

Our Ref: LM:lmc:DA/4647 AD2023/0004491

Your Ref: R2-23

24 August 2023

Dwayne Morrissey

c/-U&i Town Plan

PO Box 426

Cooktown QLD 4895

E-mail: [ramon@uitownplan.com.au](mailto:ramon@uitownplan.com.au)

Attention: Ramon Samanes

Dear Mr Samanes

**Decision Notice - Approval**  
Given under section 63 of the *Planning Act 2016*

With reference to the above-mentioned Development Application, 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 **23 August 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/4647

Approval Sought: Development Permit for Reconfiguring a Lot

Description of the Development: 1 lot into 2 lots

Category of Development: Assessable Development

Category of Assessment: Code Assessment

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

### Location Details

Street Address: Wilton Access Road, COOKTOWN 4895

Real Property Description: Lot 74 on Plan SP172677

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@dsdilgp.qld.gov.au">CairnsSARA@dsdilgp.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> ) – Native Vegetation Clearing

**Other Requirements Under Section 43 of the *Planning Regulation 2017***

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Not Applicable.

**Approved Plans and Specifications**

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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

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 (D23/21657)  
**Attachment 2** Approved Plans of development (D23/25523)  
**Attachment 3** Notice of Decision – Statement of Reasons (AD2023/0004492)



**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.	<b>INFRASTRUCTURE CONDITIONS</b> 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.	At all times
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APPROVED PLANS & DOCUMENTS														
8.	<b>APPROVED PLANS &amp; DOCUMENTS</b> 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>Building Envelope &amp; Access Plan</td><td>N/A</td><td>01.08.2023 (Submitted)</td><td>U&amp;I Town Plan</td></tr><tr><td>Vegetation Management Plan</td><td>VMP2306-35414 SRA – Sheet 1 of 1</td><td>20.07.2023</td><td>The State of Queensland</td></tr></tbody></table>	Title	Sheet No.	Date	Prepared By	Building Envelope & Access Plan	N/A	01.08.2023 (Submitted)	U&I Town Plan	Vegetation Management Plan	VMP2306-35414 SRA – Sheet 1 of 1	20.07.2023	The State of Queensland	At all times
Title	Sheet No.	Date	Prepared By											
Building Envelope & Access Plan	N/A	01.08.2023 (Submitted)	U&I Town Plan											
Vegetation Management Plan	VMP2306-35414 SRA – Sheet 1 of 1	20.07.2023	The State of Queensland											
9.	<b>CONDITIONS OF APPROVAL &amp; APPROVED PLANS</b> 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.	At all times												

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.	At all times

<b>EFFLUENT DISPOSAL</b>		
11.	On-site septic systems must be provided to proposed Lot 1 and Lot 2 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.	At all times
<b>ACCESS</b>		
12.	Access to proposed Lots 1 and 2 must be provided from the existing crossovers to Wilton Access Road, and maintained in accordance with the requirements of the FNQROC Development Manual	At all times
<b>FIREMANAGEMENT</b>		
13.	The development must be maintained at all times to a standard so as not to create a fire hazard.	At all times
14.	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;  (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>BUILDING ENVELOPE</b>		
15.	All buildings or structures must be located within the identified building envelope for proposed Lot 1 and Lot 2. 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>VEGETATION CLEARING</b>		
16.	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>		
17.	Stormwater drainage must be directed to a legal point of discharge.	At all times
18.	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>		
19.	The developer must ensure that effective measures are put in place to ensure construction activity does not cause erosion.	At all times
20.	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>OUTSTANDING CHARGES</b>		
21.	All rates, service charges, interest and other charges levied on the land must be paid prior to Council endorsement of the Plan of Survey.	At all times



**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 and Lot 2 – All buildings or structures must be located within the existing building envelope (Council file reference DA/4647). 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. In addition, a property notation will be included for Lot 1 and Lot 2 regarding the non-compliant existing structures on the site.
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 (D23/21657)**



SARA reference: 2306-35415 SRA  
 Council reference: DA/4647  
 Applicant reference: R2-23

20 July 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—Wilton Access Road, 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 29 June 2023.

### Response

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Outcome:	Referral agency response – with conditions
Date of response:	20 July 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 for 1 into 2 Lots
SARA role:	Referral agency
SARA trigger:	Schedule 10, Part 3, Division 4, Table 2, Item 1 (Planning Regulation 2017) - Native vegetation clearing

SARA reference: 2306-35415 SRA  
Assessment manager: Cook Shire Council  
Street address: Wilton Access Road, Cooktown  
Real property description: Lot 74 on SP172677  
Applicant name: Dwayne Morrissey C/- U&I Town Plan  
Applicant contact details: PO Box 426  
Cooktown QLD 4895  
ramon@uitownplan.com.au

*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

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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 Isley Peacey, Senior Planning Officer, on 4037 3202 or via email CairnsSARA@dSDLGP.qld.gov.au who will be pleased to assist.

Yours sincerely



Brett Nancarrow  
Manager (Planning)

cc Dwayne Morrissey, ramon@uitownplan.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 provisions  
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.1	Conditions	Condition timing
<b>Reconfiguration of a Lot</b>		
Schedule 10, Part 3, Division 4, Table 2, Item 1 – Native vegetation clearing (Planning Regulation 2017) —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 condition(s):		
1.	Clearing of vegetation must: <ul style="list-style-type: none"> <li>(a) only occur within Area A (Part A1) as shown on the attached:               <ul style="list-style-type: none"> <li>(i) Vegetation Management Plan, prepared by Queensland Government, reference VMP 2306-35414 SRA, Sheet 1 of 1, version 1; and</li> </ul> </li> <li>(b) not exceed 0.59 hectares.</li> </ul>	At all times

## 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) (version 3.0). 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 the SARA's decision are:

The proposal has been assessed against State code 16: Native vegetation clearing, and with conditions, the development ensures that:

- clearing is minimised in order to conserve vegetation, avoid land degradation and loss of biodiversity, and maintain ecological processes;
- greenhouse gas contributions are minimised through continued ability for carbon sequestration processes to occur;
- adequate vegetation is maintained to sustainably manage the impacts of clearing on ecosystems and biodiversity, and avoids significant residual impacts upon MSES; and
- impacts on vegetation are minimised where avoidance is not possible.

There are no notices requiring compliance, vegetation management requirements or legally secured offset areas within the development site.

Ultimately the development is determined to comply with State code 16: Native vegetation clearing.

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

- the development application material and submitted plans
- *Planning Act 2016*
- Planning Regulation 2017
- the SDAP (version 3.0), as published by SARA
- the Development Assessment Rules
- SARA DA Mapping system
- State Planning Policy mapping system
- section 58 of the *Human Rights Act 2019*

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

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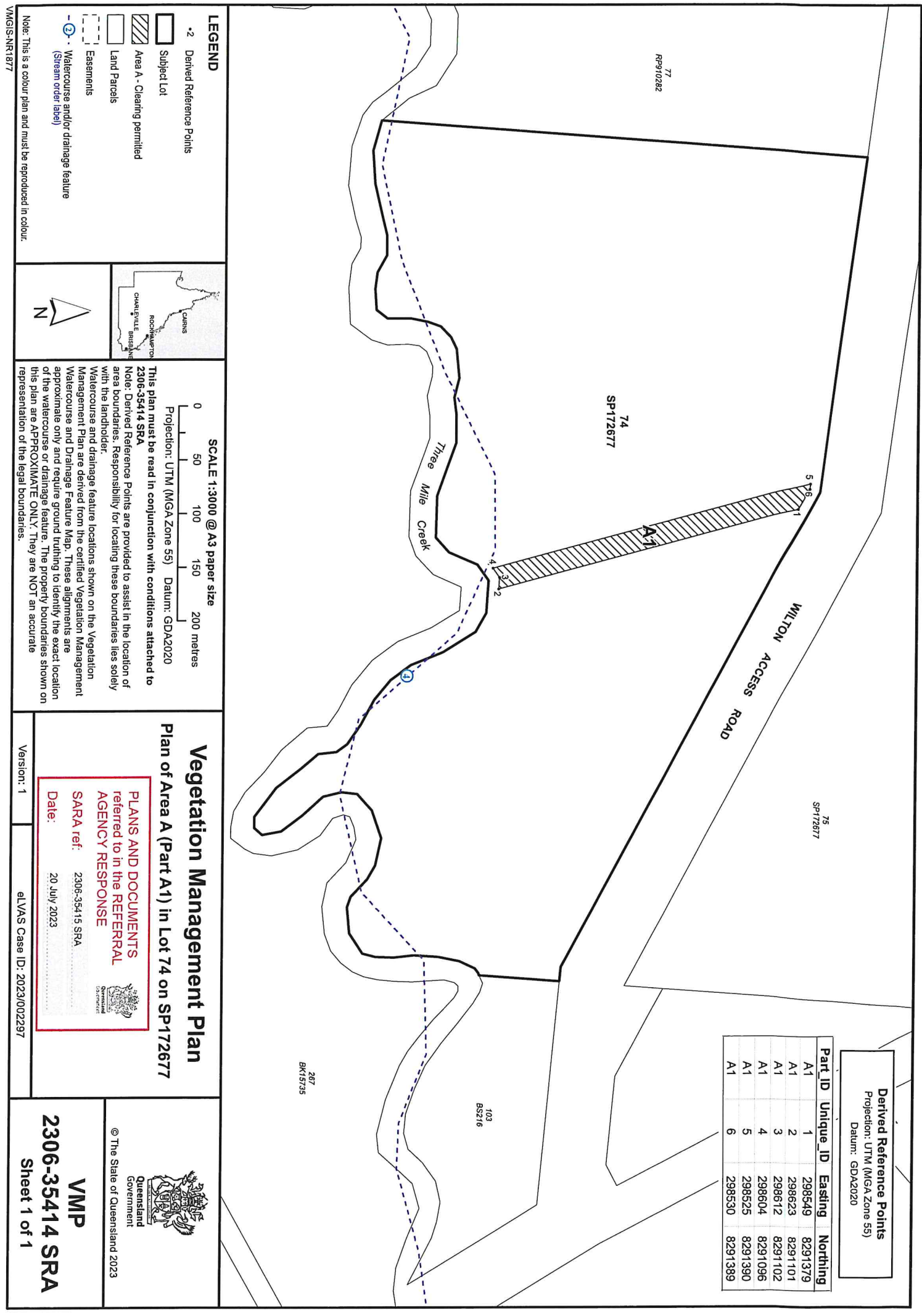
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## **Attachment 5—Documents referenced in conditions**

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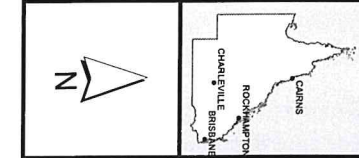


**Derived Reference Points**  
 Projection: UTM (MGA Zone 55)  
 Datum: GDA2020

Part ID	Unique_ID	Easting	Northing
A1	1	298549	8291379
A1	2	298623	8291101
A1	3	298612	8291102
A1	4	298604	8291096
A1	5	298525	8291390
A1	6	298530	8291389

**LEGEND**

- Derived Reference Points
- Subject Lot
- Area A - Clearing permitted
- Land Parcels
- Easements
- Watercourse and/or drainage feature (Stream order label)



**SCALE 1:3000 @ A3 paper size**

0 50 100 150 200 metres

Projection: UTM (MGA Zone 55) Datum: GDA2020

**This plan must be read in conjunction with conditions attached to 2306-35414 SRA**

Note: 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.

**Vegetation Management Plan**

**Plan of Area A (Part A1) in Lot 74 on SP172677**

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

SARA ref: 2306-35415 SRA  
 Date: 20 July 2023

Version: 1 eLVAS Case ID: 2023/002297

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**VMP**  
**2306-35414 SRA**  
 Sheet 1 of 1

# 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 2 – Approved Plans of development (D23/25523)**

# Building Envelope & Access Plan

Lot 74 Wilton Access Road, Cooktown (Lot 74 on SP172677)

15 26 44 5 14 5 7 9 6 E

15 26 44 5 14 5 7 36 E



15 27 5 5 14 5 7 9 E

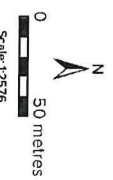
15 27 5 5 14 5 7 36 E



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

**Development Application:** Development Permit for Reconfiguration of a Lot (into 2 Lots)  
**Lot:** 74 on SP172677  
**Referred to in Cook Shire Council's Concurrence Agency Response**

**Approval Date:** 23 August 2023  
**Application Number:** DA/4647



Printed at: A3  
 Not suitable for accurate measurement.  
 Project: Web Director EFS6 (02/00 (8857))  
 For more information, visit <https://didgeo.information.qld.gov.au/help-info/contact-us.html>

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**Attachment 3 – Notice of Decision – Statement of Reasons (AD2023/0004492)**

## 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/4647
Applicant:	Dwayne Morrissey c/- U&I Town Plan
Proposal:	Development Permit for a Reconfiguration of a Lot
Description of the Development:	Reconfiguration of a Lot (1 into 2 Lots)
Street Address:	Lot 74 Wilton Access Road Cooktown QLD 4895
Real Property Description:	Lot 74 on Plan SP172677
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:	23 August 2023

## 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, and Item 2 – clearing native vegetation.
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 Categorising Instrument (Cook Shire Council Planning Scheme 2017):

- Rural Zone Code
- Reconfiguring a Lot Code
- Biodiversity Overlay
- Bushfire Hazard Overlay
- Works, Services, and Infrastructure Code.

### Local Categorising Instrument (Variation Approval)

Not Applicable

### Local Categorising Instrument (Temporary Local Planning Instrument)

Not Applicable

## PUBLIC NOTIFICATION

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Not Applicable





## **REASONS FOR THE DECISION**

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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**

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Not Applicable

## **ADDITIONAL RELEVANT MATTERS FOR IMPACT ASSESSMENT**

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Not Applicable

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

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Not Applicable

## **OTHER DETAILS**

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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.