

Our Reference: MCUI/2021/169/A  
CS Portal Reference: N/A  
Contact Officer: Richard Green  
Contact: (07) 4688 6710  
Email: [development@tr.qld.gov.au](mailto:development@tr.qld.gov.au)

**Decision Notice**  
**CHANGE TO A DEVELOPMENT APPROVAL**  
*Planning Act 2016 Section 83*

Captains Mountain Wind Farm Pty Ltd  
C/- Precinct Urban Planning  
PO Box 3038  
TOOWOOMBA QLD 4350

Email: [andrew@precinctplan.com.au](mailto:andrew@precinctplan.com.au)

27 July 2026

Dear Sir/Madam

**Development Approval:** **Material Change of Use – Impact – Undefined Use (Meteorological Mast)**  
**Location:** **9426 Gore Highway, CAPTAINS MOUNTAIN QLD 4357**  
**Property Description:** **Lot 25 DY883, Lot 26 DY851 and Lot 56 SP215189**  
**Relevant Planning Scheme:** **Toowoomba Regional Planning Scheme 2012**

I refer to your application received on 2 April 2026 for a change to the development approval for Material Change of Use – Impact – Undefined Use (Meteorological Mast) approved on 2 June 2021.

The change application was assessed against the relevant assessment benchmarks as identified in the *Toowoomba Regional Planning Scheme 2012* for the development.

The change application was approved on 21 July 2026 at the Ordinary Meeting of Council as per the attached Schedule. The changes are considered to be consistent with the relevant assessment benchmarks.

All deletions are identified by **bolded** strikethrough of text and all additions are identified by **bolded** text.

**Rights of Appeal**

Attached is an extract from the *Planning Act 2016* which details your appeal rights regarding this decision.

Yours faithfully



Matthew Coleman  
Principal Planner, Planning Branch

## SCHEDULE 1

### DEVELOPMENT PERMIT FOR MATERIAL CHANGE OF USE – IMPACT

|                              |                                                                                                                                |
|------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| <b>APPLICATION NUMBER:</b>   | MCUI/2021/169/A                                                                                                                |
| <b>APPLICANT:</b>            | Captains Mountain Wind Farm Pty Ltd                                                                                            |
| <b>LOCATION:</b>             | 9426 Gore Highway, CAPTAINS MOUNTAIN QLD 4357                                                                                  |
| <b>PROPERTY DESCRIPTION:</b> | Lot 25 DY883, Lot 26 DY851 and Lot 56 SP215189                                                                                 |
| <b>APPROVED USE:</b>         | Undefined Use (Meteorological Mast) – Change Approval                                                                          |
| <b>ZONING / PRECINCT:</b>    | Rural Zone /<br>100 Hectare minimum Precinct (Lot 25 DY883 and Lot 56 SP215189)<br>200 Hectare minimum Precinct (Lot 26 DY851) |

#### A. ASSESSMENT MANAGER'S CONDITIONS:

##### PLANNING

##### APPROVED USE

1. This Development Approval is for a Material Change of Use for an Undefined Use (Meteorological Mast), with a maximum height of 105 metres above natural ground level.
2. ~~DELETED The Meteorological Mast frame must be provided with a non-reflective galvanised finish.~~
3. No infrastructure or equipment other than that associated with the approved use for climatic monitoring is permitted to be attached to the Meteorological Mast.

##### CESSATION OF USE

4. The Undefined Use (Meteorological Mast) use must cease on or before **8 June 2031** ~~five (5) years from the date of commencement of use, unless otherwise approved by Council.~~
5. All structures and infrastructure associated with the approved Undefined Use (Meteorological Mast), with the exception of the access track, must be removed from the site upon cessation of the use and the site rehabilitated to its pre-development state. Rehabilitation and removal works must be carried out in accordance with, but not limited to, the following:
  - 5.1 Site removal works must be commenced within two (2) months of the cessation of the approved use;
  - 5.2 The approved structures and infrastructure, including concrete mast footings, cattle panel/security fencing and the like, must be removed from the site and the land left in a clean and tidy pre-developed state;

- 5.3 All applicable approvals must be obtained for the site removal works; and
- 5.4 All site removal works must be completed within three (3) months of the cessation of the approved use and Council provided with written notice of the completed works.

#### **CARRY OUT AND MAINTAIN DEVELOPMENT**

6. The development must comply with the provisions of Council's Local Laws, Planning Scheme Policies, Planning Scheme and Planning Scheme Codes to the extent they are not varied by this Development Approval.
7. Unless otherwise stated, all conditions must be complied with prior to the commencement of use and thereafter.
8. Complete all building work associated with this Development Approval, including work required by any of the conditions of this Development Approval prior to the commencement of use. Such building work is to be carried out generally in accordance with the Approved Plans and Documents and, where the building work is assessable development, in accordance with a current Building Works approval.
9. The development must be maintained generally in accordance with the Approved and Amended Plans and Documents subject to or modified by any conditions of this Development Approval.

#### **APPROVED PLANS**

10. The development must be carried out generally in accordance with the Approved Plans listed below, subject to the conditions of this Development Approval:

**Plan:** Site Plan - Lot 25/DY883, Lot 26/DY851 and Lot 56/SP215189, Sheet 1 of 1, Revision B  
**Description:** Site Plan, prepared by Vestas, dated 2 December 2020 and received by Council 19 January 2021.  
**Amendments:** As notated on Approved Plan:

- Approved Plan only authorises the location of the Meteorological Mast and access track.

**Plan:** ART-19424-DRG-GPKT-0001, Revision 00  
**Description:** General layout and Isometric View, prepared by Art Group, undated and received by Council 22 January 2021.  
**Amendments:** Nil

**Plan:** ART-19424-DRG-GEKT-0001, Revision 01  
**Description:** General Elevation View and Ancillary, prepared by Art Group, undated and received by Council 22 January 2021.  
**Amendments:** Nil

**Plan:** **Painted Mast – Safety Markings**  
**Description:** **Painted Mast – Safety Markings, undated and received by Council 2 April 2026.**  
**Amendments:** Nil

#### **COMMENCEMENT OF USE**

11. Submit to Council a Notice of Intention to Commence the Approved Use. The notice must:
- 11.1 Be submitted to the Manager, Development Services within a minimum of ten (10) business days prior to commencement of the approved use;

- 11.2 Nominate the day the approved use is intended to commence; and
- 11.3 Include evidence (i.e. copies of decision notice(s), photographic proof, and statement(s) of compliance with the conditions of this approval from suitably qualified persons) which demonstrates that all conditions of this approval have been complied with.

## **DEDICATIONS, AGREEMENTS AND CONTRIBUTIONS**

### **ACCESS AGREEMENT**

- 12. A legal access agreement must be entered into between the applicant and landowner/s, ensuring right of access from the Gore Highway to the mast location is secured for the life of this Development Approval over all lots subject to this application (Lot 25 DY883, Lot 26 DY851 and Lot 56 SP215189) in the event any of the lots are separately disposed of to another person or entity. The access track location must be generally as identified on the Approved Plans.

## **WORKS**

### **AIR QUALITY IMPACT MITIGATION**

- 13. Odours or airborne contaminants which are noxious or offensive to public amenity or safety, likely to cause environmental harm or environmental nuisance or exceed the *Air Quality Objectives* listed in the *Environmental Protection (Air) Policy 2019* as measured at any sensitive place or commercial place must not be released to the atmosphere during building work and throughout the life of this development.
- 14. All reasonable and feasible avoidance and mitigation measures must be employed so that dust emissions generated during building works do not exceed the following levels when measured at any sensitive place or commercial place:
  - 14.1 Dust deposition of 120 milligrams per square metre per day, averaged over one (1) month, when monitored in accordance with the most recent version of *Australian Standard AS3580.10.1 Methods for sampling and analysis of ambient air – Determination of particulate matter – Deposited matter – Gravimetric method*.

### **CONSTRUCTION WASTE MANAGEMENT AND STORAGE**

- 15. Waste generated during demolition, excavation and construction must be managed in accordance with the waste management hierarchy as detailed in the *Waste Reduction and Recycling Act 2011*.
- 16. The on-site storage and disposal of demolition, excavation and construction waste (including the storage and disposal of night soil) must comply with the *Environmental Protection Regulation 2019*.
- 17. Fires are not to be lit to dispose of demolition or construction waste.
- 18. No demolition, excavation or construction waste, including concrete or steel, is to be used as fill or buried on-site (with the exception of cut material recycled from the subject land and used on the subject land), or be used as fill or buried elsewhere, unless otherwise permitted:
  - 18.1 Elsewhere within this Development Approval;
  - 18.2 In accordance with an associated Operational Works approval;
  - 18.3 In association with and in accordance with an Environmental Authority issued under the *Environmental Protection Act 1994* (EP Act);

- 18.4 In accordance with either a general or specific approval of a resource for beneficial use (otherwise known as a beneficial use approval) issued under the *Waste Reduction and Recycling Act 2011*; or
  - 18.5 In accordance with a written approval issued by Council under the *Environmental Protection Regulation 2019* relating to the depositing or disposal of general waste from a premises not serviced by Council.
19. Demolition, excavation and construction waste (including night soil) must not be placed or stored within the road reserve at any time.

#### **CONSTRUCTION NOISE IMPACT MITIGATION**

20. Building work (as per the definition of the EP Act) that creates audible noise must be confined to the hours of 6:30am and 6:30pm Monday to Saturday (excluding Public Holidays) unless otherwise approved by Council in an endorsed Construction Environmental Management Plan.

#### **EROSION AND SEDIMENT CONTROL**

- 21. Stockpiles of topsoil, sand, aggregate, spoil or other material capable of being moved by the action of wind or running water must be stored clear of drainage paths and not within the road reserve at any time.
- 22. Measures such as sediment fences, earth berms, temporary drainage, temporary sediment basins, dewatering or stormwater filtering devices to prevent eroded material, sediment or sediment laden water from being transported to adjoining properties, roads or stormwater drainage systems must be provided.
- 23. Where erosion and sediment control measures have been damaged, fail or are inadequate and erosion or the release of sediment or sediment laden stormwater has occurred from the subject land or associated works, any resultant property or environmental damage or interference caused must be repaired or cleaned up within 24 hours or upon the direction of Council, at no cost to the affected parties.
- 24. All disturbed areas must be mulched or turfed as soon as possible during construction.
- 25. Measures such as vehicle baths, wash-down and construction matting together with dust suppressants and wraps, exposed ground and stockpile sprinkling must be put in place to minimise site vehicles tracking sediment onto adjoining streets during the course of the construction period, and to prevent dust nuisance during construction and, where applicable the ensuing 'on-maintenance' period.

#### **ENVIRONMENT AND WASTE**

##### **ACOUSTIC AMENITY – NOISE LIMITS**

26. Noise from activity associated with the use of the subject land must not exceed the levels specified in **Table 1** when measured at any receptor.

Table 1 – Noise Limits

| Noise level measured in dB(A)        | Monday to Saturday                  |                |                | Sunday and Public Holidays |                |                |
|--------------------------------------|-------------------------------------|----------------|----------------|----------------------------|----------------|----------------|
|                                      | 7AM-6PM                             | 6PM-10PM       | 10PM-7AM       | 9AM-6PM                    | 6PM-10PM       | 10PM-9AM       |
|                                      | Noise measured at a sensitive place |                |                |                            |                |                |
| $L_{Aeq\ adj,T}^*$                   | Background +5                       | Background +3  | Background +0  | Background +5              | Background +3  | Background +0  |
| $L_{Amax\ adj,T}^{\wedge}$           | Background +10                      | Background +8  | Background +5  | Background +10             | Background +8  | Background +5  |
| Noise measured at a commercial place |                                     |                |                |                            |                |                |
| $L_{Aeq\ adj,T}^*$                   | Background +10                      | Background +8  | Background +5  | Background +10             | Background +8  | Background +5  |
| $L_{Amax\ adj,T}^{\wedge}$           | Background +15                      | Background +13 | Background +10 | Background +15             | Background +13 | Background +10 |

\* = **Adjusted A-weighted equivalent continuous sound pressure level** - Using time-weighting 'Fast Response', the constant equivalent of the instantaneous levels of existing environment plus noise of activity under consideration that would result in the same total sound energy being produced during the time period  $T$ , where  $T$  is measured for a period no less than 15 minutes, when the activity is causing a steady state noise, and no less than 1 hour when the activity is causing an intermittent noise, unaffected by extraneous noise and adjusted for tonality and impulsiveness.

$\wedge$  = **Adjusted A-weighted sound pressure level** - Obtained by using time-weighting 'Fast Response' and arithmetically averaging the visual maximum levels of the noise of activity under investigation, considering tonality and impulsiveness during the time period  $T$ , where  $T$  is measured for a period no less than 15 minutes.

27. Where considered warranted by Council and when requested in writing to do so, a noise investigation must be undertaken to investigate a complaint of noise nuisance. In such instances, a suitably qualified person must monitor, interpret and record all parameters that are required to be monitored in order to determine whether or not the Noise Emission Limits listed within this Development Approval have been exceeded. The results of the investigation must be provided to Council within 28 days of the request or a longer period if specified in any such request. Measurement of noise emissions (adjusted for tonality and impulse) must be generally in accordance with the most recent version of *Australian Standard AS1055.1 Acoustics – Description and measurement of environmental noise – General procedures*.

## ACOUSTIC AMENITY – MECHANICAL PLANT

28. All “refrigeration equipment”, “pumps”, “regulated devices”, and “air conditioning equipment” as defined by the EP Act must be designed, installed, operated and maintained to comply with the noise standards as specified within the EP Act.
29. Any fixed mechanical plant that causes either tonal ( $L_{eq}$ ) sound (e.g. from basement car-park or kitchen exhaust, air conditioning unit or pool filtration unit), or impulse ( $L_{max}$ ) sound, must be enclosed, shielded or positioned to ensure that noise emissions do not exceed the following noise limits when measured at any sensitive place or commercial place:
- 29.1 Before 7.00am, if it makes a noise of more than 3dB(A) above the background noise level ( $L_{90}$ ); or
- 29.2 From 7.00am to 10.00pm, if it makes a noise of more than 5dB(A) above the background noise level ( $L_{90}$ ); or
- 29.3 After 10.00pm, if it makes a noise of more than 3dB(A) above the background noise level ( $L_{90}$ ).

## **AIR QUALITY AND AMENITY – AIR RELEASE LIMITS**

30. Odours or airborne contaminants which are noxious or offensive to public amenity or safety, likely to cause environmental harm or environmental nuisance or exceed the Air Quality Objectives listed in the *Environmental Protection (Air) Policy 2019* as measured at any sensitive receptor place must not be released to the atmosphere.
31. Where considered warranted by Council and when requested in writing to do so, an air quality investigation must be undertaken to investigate a complaint of air pollution, odour or dust nuisance. In such circumstances, a qualified person must monitor, interpret and record all parameters that are required to be monitored in order to determine whether or not the Air Release Limits listed within this Development Approval have been exceeded. The results of the investigation must be provided to Council within 28 days of the request or a longer period if specified in any such request.

## **OUTDOOR LIGHTING IMPACT MITIGATION**

32. Outdoor lighting associated with the use must be designed, sited, and installed to comply with the relevant parameters of *Australian Standard AS4282-1997 Control of the obtrusive effects of outdoor lighting*.
33. All flood lighting must be of a type that gives no upward component of light when mounted horizontally (i.e. a full cut off luminaire).
34. Where considered warranted by Council and when requested in writing to do so, a lighting impact investigation must be undertaken to investigate a complaint of light nuisance. In such circumstances, a suitably qualified person must monitor, interpret and record all parameters that are required to be monitored in order to determine whether or not the lighting levels listed within this Development Approval have been exceeded. The results of the investigation must be provided to Council within 28 days of the request or a longer period if specified in any such request.

## **WASTE MANAGEMENT**

35. Waste is not permitted to be stored on site and is to be removed on a daily basis when maintenance and repairs are required.
36. Disposal of waste generated must be undertaken in accordance with the *Environmental Protection Regulation 2019*.
37. The temporary storage and collection of waste must ensure that waste is adequately managed to prevent escape of litter or contamination of land or water.

## **ECOLOGICAL PRESERVATION AND MANAGEMENT**

### **REMOVAL OF EXISTING VEGETATION**

38. Clearing, including felling, pushing, lopping and grubbing of existing trees and vegetation not identified for retention must be undertaken by a suitably qualified person and must include:
  - 38.1 Stump grinding to below finished surface level;
  - 38.2 Rectification to the finished surface levels and materials;
  - 38.3 No damage to other vegetation for retention;
  - 38.4 Legal disposal of all removed vegetation and debris;
  - 38.5 No burning of removed vegetation and debris;

- 38.6 Conclude with the area being stabilised against erosion and rehabilitated; and
- 38.7 The removal of Grass Trees (*Xanthorrhoea spp.*) should be minimised through the selective location of footings and piles. Any Grass Trees needing to be removed should be relocated to similar areas (topography and soil) on site.

## **FAUNA MANAGEMENT DURING REMOVAL OF EXISTING VEGETATION**

39. Prior to clearing all trees to be removed are to be inspected for wildlife (i.e. koalas, possums, birds nests etc.). If wildlife is present, the tree must not be felled or pruned until the wildlife has left the tree or has been removed by a legislative compliant Fauna Spotter Catcher.

## **B. ADVICES:**

### **GENERAL ADVICES**

#### **INFRASTRUCTURE CHARGES**

- 1) Infrastructure charges are levied by way of an Infrastructure Charges Notice, issued pursuant to Section 119 of the *Planning Act 2016*.

#### **OTHER LAWS AND REQUIREMENTS**

- 2) This Development Approval relates to development requiring approval under the *Planning Act 2016* only. It is the approval holder's responsibility to obtain any other necessary approvals, licenses or permits required under State and Federal legislation or Council local law, prior to carrying out the development. Information with respect to other Council approvals, licenses or permits may be found on the Toowoomba Regional Council website. For information about State and Federal requirements please consult with these agencies directly.
- 3) Any works impacting outside the property boundary will require a permit under Subordinate Local Law 1.15 (Carrying Out Works on a Road or Interfering with a Road or its Operation) 2011. Please contact Council's Road Operations Branch through Council's Customer Service Centre on 131 872. The application can be found on Council's website at [www.tr.qld.gov.au](http://www.tr.qld.gov.au).
- 4) The development has only been assessed in accordance with the provisions of the *Toowoomba Regional Planning Scheme*. No assessment has been made in respect of the provisions of the *Building Code of Australia* and/or the *Queensland Development Code*.

#### **WHEN APPROVAL STARTS TO HAVE EFFECT**

- 5) This Development Approval starts to have effect in accordance with the provisions of Section 71 of the *Planning Act 2016*.

#### **WHEN APPROVAL LAPSES**

- 6) This Development Approval will lapse in accordance with the provisions contained in Sections 85 and 88 of the *Planning Act 2016*, unless otherwise stated elsewhere within this Development Approval.

#### **ENVIRONMENTAL HARM**

- 7) The EP Act states that a person must not carry out any activity that causes, or is likely to cause, environmental harm unless the person takes all reasonable and practicable measures to prevent or minimise the harm.

Environmental harm includes environmental nuisance. In this regard persons and entities involved in the civil, earthworks, construction and operational phases of this development are to adhere to their 'general environmental duty' to minimise the risk of causing environmental harm. Environmental harm is defined by the EP Act as any adverse effect, or potential adverse effect (whether temporary or permanent and of whatever magnitude, duration or frequency) on an environmental value, and includes environmental nuisance.

Therefore, no person should cause any interference with the environment or amenity of the area by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit, sediment, oil or otherwise, or cause hazards likely in the opinion of the Administering Authority to cause undue disturbance or annoyance to persons or affect property not connected with the use.

## **WATER POLLUTION**

- 8) In accordance with the EP Act, all sand, silt, mud, paint, cement, concrete, construction material and demolition material, and other such waste material must not be deposited or placed where it could reasonably be expected to travel into a roadside gutter, stormwater drain or watercourse. On the spot fines apply for such offences.

## **FIRE ANTS**

- 9) The State of Queensland has been declared a quarantine area for the Red Imported Fire Ant. Should this approval involve the movement of restricted items from areas of known infestation the provisions of the *Plant Protection Act 1989* apply, compliance with statutory provisions must be achieved.

## **BUILDING APPROVAL REQUIRED FOR CERTAIN FENCES AND RETAINING WALLS**

- 10) A Development Approval for Building Works is required for the following:

### **10.1 Fences where:**

- The fence is part of a pool fence; or
- The fence is over two (2) metres in height (from natural ground level); or
- The fence is attached to a retaining wall and the combined mean height is over 2.4 metres in height from natural ground level;

### **10.2 Retaining walls where:**

- The wall is retaining fill having a height greater than one (1) metre in height above the wall's natural ground surface; or
- The wall is located within 1.5 metres of a building or another retaining wall; or
- There is a load or surcharge imposed above the retaining wall (i.e. driveway, batter, building or the like); and

- 10.3 Retaining walls and/or fences are sited within 1.5 metres of a property boundary line and the combined height of the structures exceeds two (2) metres (including where the retaining wall is less than one (1) metre).

**SUITABLY QUALIFIED PERSON**

- 11) For the purpose of investigating a complaint of noise, air pollution, odour, dust or lighting nuisance arising from the operation of the approved development, a suitably qualified person is considered to be an environmental consultant with a minimum of three (3) years current experience in the relevant field.
- 12) The applicant should consult with the Civil Aviation Safety Authority (CASA) and Air Services Australia (ASA) to clarify, confirm and comply with any requirements of CASA and/or ASA for lighting of or on the Meteorological Mast.

**C. ATTACHMENTS:**

- Approved Development Plans
- Appeal provisions pursuant to the *Planning Act 2016*.

**SCHEDULE 2**

**CONCURRENCE AGENCY (CONDITIONS AND COMMENTS)**

**DEPARTMENT OF STATE DEVELOPMENT, MANUFACTURING, INFRASTRUCTURE AND  
PLANNING**



SARA reference: 2102-20897 SRA  
Council reference: MCUI/2021/169

5 March 2021

Chief Executive Officer  
Toowoomba Regional Council  
PO Box 3021  
TOOWOOMBA QLD 4350  
development@tr.qld.gov.au

Attention: Richard Green



Dear Richard

## SARA response—9426 Gore Highway, Captains Mountain

(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 5 February 2021.

### Response

|                   |                                                                                                                                                                                       |
|-------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Outcome:          | Referral agency response - No requirements<br><br>Under section 56(1)(a) of the <i>Planning Act 2016</i> , the department advises it has no requirements relating to the application. |
| Date of response: | 5 March 2021                                                                                                                                                                          |
| 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                                                                                                                                                   | Material change of use for an Undefined Use (Meteorological Mast) |
| SARA role:          | Referral Agency.                                                                                                                                                     |                                                                   |
| SARA trigger:       | Schedule 10, Part 9, Division 4, Subdivision 2, Table 4, Item 1—<br>Material change of use of premises near a state transport corridor<br>(Planning Regulation 2017) |                                                                   |
| SARA reference:     | 2102-20897 SRA                                                                                                                                                       |                                                                   |
| Assessment Manager: | Toowoomba Regional Council                                                                                                                                           |                                                                   |

Street address: 9426 Gore Highway, Captains Mountain  
Real property description: Lot 25 on DY883; Lot 26 on DY851 and Lot 56 on SP215189  
Applicant name: Wind Power Development Australia Pty Ltd  
C/- Precinct Urban Planning  
Applicant contact details: PO Box 3038  
TOOWOOMBA QLD 4350  
andrew@precinctplan.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 Brittany Hughes, Planning Officer, on (07) 4616 7332 or via email ToowoombaSARA@dsdmip.qld.gov.au who will be pleased to assist.

Yours sincerely



Darren Cooper  
Manager - DDSW (Planning)

cc Wind Power Development Australia Pty Ltd, andrew@precinctplan.com.au

enc Attachment 1 - Advice to the applicant  
Attachment 2 - Reasons for referral agency response  
Attachment 3 - Representations about a referral agency response

## Attachment 1—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) (v2.6). If a word remains undefined it has its ordinary meaning. |

## Attachment 2—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 development complies with State Code 1: Development in a state-controlled road environment of the SDAP. Specifically, the development:

- does not create a safety hazard for users of a state-controlled road
- does not compromise the structural integrity of state-controlled roads, road transport infrastructure or road works
- does not result in a worsening of the physical condition or operating performance of state-controlled roads and the surrounding road network

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

- The development application material and submitted plans
- *Planning Act 2016*
- Planning Regulation 2017
- The SDAP (version 2.6), as published by SARA
- The Development Assessment Rules
- SARA DA Mapping system
- *Human Rights Act 2019*

## **Attachment 3—Representations about a referral agency response**

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## 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 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.

### **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.

## 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, 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.