

19 June 2023

Enquiries: Neil Beck
Our Ref: OP 2023_5282/1 (1164680)
Your Ref: 35437-003-01

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

J & V Noli Pty Ltd
C/- Brazier Motti Pty Ltd
PO Box 1185
CAIRNS QLD 4870

Dear Sir/Madam

**Development Application for Operational Works (Dam-Excavation greater than 50m³)
At 6868 Captain Cook Highway KILLALOE
On Land Described as LOT: 32 SP: 332240**

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

Please quote Council's application number: OP 2023_5282/1 in all subsequent correspondence relating to this development application.

Should you require any clarification regarding this, please contact Neil Beck on telephone 07 4099 9451.

Yours faithfully



For
Paul Hoyer
Manager Environment & Planning

cc. State Assessment and Referral Agency (SARA) E: 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: J & V Noli Pty Ltd
Postal Address: C/- Brazier Motti Pty Ltd
PO Box 1185
CAIRNS QLD 4870
Email: cairns@braziermotti.com.au

Property Details

Street Address: 6868 Captain Cook Highway KILLALOE
Real Property Description: LOT: 32 SP: 332240
Local Government Area: Douglas Shire Council

Details of Proposed Development

Development Permit for Operational Works (Operational Works - Dam-Excavation greater than 50m³)

Decision

Date of Decision: 19 June 2023
Decision Details: Approved (subject to conditions)

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

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

Drawing	Reference	Date
Site Drainage Work General Arrangement	Drawing No. 230-003-SK01	12 January 2023
Site Drainage Work	Drawing No. 230-003-SK01	13 January 2023

1. Earthworks

The applicant is to ensure that any earthworks undertaken as part of the works maintains a free draining surface outside of the footprint of the dam with no ponding of standing water being created.

2. Stormwater

All stormwater from the property must be directed to a lawful point of discharge such that it does not adversely affect surrounding properties or properties downstream, in accordance with the Queensland Urban Drainage Manual, Fourth Edition (2016).

3. Erosion and Sediment Control

Prepare an erosion and sediment control strategy in accordance with *D5 Stormwater Quality* from the FNQROC Development Manual. The Erosion and Sediment Control Strategy must be endorsed by the Chief Executive Officer prior to commencing works.

4. Hours of Work

Construction work is permitted between the hours of 6:30am and 6:30pm Monday to Saturday. Construction work is not to occur on Sundays or Public Holidays.

5. Acid Sulfate Soils

Prepare an Acid Sulphate Management Plan prepared by a suitably qualified person for the excavation, treatment, containment and disposal of excavated material in accordance with the Queensland Acid Sulfate Soil Technical Manual.

The ASMP is to detail the treatment of excavated material on site before either being re-used on the property or being disposed offsite. If being disposed offsite, the ASMP must nominate the disposal location which is to be an authorised facility to accept the material.

The ASMP is to deal with and respond to all matters associated with the treatment, testing and disposal of acid sulfate soils.

The ASMP must be endorsed by the Chief Executive Officer prior to requesting a prestart meeting and prior to the commencement of works. The endorsed ASMP must be complied with at all times.

REASONS FOR DECISION

1. To ensure the proposed development meets the requirements of the relevant benchmarks from the 2018 Douglas Shire Planning Scheme and in particular, the requirements of the FNQROC Development Manual and relevant Australian Standards.

Further Development Permits

Not applicable

Concurrence Agency Response

Concurrence Agency	Concurrence Agency Reference	Date
State Assessment & Referral Agency	2302-33533 SRA	6 April 2023

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

Currency Period for the Approval

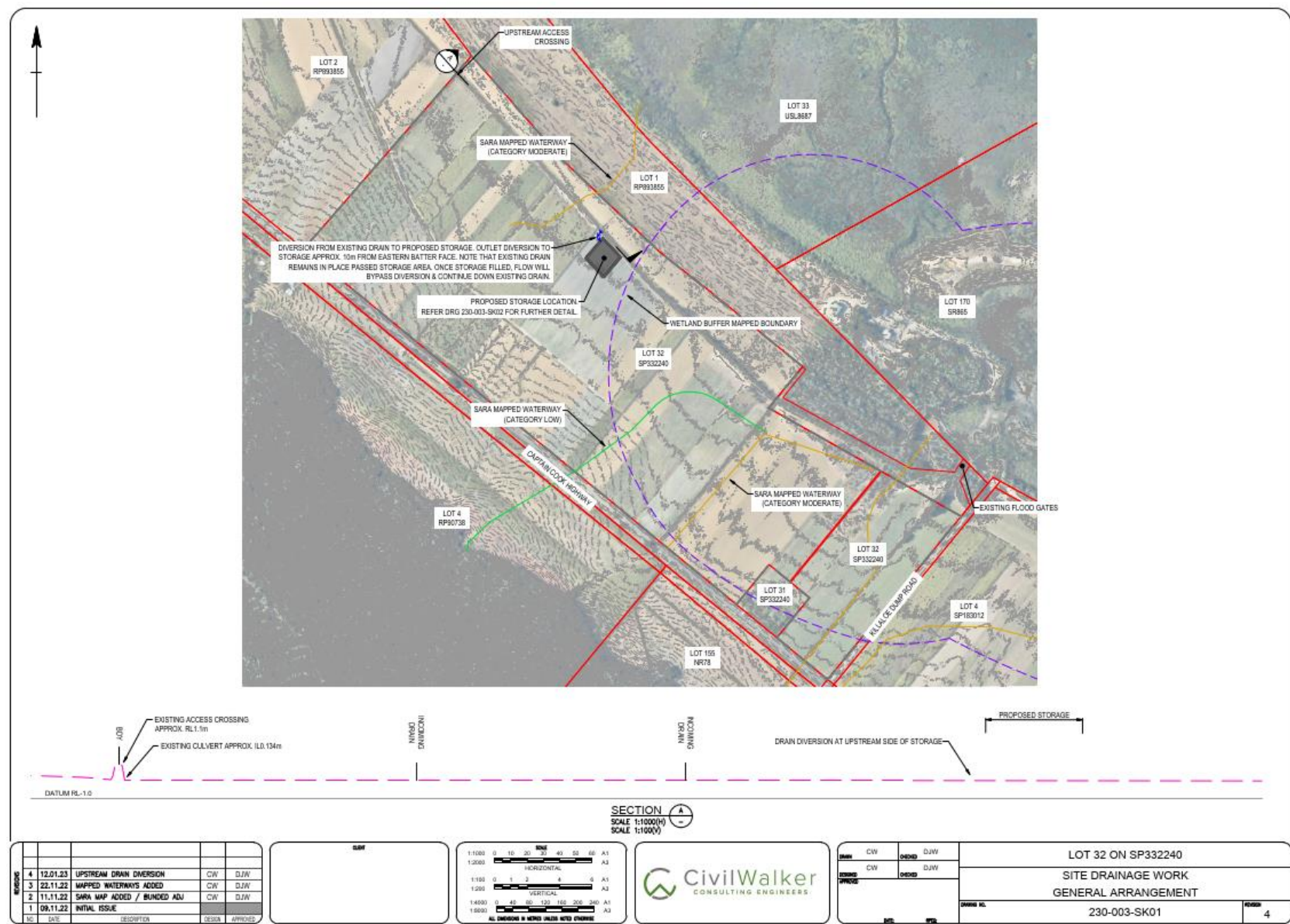
This approval, granted under the provisions of the *Planning Act 2016*, shall lapse two (2) years from the day the approval takes effect in accordance with the provisions of Section 85 of the *Planning Act 2016*.

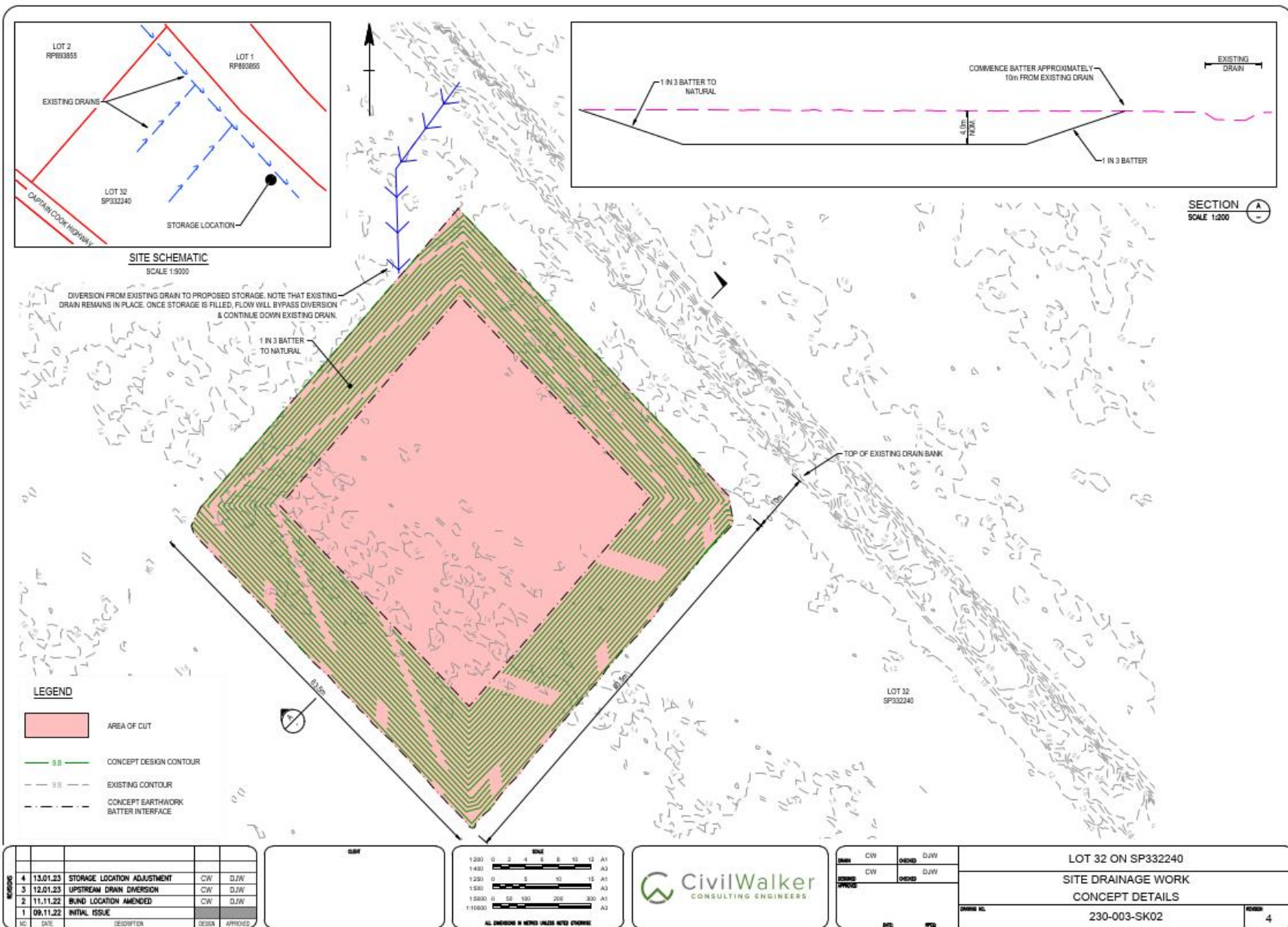
Rights to make Representations & Rights of Appeal

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

A copy of the relevant appeal provisions are attached.

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





Concurrence Agency Conditions

RA9-N



SARA reference: 2302-33533 SRA
Council reference: OP2023_5282/1
Applicant reference: 35437-003-01

6 April 2023

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

Attention: Neil Beck

Dear Sir/Madam

SARA response— Operational Works for Dam Construction at 6868 Captain Cook Highway, Killaloe (Lot 32 on SP332240)

(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 8 March 2023.

Response

Outcome:	Referral agency response - No requirements Under section 56(1)(a) of the <i>Planning Act 2016</i> , SARA advises it has no requirements relating to the application.
Date of response:	6 April 2023
Advice:	Advice to the applicant is in Attachment 1 .
Reasons:	The reasons for the referral agency response are in Attachment 2 .

Development details

Description:	Development permit	Operational works (dam – excavation greater than 50m ³)
SARA role:	Referral Agency	
SARA trigger:	Schedule 10, Part 9, Division 4, Subdivision 1, Table 1 (Planning	

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

Regulation 2017) – Development impacting on State transport infrastructure (Excavation of over 10,000t)

Schedule 10, Part 9, Division 4, Subdivision 2, Table 5 (Planning Regulation 2017) – Operational works near a state-controlled road

SARA reference: 2302-33533 SRA
 Assessment Manager: Douglas Shire Council
 Street address: 6868 Captain Cook Highway, Killaloe
 Real property description: Lot 32 on SP332240
 Applicant name: J & V Noli Pty Ltd
 Applicant contact details: C/- Brazier Motti Pty Ltd
 PO Box 1185
 CAIRNS QLD 4870
 Michael.Tessaro@braziermotti.com.au

Human Rights Act 2019
 considerations:

Section 58 of the *Human Rights Act 2019* specifies required conduct for public entities when acting or making a decision. Sections 15 – 37 of the *Human Rights Act 2019* identifies the human rights a public entity must consider in making a decision.

This decision does not limit the above identified 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 3**.

A copy of this response has been sent to the applicant for their information.

For further information please contact Anthony Westbury, Planning Officer, on 40373214 or via email CairnsSARA@dsdilgp.qld.gov.au who will be pleased to assist.

Yours sincerely



Anthony Walsh
 Manager Planning

cc J & V Noli Pty Ltd c/- Brazier Motti Pty Ltd, Michael.Tessaro@braziermotti.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

General advice	
1.	Terms and phrases used in this document are defined in the <i>Planning Act 2016</i> its regulation or the State Development Assessment Provisions (SDAP) v3.0. If a word remains undefined it has its ordinary meaning.

Attachment 2—Reasons for referral agency response

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

The reasons for the SARA decision are:

The proposed development complies with the relevant provisions of State code 1: Development in a state-controlled road environment, and State code 6: Protection of State transport networks, as follows:

- The proposed development is unlikely to compromise the safety, function, and efficiency of Captain Cook Highway, a state-controlled road, or the state-controlled road network.
- The development site for the proposed dam is located approximately 440m from Captain Cook Highway.
- No material will be imported to, or exported from, the subject site during the construction of the dam.
- The proposed dam will only generate traffic movements during construction (transporting of earthmoving equipment to the site) and will have no on-going traffic impacts to Captain Cook Highway or the state-controlled road network.

Material used in the assessment of the application:

- the development application material and submitted plans
- *Planning Act 2016*
- Planning Regulation 2017
- the State Development Assessment Provisions (version 3.0)
- the Development Assessment Rules
- SARA DA Mapping system
- State Planning Policy mapping system
- *Human Rights Act 2019*

Attachment 3—Representations about a referral agency response

(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 Rules¹ regarding **representations about a referral agency response**

Part 6: Changes to the application and referral agency responses

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.²
- 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.

¹ Pursuant to Section 68 of the *Planning Act 2016*

² 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.³

³ 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.

Planning Act 2016
Chapter 3 Development assessment

[s 74]

Division 2 Changing development approvals

Subdivision 1 Changes during appeal period

74 What this subdivision is about

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

75 Making change representations

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

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

76 Deciding change representations

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

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

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.