

4 June 2025

**Enquiries:** Jenny Elphinstone  
**Our Ref:** ROL 2025\_5725/1 (Doc ID 1298872)  
**Your Ref:** 2023-06-66

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

Douglas Shire Council  
C/ Aspire Town Planning and Project Services  
PO Box 1040  
MOSSMAN QLD 4873

Email: [admin@aspireqld.com](mailto:admin@aspireqld.com)

Attention Mr Daniel Favier

Dear Sir

**Development Application for Reconfiguring a Lot for a Staged Reconfiguration in two stages for: Stage 1 - 1 Lot into 2 Lots; and Stage 2 - Boundary Realignment for 2 lots into 2 lots at L6 Gorge Road Mossman Gorge on Land Described as Lot 6 on SP343110**

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

Please quote Council's application number: ROL 2025\_5725/1 in all subsequent correspondence relating to this development application.

Should you require any clarification regarding this, please contact Jenny Elphinstone on telephone 07 4099 9444.

Yours faithfully



**Neil Beck**  
**A/Manager Environment & Planning**

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

- Decision Notice
  - Approved Drawing(s) and/or Document(s)
  - Concurrence Agency Response
  - Reasons for Decision
- Advice For Making Representations and Appeals (Decision Notice)



## Decision Notice

### Approval (with conditions)

*Given under s 63 of the Planning Act 2016*

#### Applicant Details

Name: Douglas Shire Council

Postal Address: C/ Aspire Town Planning and Project services  
PO Box 1040  
MOSSMAN QLD 4873

Email: [admin@aspireqld.com](mailto:admin@aspireqld.com)

#### Property Details

Street Address: L6 Gorge Road Mossman Gorge

Real Property Description: Lot 6 on SP343110

Local Government Area: Douglas Shire Council

#### Details of Proposed Development

Development Permit for Reconfiguring a Lot for a Staged Reconfiguration in two stages for:  
Stage 1 - 1 Lot into 2 Lots and an access easement to a road; and  
Stage 2 - Boundary Realignment for 2 lots into 2 lots.

#### Decision

Date of Decision: 4 June 2025

Decision Details: Approved (subject to conditions)

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

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

The term 'approved drawing(s) and/or document(s) or other similar expressions means:

Drawing or Document	Reference	Date
Site Plan	Greg Skyring Design & Drafting, Plan 107-23, Sheet 1 of 1, Undated drawing as lodged with Council on 13 February 2025 (Council document ID 1280212).	13 February 2025.

Drawing or Document	Reference	Date
<b>FNQROC Regional Development Manual Standard Drawing/s for Vehicle Access</b>		
Rural Allotment Access	Standard Drawing S1105 Issue F	27 August 2020

### Assessment Manager Conditions & Advices

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 Council endorsement of the Plan of Survey, except where specified otherwise in these conditions of approval.

### External Works

3. Construct a rural vehicle access crossover, at the intersection of the access easement with Gorge Road pavement and an associated driveway to the boundary of the land, in accordance with the FNQROC Regional Development Manual to the satisfaction of the Chief Executive Officer prior to the signing and dating of the Survey Plan for Stage 1.

The design and construction of the driveway will given appropriate consideration to the existing footpath.

### 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 Council Local Laws and other statutory requirements.
3. For information relating to the *Planning Act 2016* log on to <https://planning.dsdmip.qld.gov.au/>. To access the *FNQROC Regional Development Manual*, Local Laws, the Douglas Shire Planning Scheme and other applicable Policies log on to [www.douglas.qld.gov.au](http://www.douglas.qld.gov.au).

### Further Development Permits

Not applicable

### Concurrence Agency Response

Concurrence Agency	Concurrence Agency Reference	Date	Doc ID
State Assessment Referral Agency	2503-44955 SRA	23 May 2025	1297852

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

### **Currency Period for the Approval**

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This approval, granted under the provisions of the *Planning Act 2016*, shall lapse four (4) years from the day the approval takes effect in accordance with the provisions of Section 85 of the *Planning Act 2016*.

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

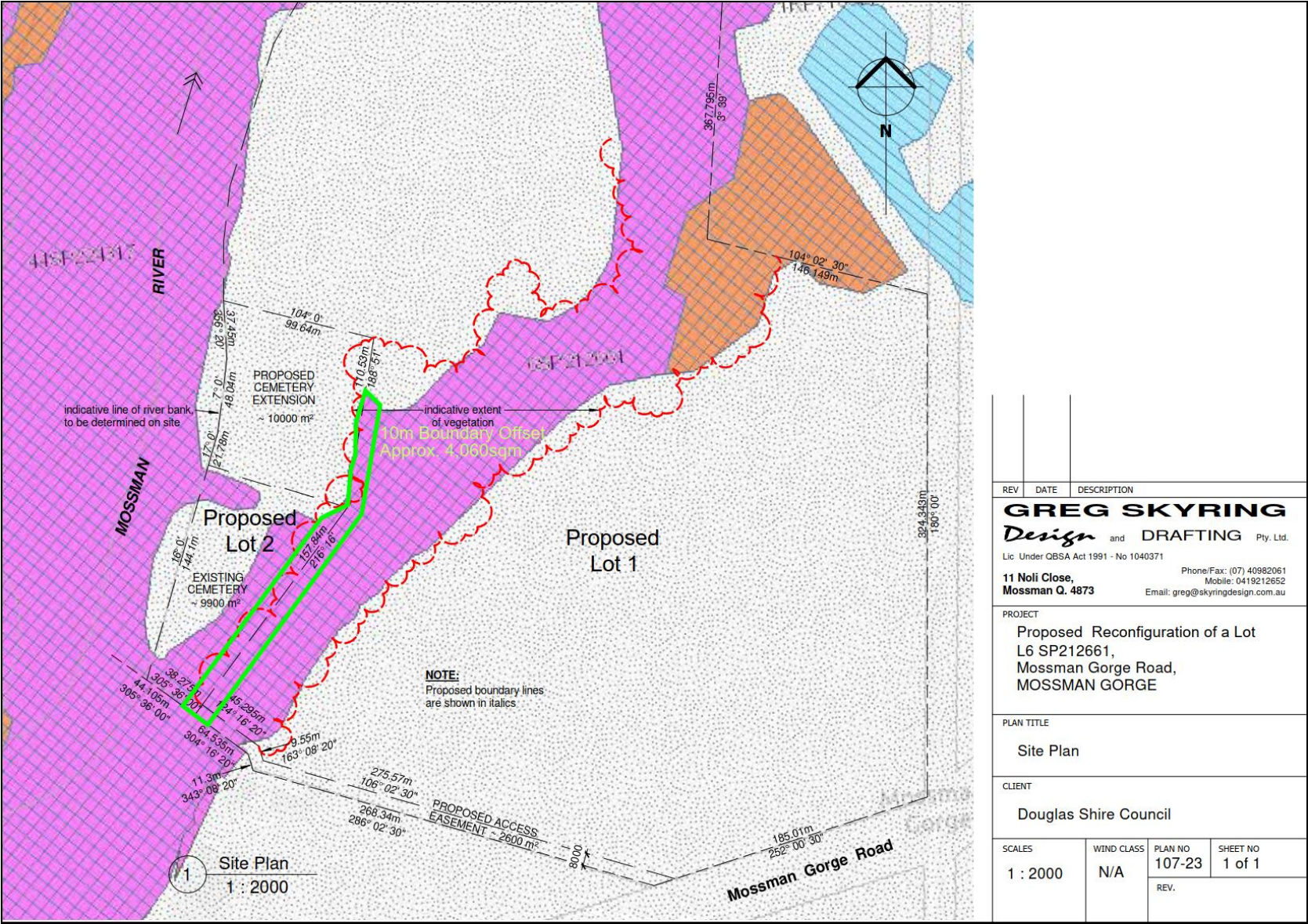
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The rights of applicants to make representations and rights to appeal to a Tribunal or the Planning and Environment Court against decisions about a development application are set out in Chapter 6, Part 1 of the *Planning Act 2016*.

A copy of the relevant appeal provisions is attached.



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



REV	DATE	DESCRIPTION
<b>GREG SKYRING</b> <i>Design</i> and DRAFTING Pty. Ltd. Lic Under QBSA Act 1991 - No 1040371 11 Noli Close, Mossman Q. 4873 Phone/Fax: (07) 40982061 Mobile: 0419212652 Email: greg@skyringdesign.com.au		
PROJECT Proposed Reconfiguration of a Lot L6 SP212661, Mossman Gorge Road, MOSSMAN GORGE		
PLAN TITLE Site Plan		
CLIENT Douglas Shire Council		
SCALES 1 : 2000	WIND CLASS N/A	PLAN NO 107-23 SHEET NO 1 of 1 REV.

## Concurrence Agency Conditions

RA6-N



SARA reference: 2503-44955 SRA  
Council reference: ROL 2025\_5725/1  
Applicant reference: 2023-06-66 – Douglas Shire Council – Lot 6 Gorge Road, Mossman Gorge

23 May 2025

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

Attention: Jenny Elpinstone

Dear Sir/Madam

### SARA referral agency response—Staged Reconfiguration of a Lot at Gorge Road, Mossman Gorge (Lot 6 on SP343110)

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

The development application described below was confirmed as properly referred by the State Assessment and Referral Agency (SARA) on 10 March 2025.

#### Response

Outcome:	Referral agency response – with conditions
Date of response:	23 May 2025
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	Staged Reconfiguration of a lot: <ul style="list-style-type: none"><li>• Stage 1 - Reconfiguring a lot (1 lot into 2 lots and creating an access easement to a road); and</li><li>• Stage 2 - Reconfiguring a lot (boundary realignment)</li></ul>
SARA role:	Referral agency	

Page 1 of 7

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

SARA trigger: **Schedule 10, Part 3, Division 4, Table 2** (Planning Regulation 2017)  
– Reconfiguring a lot involving clearing native vegetation

SARA reference: 2503-44955 SRA

Assessment manager: Douglas Shire Council

Street address: Gorge Road, Mossman Gorge

Real property description: Lot 6 on SP343110

Applicant name: Douglas Shire Council

Applicant contact details: C/- Aspire Town Planning and Project Services  
PO Box 723  
MOSSMAN QLD 4873  
admin@aspireqld.com

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

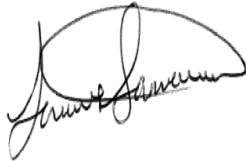
## Representations

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 Anthony Westbury, A/Senior Planning Officer, on 4037 3215 or via email CairnsSARA@dsdilgp.qld.gov.au who will be pleased to assist.

Yours sincerely



Javier Samanes  
A/ Manager (Planning)

cc Douglas Shire Council, admin@aspireqld.com

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 - Documents referenced in conditions



## 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
Schedule 10, Part 3, Division 4, Table 2 – Reconfiguring a lot involving clearing native vegetation—The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of the Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development, 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.	<p>Clearing of vegetation must not occur within the areas identified as Area B (B1-B5) as shown on the attached:</p> <p>(a) Vegetation Management Plan, prepared by Queensland Government, reference VMP 2503-44955 SRA, Sheet 1 of 1, version 1, dated 23 May 2025; and</p> <p>(b) Attachment to Vegetation Management Plan VMP 2503-44955 SRA, Derived Reference Points for GPS.</p>	At all times.
2.	<p>Built infrastructure, other than for fences, roads, underground services, firebreaks and fire management, must not be established, constructed or located within Area C (C1-C2) as shown on the attached:</p> <p>(a) Vegetation Management Plan, prepared by Queensland Government, reference VMP 2503-44955 SRA, Sheet 1 of 1, version 1, dated 23 May 2025; and</p> <p>(b) Attachment to Vegetation Management Plan VMP 2503-44955 SRA, Derived Reference Points for GPS.</p>	At all times.
3.	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.	Prior to clearing.



**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) v3.2. If a word remains undefined it has its ordinary meaning.

### Attachment 3—Reasons for referral agency response

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

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**The reasons for the SARA decision are:**

The proposed development, with conditions, complies with the relevant provisions of State code 16: Native vegetation clearing, as it:

- Appropriately avoids and minimises vegetation clearing, to avoid the loss of biodiversity and land degradation, maintain ecological processes, and conserve vegetation.
- Locates the new boundaries outside category B remnant vegetation as much as possible.
- Does not result in a significant residual impact on a matter of state environmental significance.

**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 3.2)
- the Development Assessment Rules
- SARA DA Mapping system
- State Planning Policy mapping system
- *Human Rights Act 2019*

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

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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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(page left intentionally blank – attached separately)



**Attachment: 2503-44955 SRA**  
**Derived Reference Points**  
**Datum: GDA2020, Projection: MGA Zone 55**

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



**SARA ref:** 2503-44955 SRA .....

**Date:** 23 May 2025 .....

**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 continue sequentially when labels are not shown.

Part ID	Unique ID	Easting	Northing
B1	1	324119	8178764
B1	2	324097	8178633
B1	3	324074	8178600
B1	4	324054	8178574
B1	5	324050	8178551
B1	6	324059	8178505
B1	7	324073	8178484
B1	8	324040	8178281
B1	9	324040	8178278
B1	10	324042	8178275
B1	11	324044	8178272
B1	12	324047	8178270
B1	13	324092	8178254
B1	14	324090	8178253
B1	15	324077	8178221
B1	16	324034	8178195
B1	17	324006	8178194
B1	18	323978	8178190
B1	19	323950	8178174
B1	20	323851	8178095
B1	21	323843	8178092
B1	22	323824	8178078
B1	23	323818	8178070
B1	24	323806	8178064
B1	25	323802	8178056
B1	26	323790	8178049
B1	27	323768	8178023
B1	28	323747	8177989
B1	29	323738	8177984
B1	30	323733	8177983
B1	31	323732	8177984
B1	32	323731	8177985
B1	33	323716	8177999
B1	34	323791	8178118
B1	35	323792	8178120
B1	36	323793	8178121
B1	37	323794	8178124
B1	38	323799	8178126
B1	39	323805	8178139
B1	40	323806	8178152
B1	41	323811	8178164
B1	42	323813	8178183
B1	43	323818	8178195
B1	44	323820	8178199
B1	45	323824	8178198
B1	46	323831	8178187
B1	47	323846	8178187
B1	48	323855	8178191
B1	49	323875	8178210
B1	50	323899	8178223
B1	51	323911	8178243
B1	52	323942	8178235
B1	53	323962	8178244
B1	54	323973	8178254
B1	55	323987	8178273
B1	56	324000	8178341
B1	57	323988	8178478
B1	58	323982	8178495
B1	59	323988	8178546
B1	60	323995	8178563

Part ID	Unique ID	Easting	Northing
B1	61	324014	8178579
B1	62	324017	8178587
B1	63	324040	8178614
B1	64	324044	8178620
B1	65	324070	8178667
B1	66	324075	8178680
B1	67	324072	8178684
B1	68	324069	8178687
B1	69	324056	8178682
B1	70	324045	8178667
B1	71	324030	8178656
B1	72	323995	8178644
B1	73	323989	8178637
B1	74	323949	8178612
B1	75	323928	8178592
B1	76	323927	8178588
B1	77	323918	8178578
B1	78	323902	8178568
B1	79	323880	8178560
B1	80	323860	8178561
B1	81	323850	8178553
B1	82	323882	8178617
B1	83	324015	8178744
B1	84	324069	8178769
B2	85	323787	8178448
B2	86	323780	8178444
B2	87	323824	8178511
B2	88	323814	8178463
B2	89	323802	8178448
B3	90	323734	8178268
B3	91	323729	8178256
B3	92	323720	8178258
B3	93	323733	8178324
B3	94	323759	8178410
B3	95	323778	8178441
B3	96	323771	8178417
B3	97	323770	8178403
B3	98	323764	8178391
B3	99	323752	8178327
B3	100	323742	8178307
B3	101	323740	8178298
B3	102	323742	8178294
B4	103	323747	8178141
B4	104	323747	8178136
B4	105	323744	8178133
B4	106	323729	8178132
B4	107	323713	8178140
B4	108	323699	8178138
B4	109	323690	8178132
B4	110	323682	8178118
B4	111	323706	8178190
B4	112	323716	8178239
B4	113	323722	8178237
B4	114	323711	8178200
B4	115	323711	8178161
B4	116	323740	8178147
B5	117	323772	8178126
B5	118	323701	8178012
B5	119	323656	8178052
B5	120	323669	8178077

Part ID	Unique ID	Easting	Northing
B5	121	323667	8178067
B5	122	323667	8178048
B5	123	323674	8178040
B5	124	323677	8178041
B5	125	323681	8178046
B5	126	323713	8178063
B5	127	323737	8178093
B5	128	323753	8178121
B5	129	323770	8178127
C1	130	323726	8178252
C1	131	323722	8178237
C1	132	323716	8178239
C1	133	323720	8178258
C1	134	323729	8178256
C2	135	323772	8178126
C2	136	323782	8178120
C2	137	323794	8178124
C2	138	323793	8178121
C2	139	323792	8178120
C2	140	323791	8178118
C2	141	323716	8177999
C2	142	323701	8178012

## Reasons for Decision

1. The reasons for this decision are:
  - a. Sections 60, 62 and 63 of the *Planning Act 2016*;
  - b. to ensure the development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme Version 1.0; and
  - c. to ensure compliance with the *Planning Act 2016*.
2. Findings on material questions of fact:
  - a. the development application was properly lodged to the Douglas Shire Council 13 February 2025 under section 51 of the *Planning Act 2016* and Part 1 of the *Development Assessment Rules*;
  - b. the development application contained information from the applicant which Council reviewed together with Council's own assessment against the 2017 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 Rural Zone Code;
  - 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 benchmarks.

## Non Compliance with Assessment Benchmarks

Development is supported despite the conflict.

Benchmark Reference	Alternative Measure/Comment
<p><b>Rural Zone Code</b></p> <p><i>PO7 The minimum lot size is 40 hectares, unless</i></p> <p><i>(a) the lot reconfiguration results in no additional lots (e.g. amalgamation, boundary realignments to resolve encroachments); or</i></p> <p><i>(b) the reconfiguration is limited to one additional lot to accommodate:</i></p> <p><i>(i) Telecommunications facility;</i></p> <p><i>(ii) Utility installation.</i></p>	<p>The development facilitates the ownership and care of the Aboriginal Burial Ground to the associated families, relatives and community and is consistent with the purpose of the Rural zone code that is to:</p> <p><i>“(b) provide opportunities for non-rural uses, such as ancillary tourism activities that are compatible with agriculture, the environmental features, and landscape character of the rural area where the uses do not compromise the long-term use of the land for rural purposes. ...”</i></p> <p>The balance parcel is 28.718ha and is sufficiently sized to ensure ongoing agricultural viability of the land.</p> <p>There is an overriding social and cultural benefit which justifies the need for the development. This is a necessary development to ensure appropriate ownership over the Yalanji Cemetery.</p>

Benchmark Reference	Alternative Measure/Comment
<p><b>Reconfiguration of a Lot Code</b></p> <p><i>PO1 Lots comply with the lot reconfiguration outcomes of the applicable Zone code in Part 5.</i></p>	<p>The Development Application seeks to resolve a historical issue where the Yalanji Cemetery is located on private land. The balance parcel is 28.718ha and is sufficiently sized to ensure ongoing agricultural viability of the land. The development meets the Purpose of the rural land zone.</p> <p>There is an overriding social and cultural benefit which justifies the need for the development. This is a necessary development to ensure appropriate ownership over the Yalanji Cemetery.</p>
<p><b>PO2</b></p> <p><i>New lots are generally rectangular in shape with functional areas for land uses intended by the zone</i></p>	<p>The new boundary achieves angles of not less than 45 degrees, except for where the proposed Access Easement adjoins the Mossman Gorge Road. The proposed lot layout respects the natural site constraints and does not impact upon the intended independent function of the proposed lots.</p>



## 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 assessment manager gives the applicant the decision notice for 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) If the applicant makes the change representations during the appeal period without giving a notice under subsection (2), the appeal period is suspended from the day the representations are made until—
- (a) the applicant withdraws the change representations by notice given to the assessment manager; or
  - (b) the assessment manager gives the applicant the decision notice for the change representations; or

- (c) 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.
- (6) Despite subsections (4) and (5), if the decision notice mentioned in subsection (4)(b)(ii) or (5)(b) is 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.

## Subdivision 2 Changes after appeal period

### 77 What this subdivision is about

This subdivision is about changing a development approval, other than the currency period, after all appeal periods in relation to the approval end.

### 78 Making change application

- (1) A person may make an application (a *change application*) to change a development approval.

*Note—*

For the making of a change application for a development approval that was a PDA development approval, see also the *Economic Development Act 2012*, sections 51AM, 51AN and 51AO.

- (2) A change application must be made to the responsible entity for the application.

### 78A Responsible entity for change applications

- (1) The *responsible entity* for a change application is—
  - (a) if the change application is for a minor change to a development condition of a development approval stated in a referral agency's response for the development application or another change application for the approval—the referral agency; or



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 a decision of the Minister, under chapter 7, part 4, to amend the registration of premises to include additional land in the affected area for the premises—20 business days after the day a notice is published under section 269A(2)(a); or
  - (e) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
  - (f) 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
  - (g) 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
- (h) 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.

# **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—