

23 August 2019

**Enquiries:** Daniel Lamond  
**Our Ref:** MCUI2019\_3100 (916248)  
**Your Ref:** 18-385

Administration Office  
64 - 66 Front St Mossman  
P 07 4099 9444  
F 07 4098 2902

Mossman Gorge Centre  
C/- Louise Cameron-Urban Sync Pty Ltd  
PO Box 2970  
CAIRNS QLD 4870

**Email:** admin@urbansync.com.au or

Dear Sir/Madam

**Development Application for Telecommunication Facilities  
- Impact Assessable  
At Gorge Road, Mossman Gorge and 212 Gorge Road, Mossman Gorge  
Land Described as Lot 94 on SR257, Lot 7 on SP212661, Lot 152 on SR832**

Please find attached the Decision Notice for the above-mentioned development application.

Please quote Council's application number: MCUI 2019\_3100 in all subsequent correspondence relating to this development application.

Should you require any clarification regarding this, please contact Daniel Lamond on telephone 07 4099 9456.

Yours faithfully

**Paul Hoyer**  
**Manager Environment & Planning**

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

encl.

- Decision Notice
  - Approved Drawing(s) and/or Document(s)
  - Concurrence Agency Response
  - Reasons for Decision - non-compliance with assessment benchmarks.
- Advice For Making Representations and Appeals (Decision Notice)



# Decision Notice

Approval (with conditions)

*Given under section 63 of the Planning Act 2016*

## Applicant Details

**Name:** Mossman Gorge Centre  
**Postal Address:** C/- Louise Cameron-Urban Sync Pty Ltd  
PO Box 2970  
CAIRNS QLD 4870  
**Email:** admin@urbansync.com.au or

## Property Details

**Street Address:** Gorge Road Mossman Gorge, 212 Gorge Road, Mossman Gorge.  
**Real Property Description:** LOT: 94 TYP: SR PLN: 257, LOT: 7 SP: 212661, LOT: 152 TYP: SR PLN: 832  
**Local Government Area:** Douglas Shire Council

## Details of Proposed Development

Development Permit- Material Change of Use (Telecommunication Facilities) - Impact Assessable

## Decision

**Date of Decision:** 20 August 2019  
**Decision Details:** Approved (subject to conditions)

## Approved Drawing(s) and/or Document(s)

Copies of the following plans, specifications and/or drawings are enclosed.

Drawing or Document	Reference	Date
Site Plan- All	Plan No: 18-385 DA01 Rev: A	18 December 2018
Site Plan- Lot 7	Plan No: 18-385 DA02 Rev: A	18 December 2018

Site Plan- Lot 94	Plan No: 18-385 DA03 Rev: A	18 December 2018
Site Plan- Lot 94 Lease Plan	Plan No: 18-385 DA03.1 Rev: A	18 December 2018
Site Plan- Lot 152	Plan No: 18-385 DA04 Rev: A	18 December 2018
Proposed Radio Tower- Site Plan	PR143136-1 A prepared by RPS Australia East Pty Ltd	13 June 2019

## Assessment Manager Conditions & Advices

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1. Carry out the approved development generally in accordance with the approved drawing(s) and/or document(s), and in accordance with:
  - a. The specifications, facts and circumstances as set out in the application submitted to Council; and
  - b. The following conditions of approval and the requirements of Council's Planning Scheme and the FNQROC Development Manual.

Except where modified by these conditions of approval

### Timing of Effect

2. The conditions of the Development Permit must be effected prior to Commencement of Use, except where specified otherwise in these conditions of approval.

### Limited Approval

3. The Development hereby approved lapses at the expiry of agreement to lease the land from the land owner or entity from which a lease may be attained. Prior to the lapse of the life of the approval the telecommunications tower and all associated infrastructure must be decommissioned and removed and the site reinstated to its original condition to the satisfaction of the Chief Executive Officer. All costs associated with the decommissioning and final removal shall be borne by the Applicant or entity that operates the tower at the time of removal.

### Health

4. The facility must comply with all relevant State and National Standards in relation to emission of light, vibration, odour and radiation.

The telecommunications facility must be operated in accordance with Radio Communications (Electromagnetic Radiation – Human Exposure) Standard 2003 in relation to the limits for continuous exposure of the general public to radio-frequency electromagnetic energy or other Standard of the Commonwealth of Australia more relevant at the time.

### ADVICE

1. All building site managers must take all action necessary to ensure building materials and / or machinery on construction sites are secured immediately following the first cyclone watch and that relevant emergency telephone contacts are provided to Council officers, prior to commencement of works.

2. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.

## REFERRAL AGENCY CONDITIONS & REQUIREMENTS

Referral Agency	Referral Agency Reference	Date	Council Electronic Reference
State Assessment & Referral Agency (Department of Infrastructure, Local Government & Planning)	1905-11271 SRA	18 July 2019	911212

Refer to Attachment 2: Referral Agency Requirements. (Please note that these conditions / requirements may be superseded by subsequent negotiations with the relevant referral agencies).

### Currency period for the approval

Under section 85(1)(a)(i) of the *Planning Act 2016*, the relevant period for the approval is to be six (6) years starting from the day the approval takes effect.

### Reasons for Decision

The reasons for this decision are:

1. Sections 60, 62 and 63 of the *Planning Act 2016*:
  - a. the approved plan(s) and document(s);
  - b. the Conditions and Advices;
  - c. The development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme Version 1.0; and
  - d. The development complies with the *Planning Act 2016*.
2. Findings on material questions of fact:
  - a. the development application was properly lodged to the Douglas Shire Council on 30 April 2019 under section 51 of the *Planning Act 2016* and Part 1 of the Development Assessment Rules;
  - b. the application was properly notified;
  - c. the development application contained information from the applicant which Council reviewed together with Council's own investigation of assessment against the State Planning Policy and the 2018 Douglas Shire Planning Scheme Version 1.0 in making its assessment manager decision.
3. Evidence or other material on which findings were based:
  - a. the development triggered assessable development under the Assessment Table associated with the relevant zone codes;
  - b. Council undertook an assessment in accordance with the provisions of sections 60, 62 and 63 of the *Planning Act 2016*; and

- c. the applicant's reasons have been considered and the following findings are made:
  - i. Subject to conditions the development satisfactorily meets the Planning Scheme requirements.

### **Further Development Permits**

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Please be advised that the following development permits are required to be obtained before the development can be carried out:

- All Building Work

### **Concurrence Agency Response**

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**Note** – Concurrence Agency Response is attached. This Concurrence Agency Response maybe amended by agreement with the respective agency.

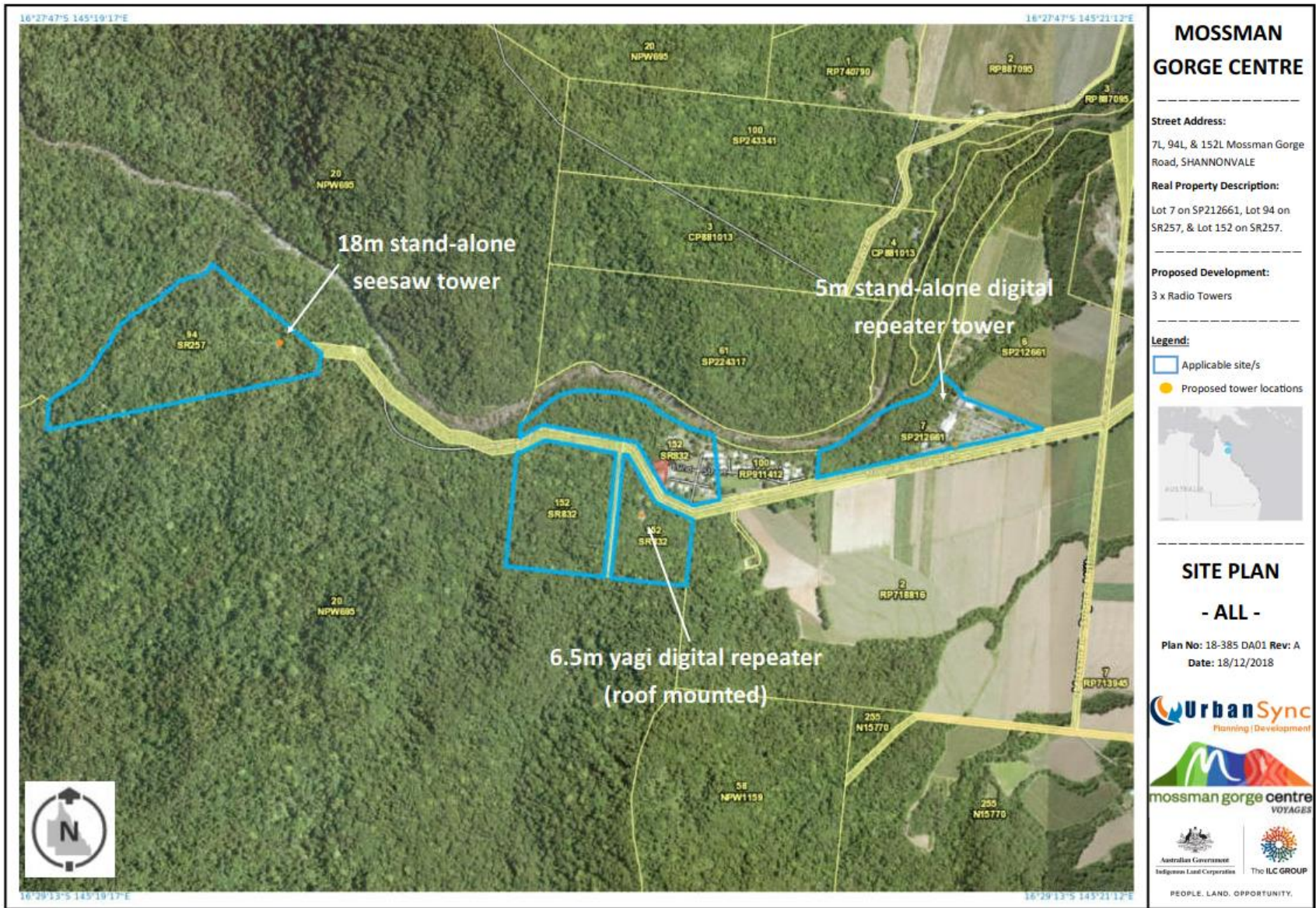
### **Rights to make Representations & Rights of Appeal**

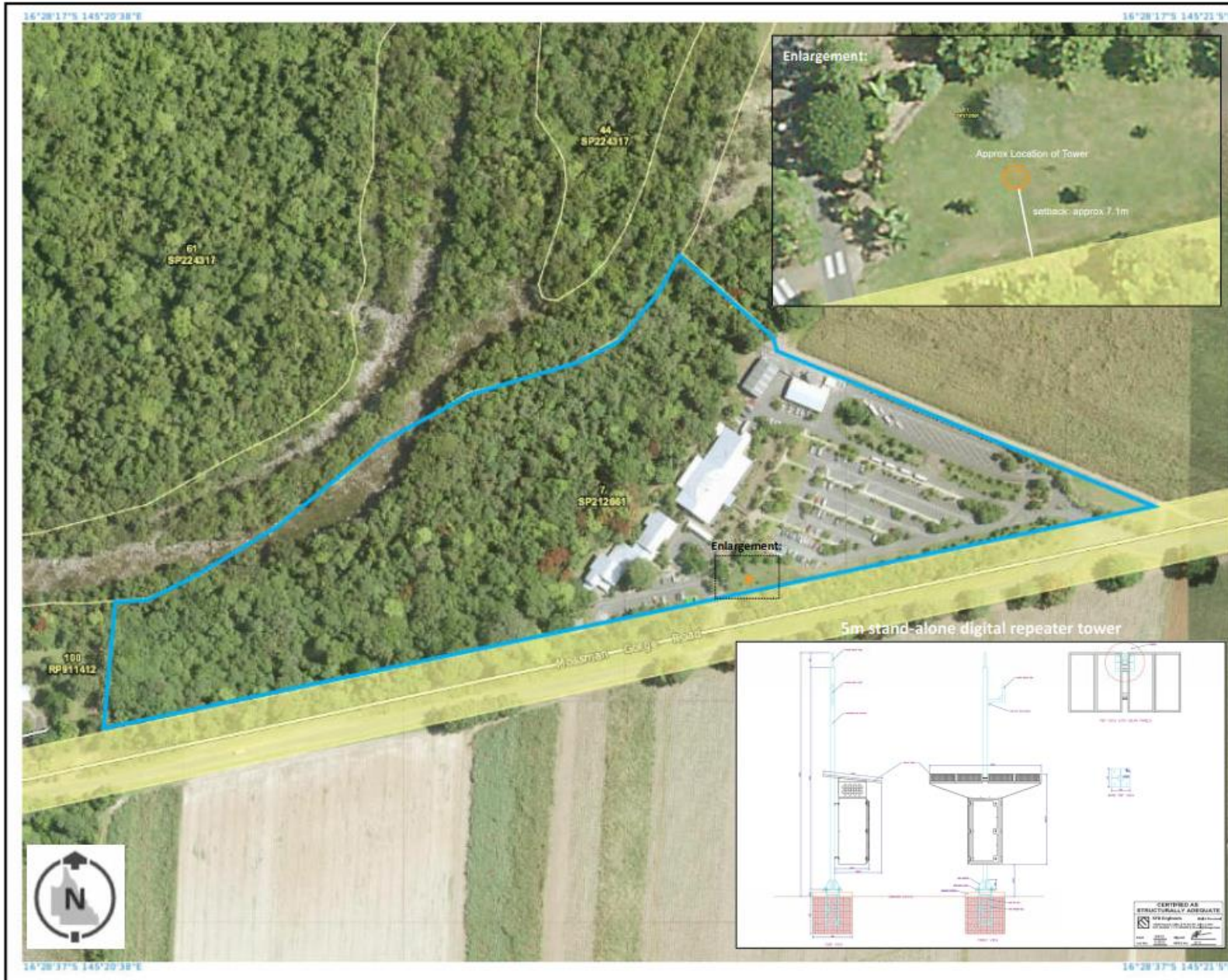
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The rights of applicants to make representations and rights to appeal to a Tribunal or the Planning and Environment Court against decisions about a development application are set out in Chapter 6, Part 1 of the *Planning Act 2016*.

A copy of the relevant appeal provisions are attached.

Approved Drawing(s) and/or Document(s)





## MOSSMAN GORGE CENTRE

**Street Address:**

7L, 94L, & 152L Mossman Gorge Road, SHANNONVALE

**Real Property Description:**

Lot 7 on SP212661, Lot 94 on SR257, & Lot 152 on SR257.

**Proposed Development:**

3 x Radio Towers

**Legend:**

- Applicable site/s
- Proposed tower locations



## SITE PLAN

### (Lot 7)

Plan No: 18-385 DA02 Rev: A

Date: 18/12/2018



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# MOSSMAN GORGE CENTRE

**Street Address:**  
7L, 94L, & 152L Mossman Gorge Road, SHANNONVALE

**Real Property Description:**  
Lot 7 on SP212661, Lot 94 on SR257, & Lot 152 on SR257.

**Proposed Development:**  
3 x Radio Towers

- Legend:**
- Applicable site/s
  - Proposed tower locations



## SITE PLAN (Lot 94)

Plan No: 18-385 DA03 Rev: A  
Date: 18/12/2018



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# MOSSMAN GORGE CENTRE

**Street Address:**  
7L, 94L, & 152L Mossman Gorge Road, SHANNONVALE

**Real Property Description:**  
Lot 7 on SP212661, Lot 94 on SR257, & Lot 152 on SR257.

**Proposed Development:**  
3 x Radio Towers

**Legend:**  
 Applicable site/s  
 Proposed tower locations



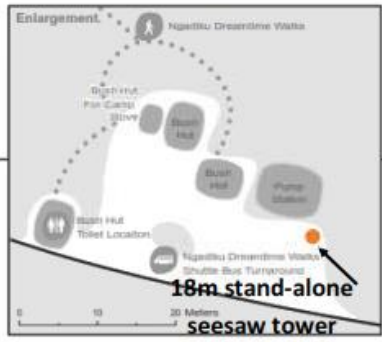
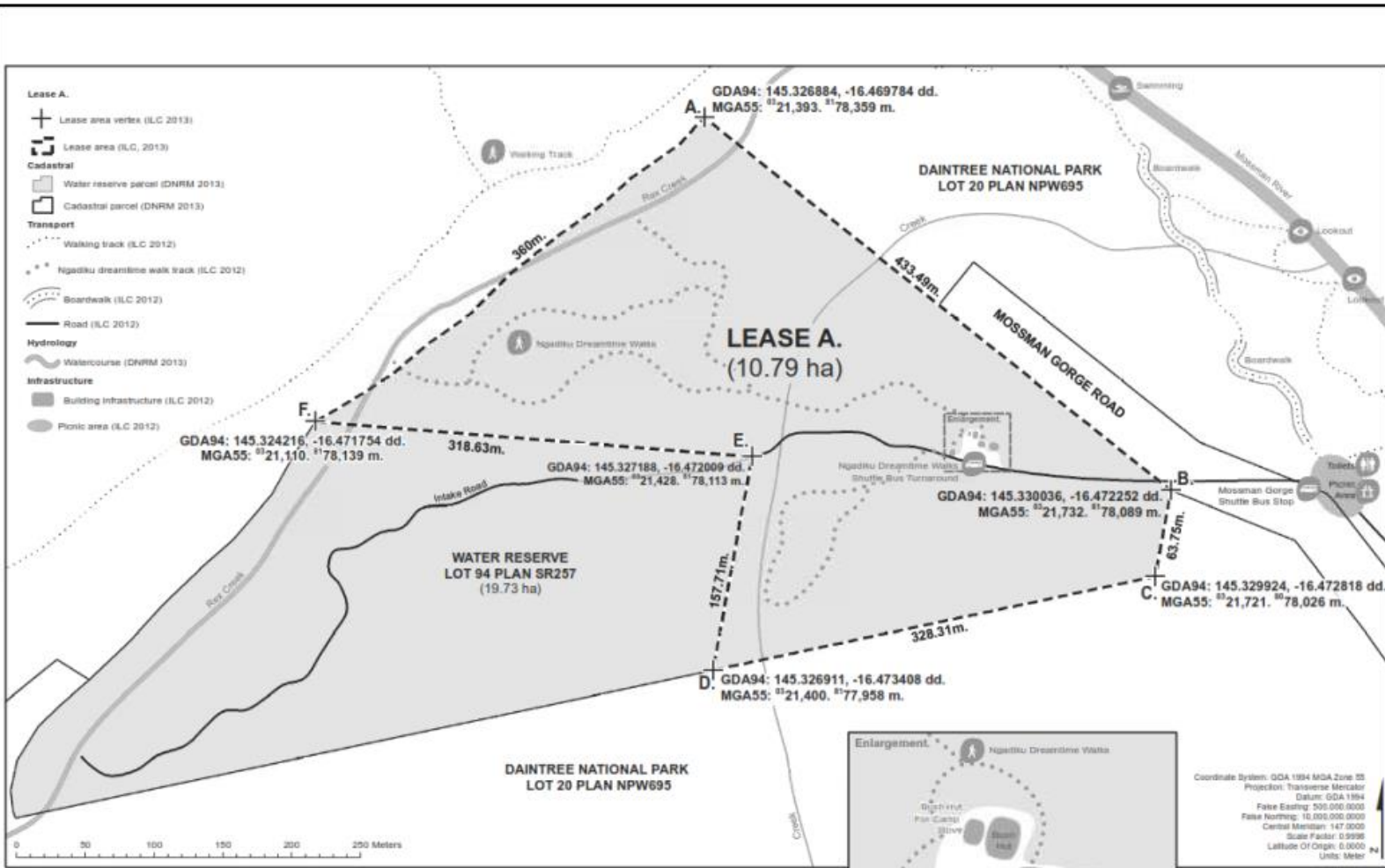
## SITE PLAN

(Lot 94—Lease Plan)

Plan No: 18-385 DA03.1 Rev: A  
Date: 18/12/2018



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**Lease Area for Mossman Gorge Walking Tracks**  
Water Reserve, Lot 94 on Plan SR257,  
CAIRNS REGIONAL SHIRE, QLD.

01-AUG-2013  
ILC Map No.2206  
Australian Government  
Indigenous Land Corporation  
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The ILC makes no warranties as to the currency and accuracy of information depicted. This map remains the property of the ILC and may not be copied by any means.  
All geographic calculations were performed in MGA55 projection based on GDA94 datum.  
MGA Zone 55 Projected Coordinate System based on GDA94 Datum.

See attached data attribution for more information.



**MOSSMAN  
GORGE CENTRE**

Street Address:  
7L, 94L, & 152L Mossman Gorge Road, SHANNONVALE

Real Property Description:  
Lot 7 on SP212661, Lot 94 on SR257, & Lot 152 on SR257.

Proposed Development:  
3 x Radio Towers

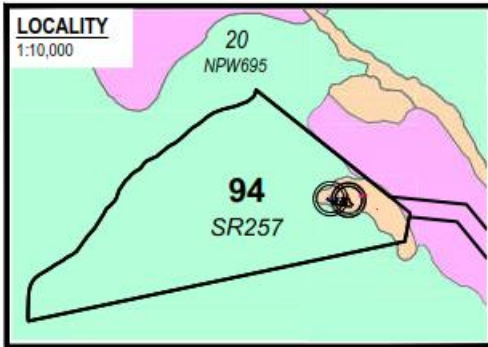
- Legend:
- Applicable site/s
  - Proposed tower locations



**SITE PLAN  
(Lot 152)**

Plan No: 18-385 DA04 Rev: A  
Date: 18/12/2018





**PRELIMINARY ONLY**

**IMPORTANT NOTE**  
This plan was prepared as a concept plan only and accuracy of all aspects of the plan have not been verified.  
All lots, areas and dimensions are approximate only. Subject to relevant studies, Survey, Engineering and Government approvals.  
No reliance should be placed on the plan and RPS Australia East Pty Ltd accepts no responsibility for any loss or damage suffered howsoever arising to any person who may use or rely on this plan.  
Boundaries shown have been plotted from DNRME OCDB and are approximate only.

**VMA MAPPING LEGEND**

- Category A or B area containing endangered regional ecosystems.
- Category A or B area containing of concern regional ecosystems.
- Category A or B area that is a least concern regional ecosystem.

**POTENTIAL CLEARING AREAS**

**Existing Tower**

- 681m<sup>2</sup> 30.0m buffer from tower within least concern regional ecosystems
- 2782m<sup>2</sup> 37.5m buffer from tower within of concern regional ecosystems

**Proposed Tower**

- 36m<sup>2</sup> 30.0m buffer from tower within least concern regional ecosystems
- 4017m<sup>2</sup> 37.5m buffer from tower within of concern regional ecosystems

**AMENDMENTS**

A	AMK 13/8/2019	Add water main location
<b>PROJECT MANAGER</b>		<b>SURVEYED</b>
A Kerlin		MGF 28/3/2019
<b>COMPILED</b>		<b>CAD/REF</b>
AMK		PR143136-1a.DWG
<b>SHEET SIZE</b>		<b>PROJECT</b>
A3		PR143136 Mossman Gorge.rvt
<b>SHEET</b>		<b>OF SHEETS</b>
1		1

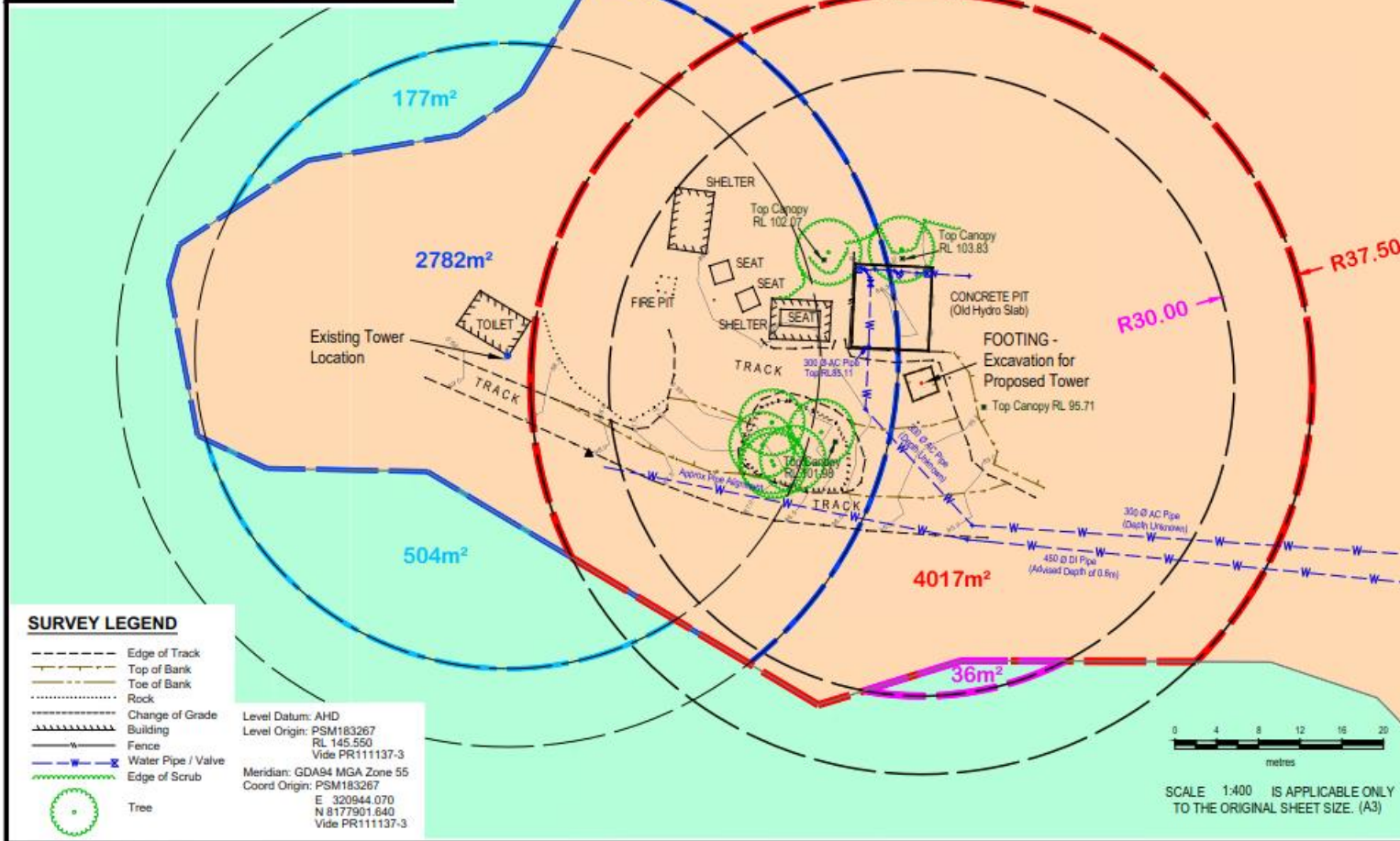
RPS Australia East Pty Ltd  
ACN 140 292 762  
125 Abbott St  
PO Box 1940  
CAIRNS QLD 4870  
T +61 7 4031 1336  
F +61 7 4031 2042  
W rpsgroup.com

**MOSSMAN GORGE CENTRE**

**PROPOSED RADIO TOWER**

**POTENTIAL VEGETATION CLEARING - SITE PLAN**

<b>SCALE</b>	<b>DATE</b>	<b>DRAWING NO.</b>	<b>ISSUE</b>
1:400	13/8/2019	PR143136-1	A



**SURVEY LEGEND**

- Edge of Track
- Top of Bank
- Toe of Bank
- Rock
- Change of Grade
- Building
- Fence
- Water Pipe / Valve
- Edge of Scrub
- Tree

Level Datum: AHD  
Level Origin: PSM183267  
RL 145.550  
Vide PR111137-3  
Meridian: GDA94 MGA Zone 55  
Coord Origin: PSM183267  
E 320944.070  
N 8177901.640  
Vide PR111137-3



SCALE 1:400 IS APPLICABLE ONLY TO THE ORIGINAL SHEET SIZE. (A3)

# Concurrence Agency Conditions

RA6-N



Department of  
**State Development,  
Manufacturing,  
Infrastructure and Planning**

SARA reference: 1905-11271 SRA  
Council reference: MCUI 3100/2019  
Applicant reference: 18-385

18 July 2019

Chief Executive Officer  
Douglas Shire Council  
PO Box 723  
Mossman Qld 4873  
enquiries@douglas.qld.gov.au

Attention: Daniel Lamond

Dear Sir/Madam

## **SARA response—212 Gorge Road, Mossman Gorge and Mossman Gorge Road, Shannonvale**

(Referral agency response given under section 56 of the *Planning Act 2016*)

The development application described below was confirmed as properly referred by the Department of State Development, Manufacturing, Infrastructure and Planning on 17 June 2019.

### **Response**

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Outcome:	Referral agency response – with conditions.
Date of response:	18 July 2019
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	Material change of use for Placement and operation of three (3) radio towers to support the upgrade of the existing telecommunications facilities used in conjunction with the existing Visitor Centre
SARA role:	Referral Agency.	

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

Page 1 of 7

SARA trigger: Schedule 10, Part 3, Division 4, Table 3 (Planning Regulation 2017)  
 Development application for a material change of use - clearing native vegetation

SARA reference: 1905-11271 SRA

Assessment Manager: Douglas Shire Council

Street address: 212 Gorge Road, Mossman Gorge and Mossman Gorge Road, Shannonvale

Real property description: Lots 7 on SP212661, 94 on SR257, and 152 on SR832

Applicant name: Voyages Indigenous Tourism Australia Pty Ltd T/A The Mossman Gorge Centre

Applicant contact details: PO Box 2970  
 Cairns QLD 4870  
 louise@urbansync.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 Sue Lockwood, Senior Planning Officer, on 40373215 or via email CairnsSARA@dsmip.qld.gov.au who will be pleased to assist.

Yours sincerely



Brett Nancarrow  
 Manager (Planning)

cc: Voyages Indigenous Tourism Australia Pty Ltd T/A The Mossman Gorge Centre, louise@urbansync.com.au

enc: Attachment 1 - Referral agency conditions  
 Attachment 2 - Advice to the applicant  
 Attachment 3 - Reasons for referral agency response  
 Attachment 4 - Change representation provisions  
 Attachment 5 - Approved plans and specifications

## 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 plans and specifications referenced below are found at Attachment 5)

No.	Conditions	Condition timing
<b>Material change of use</b>		
Schedule 10, Part 3, Division 4, Table 3—The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of the Department of Natural Resources, Mines and Energy to be the enforcement authority for the development to which this development approval relates for the administration and enforcement of any matter relating to the following condition(s):		
1.	No clearing of vegetation is to occur within areas identified as Area A (Part A <sup>1</sup> ) as shown on the attached Technical Agency Response Plan (TARP) 1905-11271 SRA dated 15 July 2019.	At all times
2.	No built structure is to be established, constructed or located within areas identified as Area B (Part B <sup>1</sup> ) as shown on attached Technical Agency Response Plan (TARP) 1905-11271 SRA dated 15 July 2019.	At all times
3.	Any person(s) engaged or employed to carry out the <u>clearing of vegetation</u> 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 <u>clearing</u> authorised by this development approval.	Prior to clearing

## Attachment 2—Advice to the applicant

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<b>General advice</b>	
1.	Terms and phrases used in this document are defined in the <i>Planning Act 2016</i> its regulation or the State Development Assessment Provisions (SDAP) v2.4. If a word remains undefined it has its ordinary meaning.
<b>Digital Data</b>	
2.	To request an electronic file of the Derived Points (Attached to Plan: 1905-11271 SRA) as contained in this technical agency response, email a request to the Department of Natural Resources, Mines and Energy at <a href="mailto:northvegetation@dnrme.qld.gov.au">northvegetation@dnrme.qld.gov.au</a> and include application reference (1905-11271 SRA).

## 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 is located in an existing cleared area. There will be minimal impact on the loss of vegetation and no impact on biodiversity, land degradation, connectivity and ecological processes.
- The proposed radio tower will not result in an adverse impact on the underlying purpose and tenure of the land as a water reserve as the radio tower presents a suitable level of separation from existing water mains.
- There are no wetlands within 100m of the subject lot and no watercourses and drainage features within the proposed development area.
- There will be no adverse impacts to connectivity and ecological processes on the subject lot or in the adjacent landscape.
- The development proposal does not contribute to or accelerate land degradation through waterlogging, or through the salinisation of groundwater, surface water or soil.
- It is unlikely that the full extent of the fire break and safety buffer areas will be utilised.

### Material used in the assessment of the application:

- The development application material and submitted plans
- *Planning Act 2016*
- Planning Regulation 2017
- The *State Development Assessment Provisions* (version 2.4), as published by the department
- The Development Assessment Rules
- SARA DA Mapping system



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

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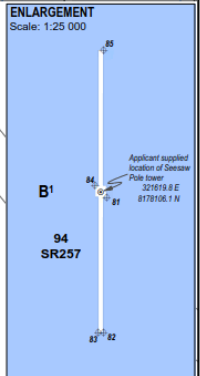
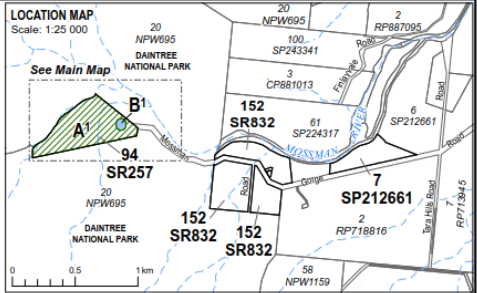
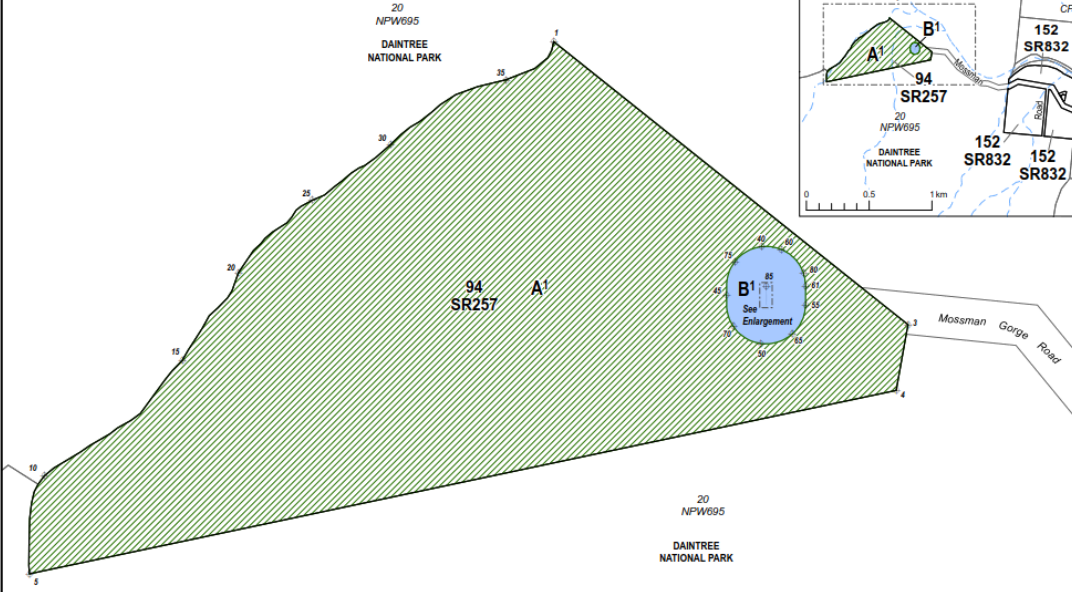
(page left intentionally blank – refer to attachment 4)

## **Attachment 5—Approved plans and specifications**

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(page left intentionally blank – refer to attachment 5)

**Derived Reference Points**  
 Projection: UTM (MGA Zone 55)  
 Datum: GDA(94)  
 All GPS points continue sequentially when labels are missing



**Legend**

- 2 Derived Reference Start Points (See attachment)
- Subject Lot(s)
- Area A (Part A')
- Area B (Part B')
- Watercourse and drainage feature

Note: This is a colour plan and should only be reproduced in colour

1: 3 000 @ A3 size  
 0 100 200 300 m  
 Projection: UTM (MGA Zone 55) Datum: GDA94

**This plan must be read in conjunction with Decision Notice 1905-11271 SRA**

The property boundaries shown on this plan are APPROXIMATE ONLY. They are NOT an accurate representation of the legal boundaries.

Note: 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).

**Technical Agency Response Plan**  
**Plan of Area A (Part A') and Area B (Part B')**  
**in Lot 94 on SR257, Lot 7 on SP212661 and Lot 152 on SR832**

eLVAS Case ID:2019/002788

LOCAL GOVT: DOUGLAS SHIRE  
 LOCALITY OF MOSSMAN GORGE AND SHANNONVALE

File Reference: eDOCS no. 082/0003370 Compiled from: DCDB, RVM & NRM Notes on file  
 Department: DNRME Prepared by: SAK & EMR - j554 Region: NORTH Date: 15/07/2019

Version: 2

**TARP**  
**1905-11271 SRA**  
**Sheet 1 of 1**

## Attachment to Plan: 1905-11271 SRA

## Derived Reference Points for GPS

Horizontal Datum: GDA94 Projection: Transverse Mercator MGA 94 Zone 55

Note: Derived Reference Points are provided to assist in the location of the Technical Agency Response boundaries. Responsibility for locating these boundaries lies solely with the landholder and delegated contractor(s). This attachment must be read in conjunction with the accompanying plan and the Technical Agency Response 1905-11271 SRA. Derived Reference Points are indicated on the accompanying plan and proceed sequentially if labels are missing.

Parcel	ID	Easting	Northing	Parcel	ID	Easting	Northing
A1	1	321417	8178348	B1	61	321657	8178115
A1	2	321711	8178113	B1	62	321658	8178103
A1	3	321756	8178078	B1	63	321657	8178092
A1	4	321744	8178015	B1	64	321654	8178081
A1	5	320916	8177840	B1	65	321645	8178069
A1	6	320915	8177873	B1	66	321634	8178062
A1	7	320916	8177892	B1	67	321622	8178060
A1	8	320918	8177907	B1	68	321610	8178061
A1	9	320920	8177918	B1	69	321599	8178066
A1	10	320930	8177933	B1	70	321588	8178076
A1	11	320964	8177956	B1	71	321583	8178087
A1	12	320993	8177974	B1	72	321582	8178102
A1	13	321012	8177986	B1	73	321582	8178115
A1	14	321045	8178025	B1	74	321584	8178127
A1	15	321062	8178044	B1	75	321590	8178138
A1	16	321073	8178062	B1	76	321601	8178148
A1	17	321081	8178075	B1	77	321620	8178153
A1	18	321088	8178086	B1	78	321637	8178149
A1	19	321105	8178103	B1	79	321648	8178140
A1	20	321115	8178127	B1	80	321655	8178127
A1	21	321130	8178149	B1	81	321620	8178106
A1	22	321141	8178160	B1	82	321620	8178097
A1	23	321162	8178175	B1	83	321620	8178097
A1	24	321171	8178187	B1	84	321619	8178106
A1	25	321186	8178197	B1	85	321620	8178115
A1	26	321198	8178202				
A1	27	321215	8178215				
A1	28	321231	8178227				
A1	29	321247	8178238				
A1	30	321261	8178250				
A1	31	321280	8178266				
A1	32	321300	8178281				
A1	33	321323	8178298				
A1	34	321344	8178305				
A1	35	321371	8178312				
A1	36	321398	8178322				
A1	37	321411	8178333				
A1	38	321417	8178348				
A1	39	321626	8178152				
A1	40	321615	8178152				
A1	41	321603	8178149				
A1	42	321591	8178140				
A1	43	321585	8178129				
A1	44	321582	8178118				
A1	45	321582	8178106				
A1	46	321582	8178095				
A1	47	321585	8178083				
A1	48	321591	8178072				
A1	49	321603	8178063				
A1	50	321615	8178060				
A1	51	321627	8178060				
A1	52	321639	8178065				
A1	53	321650	8178074				
A1	54	321655	8178085				
A1	55	321657	8178097				
A1	56	321658	8178109				
A1	57	321657	8178120				
A1	58	321654	8178132				
A1	59	321645	8178143				
A1	60	321634	8178150				

## Development Assessment Rules—Representations about a referral agency response (concurrency)

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 (concurrency)**.

### Part 6: Changes to the application and referral agency responses and Part 7: Miscellaneous

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#### 28 Concurrency agency changes its response or gives a late response

- 28.1. Despite part 2, a concurrency 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 concurrency 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 concurrency 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 concurrency 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 concurrency agency proposes to change its referral agency response under section 28.2(a), the concurrency 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 concurrency agency has 10 days from the day of giving notice under paragraph (a), or a further period agreed between the applicant and the concurrency 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 concurrency agency under section 30, and the concurrency agency agrees to make the change included in the representations, section 28.2(c) is taken to have been satisfied.

### 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.

## **Reasons for Decision Despite Non-Compliance with Assessment Benchmarks**

### **Conservation Zone Code**

AO2 of the code stipulates that any building or structure must not be more than 8.5m or two (2) storeys in height. The towers slender design and green finish blends with the surrounding mature vegetation. The vegetation surrounding the proposed location is approximately 19 metres in height. It is considered that the proposed 18m seesaw tower is compatible with the character and amenity of the existing mature vegetation that envelopes the site.

### **Low Density Residential Zone Code**

AO1 of the low density residential zone code requires that the height of buildings or structures is not more than 8.5 metres. The tower stands 6.5m tall on top of an existing two storey building and does not comply with the exemption requirement for low impact facilities. The maximum proposed height is approximately 14.5 metres when accommodating for the existing two (2) storey BBNAC office building. The placement of the tower to the roof of the BBNAC office is considered to be minor and inconsequential when considering the impact on the character and amenity of the area as the towers slender and light weight design ensures that it blends seamlessly with the surrounding mature vegetation. Further, the tower cannot be viewed from Mossman Gorge Road.

### **Landscape Values Overlay Code**

In conjunction with the height non-compliances detailed above, the development departs from the same height particulars (maximum height of 8.5m) that are also stipulated under AO1.1 of the Landscape Values Overlay Code. The towers over Lots 94 and 152 within the high landscape value overlay area are in keeping with and protect the high landscape values present over each respective site due to their minimalistic design.

### **Telecommunications Facility Code**

The single non-compliance relates directly to the requirement for each tower to be enclosed by a 1.8m fence as prescribed under AO4.1. The Applicant has elected not to fence each tower to ensure the movement of fauna over each respective site remains unrestricted and to limit the development footprint and maintenance requirements as well as to protect and limit any impacts on the surrounding landscape. Each tower is of a simple design where any moving parts and electrical components will be safely secured to ensure a member of the general public cannot damage or be injured by the infrastructure. The proposal is considered to comply with the purpose and intent of PO4 as it will not compromise the safety of the public.

# Extracts from the Planning Act 2016 - Making Representations During Applicant's Appeal Period

Planning Act 2016  
Chapter 3 Development assessment

[s 74]

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## Division 2            Changing development approvals

### Subdivision 1        Changes during appeal period

#### 74     What this subdivision is about

- (1) This subdivision is about changing a development approval before the applicant's appeal period for the approval ends.
- (2) This subdivision also applies to an approval of a change application, other than a change application for a minor change to a development approval.
- (3) For subsection (2), sections 75 and 76 apply—
  - (a) as if a reference in section 75 to a development approval were a reference to an approval of a change application; and
  - (b) as if a reference in the sections to the assessment manager were a reference to the responsible entity; and
  - (c) as if a reference in section 76 to a development application were a reference to a change application; and
  - (d) as if the reference in section 76(3)(b) to section 63(2) and (3) were a reference to section 83(4); and
  - (e) with any other necessary changes.

#### 75     Making change representations

- (1) The applicant may make representations (*change representations*) to the assessment manager, during the applicant's appeal period for the development approval, about changing—
  - (a) a matter in the development approval, other than—
    - (i) a matter stated because of a referral agency's response; or



- 
- (ii) a development condition imposed under a direction made by the Minister under chapter 3, part 6, division 2; or
    - (b) if the development approval is a deemed approval—the standard conditions taken to be included in the deemed approval under section 64(8)(c).
  - (2) If the applicant needs more time to make the change representations, the applicant may, during the applicant's appeal period for the approval, suspend the appeal period by a notice given to the assessment manager.
  - (3) Only 1 notice may be given.
  - (4) If a notice is given, the appeal period is suspended—
    - (a) if the change representations are not made within a period of 20 business days after the notice is given to the assessment manager—until the end of that period; or
    - (b) if the change representations are made within 20 business days after the notice is given to the assessment manager, until—
      - (i) the applicant withdraws the notice, by giving another notice to the assessment manager; or
      - (ii) the applicant receives notice that the assessment manager does not agree with the change representations; or
      - (iii) the end of 20 business days after the change representations are made, or a longer period agreed in writing between the applicant and the assessment manager.
  - (5) However, if the assessment manager gives the applicant a negotiated decision notice, the appeal period starts again on the day after the negotiated decision notice is given.

## **76 Deciding change representations**

- (1) The assessment manager must assess the change representations against and having regard to the matters that

- must be considered when assessing a development application, to the extent those matters are relevant.
- (2) The assessment manager must, within 5 business days after deciding the change representations, give a decision notice to—
    - (a) the applicant; and
    - (b) if the assessment manager agrees with any of the change representations—
      - (i) each principal submitter; and
      - (ii) each referral agency; and
      - (iii) if the assessment manager is not a local government and the development is in a local government area—the relevant local government; and
      - (iv) if the assessment manager is a chosen assessment manager—the prescribed assessment manager; and
      - (v) another person prescribed by regulation.
  - (3) A decision notice (a *negotiated decision notice*) that states the assessment manager agrees with a change representation must—
    - (a) state the nature of the change agreed to; and
    - (b) comply with section 63(2) and (3).
  - (4) A negotiated decision notice replaces the decision notice for the development application.
  - (5) Only 1 negotiated decision notice may be given.
  - (6) If a negotiated decision notice is given to an applicant, a local government may give a replacement infrastructure charges notice to the applicant.

## Extracts from the Planning Act 2016 – Appeal Rights

Planning Act 2016  
Chapter 6 Dispute resolution

[s 229]

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- (2) The person is taken to have engaged in the representative's conduct, unless the person proves the person could not have prevented the conduct by exercising reasonable diligence.
- (3) In this section—
  - conduct* means an act or omission.
  - representative* means—
    - (a) of a corporation—an executive officer, employee or agent of the corporation; or
    - (b) of an individual—an employee or agent of the individual.
  - state of mind*, of a person, includes the person's—
    - (a) knowledge, intention, opinion, belief or purpose; and
    - (b) reasons for the intention, opinion, belief or purpose.

## 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) 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, 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.

## **Part 2 Development tribunal**

### **Division 1 General**

#### **233 Appointment of referees**

- (1) The Minister, or chief executive, (the *appointer*) may appoint a person to be a referee, by an appointment notice, if the appointer considers the person—
  - (a) has the qualifications or experience prescribed by regulation; and
  - (b) has demonstrated an ability—
    - (i) to negotiate and mediate outcomes between parties to a proceeding; and
    - (ii) to apply the principles of natural justice; and
    - (iii) to analyse complex technical issues; and
    - (iv) to communicate effectively, including, for example, to write informed succinct and well-organised decisions, reports, submissions or other documents.



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## **Subdivision 5      Changing charges during relevant appeal period**

### **124      Application of this subdivision**

This subdivision applies to the recipient of an infrastructure charges notice given by a local government.

### **125      Representations about infrastructure charges notice**

- (1) During the appeal period for the infrastructure charges notice, the recipient may make representations to the local government about the infrastructure charges notice.
- (2) The local government must consider the representations.
- (3) If the local government—
  - (a) agrees with a representation; and
  - (b) decides to change the infrastructure charges notice;the local government must, within 10 business days after making the decision, give a new infrastructure charges notice (a *negotiated notice*) to the recipient.
- (4) The local government may give only 1 negotiated notice.
- (5) A negotiated notice—
  - (a) must be in the same form as the infrastructure charges notice; and
  - (b) must state the nature of the changes; and
  - (c) replaces the infrastructure charges notice.
- (6) If the local government does not agree with any of the representations, the local government must, within 10 business days after making the decision, give a decision notice about the decision to the recipient.
- (7) The appeal period for the infrastructure charges notice starts again when the local government gives the decision notice to the recipient.

## **126 Suspending relevant appeal period**

- (1) If the recipient needs more time to make representations, the recipient may give a notice suspending the relevant appeal period to the local government.
- (2) The recipient may give only 1 notice.
- (3) If the representations are not made within 20 business days after the notice is given, the balance of the relevant appeal period restarts.
- (4) If representations are made within the 20 business days and the recipient gives the local government a notice withdrawing the notice of suspension, the balance of the relevant appeal period restarts the day after the local government receives the notice of withdrawal.

## **Division 3 Development approval conditions about trunk infrastructure**

### **Subdivision 1 Conditions for necessary trunk infrastructure**

#### **127 Application and operation of subdivision**

- (1) This subdivision applies if—
  - (a) trunk infrastructure—
    - (i) has not been provided; or
    - (ii) has been provided but is not adequate; and
  - (b) the trunk infrastructure is or will be located on—
    - (i) premises (the *subject premises*) that are the subject of a development application, whether or not the infrastructure is necessary to service the subject premises; or
    - (ii) other premises, but is necessary to service the subject premises.

## Extracts from the Planning Act 2016 –Appeal Rights

Planning Act 2016  
Chapter 6 Dispute resolution

[s 229]

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(2) The person is taken to have engaged in the representative's conduct, unless the person proves the person could not have prevented the conduct by exercising reasonable diligence.

(3) In this section—

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