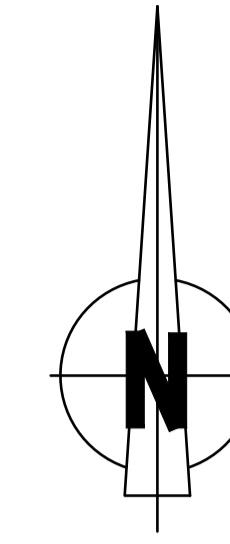
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A1	4	297393	8292607
A1	5	297394	8292587
A1	6	297379	8292586
A2	7	297411	8292608
A2	8	297412	8292587
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A2	10	297412	8292586
A2	11	297412	8292584
A2	12	297412	8292583
A2	13	297411	8292582
A2	14	297411	8292581
A2	15	297411	8292580
A2	16	297410	8292579
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A2	18	297409	8292577
A2	19	297408	8292576
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A2	117	297410	8292614
A2	118	297410	8292613
A2	119	297411	8292612
A2	120	297411	8292611

Part ID	Unique ID	Easting	Northing
A2	121	297411	8292610
A2	122	297411	8292608
A2	123	297411	8292608
A2	124	297379	8292586
A2	125	297394	8292587
A2	126	297393	8292607
A2	127	297373	8292607
A2	128	297373	8292586
A2	129	297379	8292586
A3	130	297455	8292770
A3	131	297434	8292764
A3	132	297435	8292769
A3	133	297439	8292770
A3	134	297448	8292770
A3	135	297449	8292771
A3	136	297451	8292771
A3	137	297452	8292772
A3	138	297455	8292774
A3	139	297455	8292770
A4	140	297452	8292728
A4	141	297437	8292737
A4	142	297438	8292750
A4	143	297454	8292753
A4	144	297452	8292728
A5	145	297431	8292715
A5	146	297448	8292717
A5	147	297451	8292723
A5	148	297419	8292293
A5	149	297400	8292296
A5	150	297431	8292715

**Attachment 2 – Approved Plans (D23/35162)**





**LAYOUT PLAN**  
SCALE 1:2000

**COOK SHIRE COUNCIL**  
**DIGITALLY STAMPED**  
**APPROVED PLAN**

**Development Application:** Development Permit for Reconfiguring  
a Lot (1 Lot into 2 Lots)

**Lot:** 3 on RP907664

Referred to in Cook Shire Council's Decision Notice

**Approval Date:** 28 November 2023  
**Application Number:** DA/4601

0 20 40 60 80 100m  
SCALE 1:2000 (A1)



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ABN: 49 641 461 298

LOT 3 ON RP907664, RAILWAY  
AVENUE WEST, COOKTOWN

PROPOSED RECONFIGURATION  
1 INTO 2

ARO0115-SK23 1:2000  
A1 Full Size

Acad No. ARO00115-SK23(2) 16/05/2023



**Attachment 3 – Notice of Decision – Statement of Reasons (AD2023/0006730)**

## NOTICE ABOUT DECISION – STATEMENT OF REASONS

*This Notice is prepared in accordance with s63(5) and s83(9) of the Planning Act 2016 to provide information about a decision that has been made in relation to a development application. The purpose of the Notice is to enable a public understanding of the reasons for the planning decision, specifically having regard to:*

- the relevant parts of the Planning Scheme and Assessment Benchmarks against which the application was assessed; and*
- any other information, documents or other material Council was either required to, or able to, consider in its assessment.*

*All terms used in this Notice have the meanings given them in the Planning Act 2016 or otherwise their ordinary meaning.*

### APPLICATION DETAILS

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Application No:	DA/4601
Applicant:	Gene Lawrence Brookes & Chloe Michele Brookes c/-Kelly Reaston Development and Property Services
Proposal:	Development Permit for a Reconfiguration of a Lot
Description of the Development:	Reconfiguration of a Lot one (1) into two (2)
Street Address:	122 Railway Ave West, Cooktown QLD 4895
Real Property Description:	Lot 3 on RP907664
Planning Scheme:	Cook Shire Council Planning Scheme 2017 v2.0
Land Zoning:	Rural
Assessment Type:	Code Assessment

### DECISION DETAILS

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Type of Decision:	Approval with Conditions
Type of Approval:	Development Permit for Reconfiguration of a Lot ( 1 into 2 Lots)
Date of Decision:	28 November 2023

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## ASSESSMENT BENCHMARKS

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The following Assessment Benchmarks applied to the development from the following Categorising Instruments:

Assessment benchmarks	Comment
Schedule 9	Schedule 9 is not applicable as the application is not for building work under the Building Act.
Schedule 10	The application triggered a referral to SARA under Schedule 10, Part 3, Division 4, Table 2, – Reconfiguring a lot involving clearing native vegetation. The referral agency response is addressed in a separate section of this report.
Regional Plan	Section 2.2 of the Planning Scheme identifies that the Cape York Regional Plan has been adequately reflected in the Planning Scheme. A separate assessment against the Regional Plan is not required.
State Planning Policy (SPP) Part E	Section 2.1 of the Planning Scheme identifies that the superseded version of the <i>State Planning Policy</i> is integrated in the Planning Scheme. A review of the current version of the SPP (July 2017) and mapping has determined that the state interests are adequately reflected in the Planning Scheme and no additional assessment provisions in the current SPP (part E) or updated mapping are applicable requiring further assessment against the SPP.
Temporary State Planning Policy	There are no Temporary State Planning Policies.
Local Government Infrastructure Plan (LGIP)	This matter is addressed in a separate section of this report.
Any development approval for, and any lawful use of the premises, or adjacent premises	This matter is addressed separately in Background/History section above.
The common material	All the material received about the application has been assessed and has informed the recommendation of this report.

### **Local Categorising Instrument (Cook Shire Council Planning Scheme 2017):**

- Rural Zone Code;
- Reconfiguring a Lot Code;
- Works, Services, and Infrastructure Code;



- Biodiversity Overlay; and
- Bushfire Hazard Overlay.

**Local Categorising Instrument (Variation Approval)**

Not Applicable

**Local Categorising Instrument (Temporary Local Planning Instrument)**

Not Applicable

**PUBLIC NOTIFICATION**

Not Applicable

**REASONS FOR THE DECISION**

The application is **approved** on the following grounds:

- a. An assessment was made against the applicable assessment benchmarks and the proposed development demonstrated compliance.
- b. The proposed development will have no detrimental impact on the property, surrounding properties, or the environment itself.

**REASONS FOR APPROVAL DESPITE NON-COMPLIANCE WITH ASSESSMENT BENCHMARKS**

Not Applicable

**ADDITIONAL RELEVANT MATTERS FOR IMPACT ASSESSMENT**

Not Applicable

**OTHER MATTERS PRESCRIBED BY THE PLANNING REGULATION 2017**

Not Applicable

**OTHER DETAILS**

If you wish to obtain more information about Council's decision, including a copy of Council's Decision Notice and any conditions or plans relating to the development, please refer to Council's webpage.

**Attachment 4 – Extract of Appeal Provisions (Chapter 6 part 1 of the *Planning Act 2016*)**

## Chapter 6 Dispute resolution

### Part 1 Appeal rights

#### 229 Appeals to tribunal or P&E Court

- (1) Schedule 1 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.
- (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 an appeal relating to the *Plumbing and Drainage Act 2018*—
  - (i) for an appeal against an enforcement notice given because of a belief mentioned in the *Plumbing and Drainage Act 2018*, section 143(2)(a)(i), (b) or (c)—5 business days after the day the notice is given; or
  - (ii) for an appeal against a decision of a local government or an inspector to give an action notice under the *Plumbing and Drainage Act 2018*—5 business days after the notice is given; or
  - (iii) for an appeal against a failure to make a decision about an application or other matter under the *Plumbing and Drainage Act 2018*—at anytime after the period within which the application or matter was required to be decided ends; or
  - (iv) otherwise—20 business days after the day the notice is given; or
- (g) 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, section 1, table 1, item 1—each principal submitter for the application whose submission has not been withdrawn; and
  - (d) for an appeal about a change application under schedule 1, section 1, table 1, item 2—each principal submitter for the application whose submission has not been withdrawn; and

- (e) each person who may elect to be a co-respondent for the appeal other than an eligible submitter for a development application or change application the subject of the appeal; 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 is 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 to an appeal by filing a notice of election in the approved form—
    - (a) if a copy of the notice of appeal is given to the person—within 10 business days after the copy is given to the person; or
    - (b) otherwise—within 15 business days after the notice of appeal is lodged with the registrar of the tribunal or the P&E Court.
  - (7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department's website for this purpose.

### 231 Non-appealable decisions and matters

- (1) Subject to this chapter, section 316(2), 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 the 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, any tribunal or another entity; and
- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, any 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 rules of the P&E Court.