

9 September 2021

**Enquiries:** Jenny Elphinstone  
**Our Ref:** MCUI 2021\_4257/1 (Doc ID 1035496)  
**Your Ref:** 21-17/001116

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

MFB Properties (NQ) Pty Ltd  
C/- Planning Plus  
PO Box 399  
REDLYNCH QLD 4870

Email [evan@planningplusqld.com.au](mailto:evan@planningplusqld.com.au)

Attention Mr Evan Yelavich

Dear Sir

**Development Application for Material Change of Use (Minor Change)  
At L0 and Units 1,2 and 4 / 3910 Cape Tribulation Road Cape Tribulation  
On Land Described as Lots 0, 1, 2 and 4 on SP219085**

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

Please quote Council's application number: MCUC 2021\_4257/1 in all subsequent correspondence relating to this development application.

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

Yours faithfully



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

encl.

- Decision Notice
  - Approved Drawing(s) and/or Document(s)
  - Reasons for Decision
- Advice For Appeals (Decision Notice)



## Decision Notice

### Approval (with conditions)

*Given under sections 81, 81A & 83 of the Planning Act 2016*

#### Applicant Details

Name: MFB Properties (NQ) Pty Ltd  
Postal Address: C/- Planning Plus  
PO Box 399  
REDLYNCH QLD 4870  
Email: [evan@planningplusqld.com.au](mailto:evan@planningplusqld.com.au)

#### Property Details

Street Address: Unit 0, 1, 2 and 4 /3910 Cape Tribulation Road Cape Tribulation  
Real Property Description: Lots 0, 1, 2 and 4 on SP219085  
Local Government Area: Douglas Shire Council

#### Details of Proposed Development

Application for Minor Change for:

- A. The Town Planning Consent TPC 156 for a Caravan Park with 71 bays, 21 bungalow units, amenities; and
- B. The Town Planning Consent TPC 1261 for a material change of use for the purpose of a General Licensed Premises – (Restaurant / Bar and existing associated and approved uses) and take-away Food Store (Bottle Shop).

#### Decision

Date of Decision: 9 September 2021  
Decision: Approved (subject to conditions)  
Details: Whereby:  
1. The approved plans are amended to have regard to the relocation of the caravan park reception to the kiosk / shop building, the relocation of the Take Away Food (Bottle Shop) to kiosk / shop building and the use of the current reception building for seating for the Shop / Kiosk uses

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

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

Drawing or Document	Reference	Date
Whole of Site Plan and detailed drawings	Plans prepared on the applicant's behalf and submitted to Council (Document 1024794).	22 July 2021

2. The following advices be included in the Decision.

#### Advice

1. All building site managers must take all action necessary to ensure building materials and / or machinery on construction sites are secured immediately following the first cyclone watch and that relevant emergency telephone contacts are provided to Council officers, prior to commencement of works.
  2. The building approval for the deck area should include the consideration of available amenity facilities and any associated upgrade to onsite wastewater infrastructure.
  3. This approval does not negate the requirement for compliance with all other relevant Council Local Laws and other statutory requirements.
  4. For information relating to the *Planning Act 2016* log on to [www.dsdmip.qld.gov.au](http://www.dsdmip.qld.gov.au). To access the *FNQROC Regional Development Manual*, Local Laws, the Douglas Shire Planning Scheme and other applicable Policies log on to [www.douglas.qld.gov.au](http://www.douglas.qld.gov.au)
3. All other conditions of the respective approvals remain unchanged.

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

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

Drawing or Document	Reference	Date
Whole of Site Plan and detailed drawings	Plans prepared on the applicant's behalf and submitted to Council (Document 1024794).	22 July 2021

## **Original Approvals**

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Attachment 1 – TPC 156 for a Caravan Park with 71 bays, 21 bungalow units and amenities

Attachment 2 – TPC 1261 for a material change of use for the purpose of a General Licensed Premises – (Restaurant / Bar and existing associated and approved uses) and take-away Food Store (Bottle Shop).

## **Further Development Permits**

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

- All Building Work

All Plumbing and Drainage Work must only be carried in compliance with the Queensland *Plumbing and Drainage Act 2018*.

## **Currency Period for the Approval**

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This approval, granted under the provisions of the *Planning Act 2016*, shall lapse six (6) years from the day the approval takes effect in accordance with the provisions of Section 85 of the *Planning Act 2016*.

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

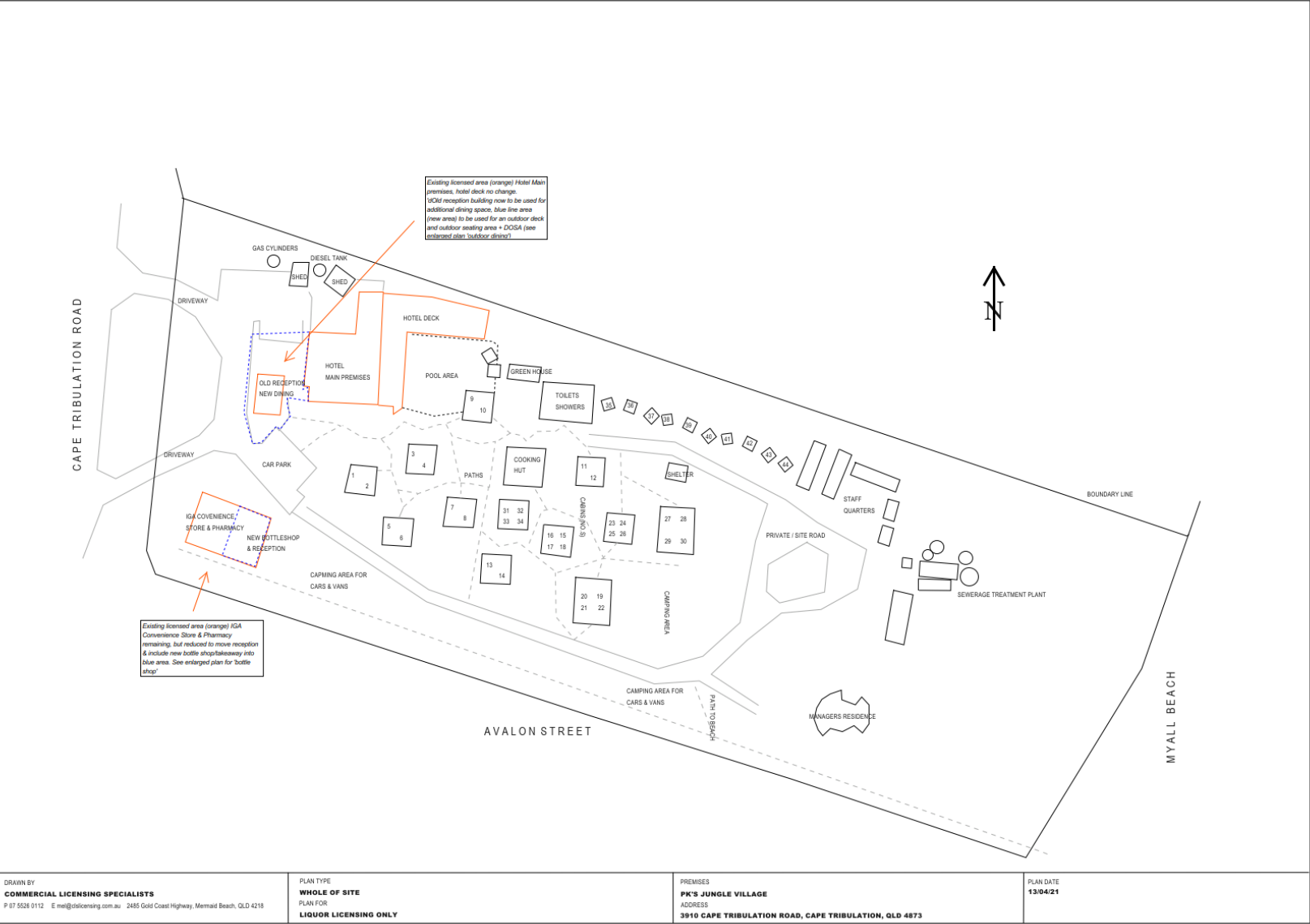
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The rights of applicants to make representations and rights to appeal to a Tribunal or the Planning and Environment Court against decisions about a development application are set out in Chapter 6, Part 1 of the *Planning Act 2016*.

A copy of the relevant appeal provisions is attached.



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





ENLARGED

CAPE TRIBULATION ROAD

BOUNDARY LINE

CAR PARKING

CAR PARKING

LOT 1

COVENIENCE  
STORE

LOT 2

NEW BOTTLESHOP  
+ RECEPTION

W/C

W/C

AVALON STREET



9700

4850

4850

13500

DRAWN BY  
**COMMERCIAL LICENSING SPECIALISTS**  
P 07 5526 0112 E mel@clslicensing.com.au 2485 Gold Coast Highway, Mermaid Beach, QLD 4218

PLAN TYPE  
**ENLARGED - BOTTLESHOP / CONVENIENCE STORE**  
PLAN FOR  
**LIQUOR LICENSING ONLY**

PREMISES  
**PK'S JUNGLE VILLAGE**  
ADDRESS  
**3910 CAPE TRIBULATION ROAD, CAPE TRIBULATION, QLD 4873**

PLAN DATE  
**8/6/21**

DOUGLAS SHIRE COUNCIL.

PAGE 1.

BUILDING SURVEYOR'S REPORT.

CHAIRMAN AND COUNCILLORS,  
DOUGLAS SHIRE COUNCIL,

SIR,

WITH SUBMIT MY REPORT FOR THE PERIOD ENDING 29TH MARCH, 1984.

1.

(9) Town Planning applications were received and advertised - see attached Schedule  
two (2) Town Planning applications are resubmitted for consideration by Council as  
there has been no appeals lodged against these applications.

TOWN PLANNING SCHEME APPLICATION NO. 151.

This application is for a Church on land described as Sub. 20 Resub. 2 Sub. 3 Resub. 5  
a. 7 Resub. 2 Portion 2, Parish of Victory, County of Solander at Alchera Drive. There  
have been no objections to the application and should Council grant approval to the application  
the following conditions should apply:-

1. Should within a period of two (2) years from the date of the permit work on the develop-  
ment as approved not be commenced Council may implement action to revoke the approval  
as given.
2. The approval does not constitute a building permit and a building permit must be obtained  
before any building operations proceed.
3. The development must comply with Council's Town Planning Scheme.

TOWN PLANNING SCHEME APPLICATION NO. 155.

This application is for a Nursery on land described as Lot 1 on R.P. 33909, in Registered  
Group Title Plan No. 25, Parish of Mowbray, County of Solander. There has been one objection  
to the application and should Council grant approval to the application the following conditions  
should apply:-

1. Should within a period of two (2) years from the date of the permit work on the develop-  
ment as approved not be commenced Council may implement action to revoke the approval  
as given.
2. The approval does not constitute a building permit and a building permit must be obtained  
before any building operations proceed.
3. The development must comply with the provisions of Council's Town Planning Scheme.

TOWN PLANNING SCHEME APPLICATION NO. 156.

This application is for a Caravan Park with 71 bays, 21 bungalow units, amenities building,  
kiosk, manager's flat and an inground swimming pool on land described as Portion 11, Parish  
of Noah, County of Solander. Three (3) objections have been received to the application  
and should Council grant approval to the application the following conditions should apply:-

1. Should within a period of two (2) years from the date of the permit work on the develop-  
ment as approved not be commenced Council may implement action to revoke the approval  
as given.
2. The approval does not constitute a building permit and a building permit must be obtained  
before any building operations proceed.

1. The development must comply with the provisions of Council's Town Planning Scheme.
2. An approved drainage system to cater for the disposal of effluent from all septic tanks and other drainage fixtures is to be provided in accordance with the provisions of the standard sewerage by-laws.
3. A landscaped area at least 14 metres in depth along all street frontages and at least 4 metres in depth along all other side boundaries is to be provided. Access to the remainder of the site may be provided through this landscaped area but no buildings, structures, caravans or units may be located within the landscaped area. The area shall be landscaped to the satisfaction of Council.
4. Access to and egress from the site are to be approved of by Council's Engineer.

RE: TOWN PLANNING APPLICATION NO. 157.

This application is for a caravan park on Part of Portion 83, Parish of Alexandra, County of Solander. There have been three (3) objections to the application and should Council grant approval to the application the following conditions should apply:-

1. Should within a period of two (2) years from the date of the permit work on the development as approved not be commenced Council may implement action to revoke the approval as given.
2. The approval does not constitute a building permit and a building permit must be obtained before any building operations proceed.
3. The development must comply with the provisions of Council's Town Planning Scheme.
4. An approved drainage system to cater for the disposal of effluent from all septic tanks and other drainage fixtures is to be provided in accordance with the provisions of the standard sewerage by-laws.
5. Details of a potable water supply are to be submitted with the building application for Council's approval.
6. Access to and egress from the site are to be approved by Council's Engineer and the Department of Main Roads.

RE: TOWN PLANNING SCHEME APPLICATION NO. 158.

This application is for a duplex on land described as Portion 96, Parish of Salisbury, County of Solander. No objections have been received to the application and should Council grant approval to the application the following conditions should apply:-

1. Should within a period of two (2) years from the date of the permit work on the development as approved not be commenced Council may implement action to revoke the approval as given.
2. The approval does not constitute a building permit and a building permit must be obtained before any building operations proceed.
3. The development must comply with the provisions of Council's Town Planning Scheme and Development Control Plan 1.
4. An approved drainage system to cater for the disposal of effluent from all septic tanks and other drainage fixtures is to be provided in accordance with the provisions of the standard sewerage by-laws.

APPLICATION FOR CONSENT TO THE USE OF LAND

16th February, 1984

To: The Shire Clerk,  
Douglas Shire Council,  
Mill Street,  
MOSSMAN. QLD. 4873

Re: Proposed Use of Land and/or Proposed Erection of Building and other Structures.

Application for Consent to the Use of the Following Land:

Postal Address: Corner of Cape Tribulation Road and Avalon Street, Cape Tribulation.

Real Property Description: Portion 11, Parish of Noah, County of Solander.

Rates Assessment Number: 2469

Area of Land: 2.501 Ha.

Length of Road Frontage: Cape Tribulation Road 93.642 m  
Avalon Street 242.27 m  
Esplanade 95.301 m

Zone in which the land is included : Residential - Rural

Nature of Proposed Use: Construction of Caravan Park and Refreshment Service including  
71 Camping Bays  
21 Bungalow Units  
Amenities Building  
Kiosk and Managers Flat  
Swimming Pool

Details of Building Proposed to be Erected: Amenities Building, 200 m<sup>2</sup>, Single Storey  
Kiosk and Managers Flat, 200 m<sup>2</sup>, Two Storey  
Swimming Pool, 200 m<sup>2</sup>, In-ground pool.  
Bungalow Unit Buildings, each 120 m<sup>2</sup>, Single Storey  
Refreshment Service Building, 216 m<sup>2</sup>, Single Storey

Number of Vehicles for which Parking Provision is to be made on the Land: 99

Number of Employees Proposed to be engaged on the Land : 4

The Nature of any Machinery proposed to be used on the land : (1) Swimming Pool Pump and Filter  
(2) Diesel Alternator Set (20 KVA)  
(3) Commercial Refrigeration  
(4) Domestic Appliances

Name and Address of Owner : R.E. & B.J. Prescott, and  
E. & M. Bruce Investments Pty. Ltd.,  
P.O. Box 1077,  
CAIRNS. QLD. 4870

Name and Address of  
Applicant :

R.E. & B.J. Prescott, and  
E. & M. Bruce Investments Pty. Ltd.,  
P.O. Box 1077,  
CAIRNS. QLD. 4870

Detailed Description  
of Proposal :

The Proposal is shown on Ariotti, Hamilton &  
Bruce Pty. Ltd. Drawing 906, Sheet 1.

In General the proposed Caravan Park will be  
designed to comply with Chapter 42 of Council's  
By laws and as well meet the requirements of  
Council's policy regarding Caravan Parks dated  
14th December, 1981.

Camping Bays measuring 10 m X 10 m (100 m<sup>2</sup>)  
are proposed. This will allow extensive  
planting of palms between bays.

Approximately 28% of the site has been allocated  
for landscaping outside of the Camping Bays  
and Pool surrounds. A buffer strip of 10 m is  
proposed on the northern boundary and a strip  
6 m wide adjacent to Avalon Street.

It is proposed to complement the Camelot  
Development on the South side of Avalon Street.  
The area will be grassed and planted out with  
palms native to the Cape Tribulation area.  
The native trees in the front of the land will  
be retained.

The amenities Building and Kiosk/Managers Flat  
Building will be Architect designed to be both  
distinctive and in accord with the surrounds.

A bore (120 m deep) has been drilled and tested  
and will supply potable water.

Disposal of soakage from the amenities building  
will be by septic and soakage trenches.

A Refreshment Service Building is to be provided.  
Because Cape Tribulation is a high rainfall  
area this will combine a large covered area  
with restaurant facilities. It will be designed  
in with the landscaping associated with the  
swimming pool area.

The Amenities Building will contain ablutions  
fitments (male and female) and clothes washing/  
drying facilities as required by Council by-laws  
and policies.

Disposal of effluent will be by septic tank(s)  
and soakage trenches designed in accordance  
with Part X, Standard Sewerage By-Laws.  
Preliminary investigation work shows the area  
to be suitable for disposal of effluent by  
absorption trenches and the relative low density  
(less than 15 Camping Bays per acre) of  
development has provided ample space for trenches.

...../Cont.

Detailed Description  
of Proposal (Cont.) :

Disposal of solid (garbage) waste from the area will be to Council's rubbish tip. Management will provide receptacles which will be emptied and carried to Council's rubbish tip in accordance with Council and Department of Health requirements.


The site has good access to the nearby beach.

There is a need for good camping facilities at Cape Tribulation. This development is specifically directed towards family groups. The applicants have developed rural-residential land at Cape Tribulation and, subject to Council approval, intend to re-invest into this proposed Caravan Park. It is proposed to commence work immediately approvals are obtained.

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We hereby submit and authorise the foregoing application and advise that all notices relating to the application should be sent to:-

R.E. & B.J. Prescott, and  
E. & M. Bruce Investments Pty. Ltd.,  
P.O. Box 1077,  
CAIRNS. QLD. 4870

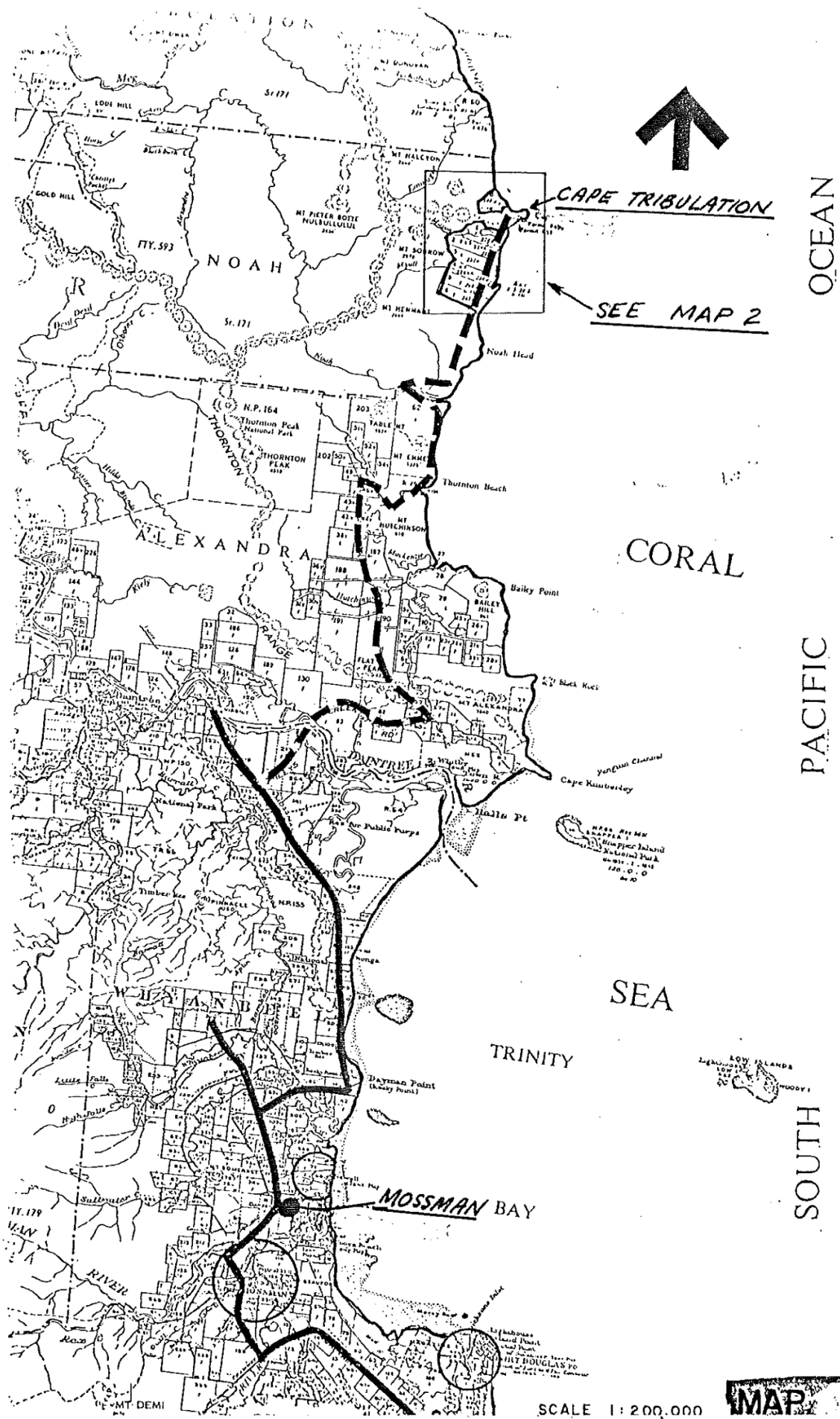
Signed .....  ..... R.E. Prescott

Signed .....  ..... B.J. Prescott

Signed .....  ..... E. & M. Bruce Investments Pty. Ltd.

Witness .....  ..... Date..... 16. 2. 84 .....









**Attachment 2 – TPC 1261 for a material change of use for the purpose of a General Licensed Premises – (Restaurant / Bar and existing associated and approved uses) and take-away Food Store (Bottle Shop).**

Mrs Natalie Clark – Planning Officer  
Planning Services Section - ☎ (07) 4099 9456  
planning@dsc.qld.gov.au

TPC 1261

Victor Feros Town Planning Consultants  
PO Box 1256  
CAIRNS QLD 4870

20 November 2007

**INTEGRATED PLANNING ACT  
AMENDED NEGOTIATED DECISION NOTICE  
DEVELOPMENT APPLICATION**

<b>Applicant's Name</b>	:	MFB Properties NQ Pty Ltd
<b>Owner's Name</b>	:	MFB Properties NQ Pty Ltd
<b>Proposal</b>	:	Material Change of Use for the purpose of a General Licence Premises – Tavern (Restaurant/Bar and existing associated and approved uses) and a Take-Away Food Store (bottle shop)
<b>Application Number</b>	:	TPC 1261
<b>Site Address</b>	:	Cape Tribulation Road, Cape Tribulation
<b>Property Description</b>	:	Lot 11 on SR 740, Parish of Noah, County of Solander

**A. Decision:** **Decision Date:** 30 October 2007

Approved subject to Conditions

**B. Type of Development Approval:**

Material Change of Use

Development Permit

.../2.

**C. Referral Agency:**

Department of Natural Resources & Water  
PO Box 210  
ATHERTON QLD 4883

**D. Conditions**

**Plan of Development**

1. The approved development and the conduct of the approved use, the carrying out of any works on the premises and the construction of any buildings on the premises associated with the development must generally be in accordance with the details of the application and the approved Plan/s of Development shown at Appendix A:  
except where such plans are modified by the terms of this approval.

**Currency Period**

2. This development approval lapses four (4) years after the day that the development approval takes effect, unless extended under Section 3.5.22 of the Integrated Planning Act 1997.

**Landscaping**

3. The applicant/owner is to provide to Council a Landscaping Plan in accordance with Planning Scheme Policy No 7 – Landscaping prior to an application being made to Liquor Licensing. In particular the landscaping plan is to show screening vegetation along the full frontage of the site excluding the driveway area.

**Car parking**

4. A car parking area with a minimum of four (4) spaces shall be dedicated to the take-away food store and are to be clearly signed for short term parking only, in accordance with the approved plan of development and the relevant Australian Standard, and maintained thereafter.
5. An additional four (4) car parking spaces are to be constructed, drained, marked and sited elsewhere on the site in accordance with the approved plan of development and the relevant Australian Standard, and maintained thereafter.

**Compliance**

6. All conditions shall be complied with prior to the occupancy of the building for the approved use or commencement of the approved use on the land. Any developer security, associated with this approval will not be released until all conditions of approval are complied with.

.../3.

## Security

7. To guarantee the satisfactory completion of the landscaping and to ensure the completion of the works, the developer shall lodge with the Council a Cash Bond or Guarantee to the value of \$20 000. Such guarantee shall be lodged prior to the commencement of the use. The Council may call up this Guarantee to complete all or any part of the works mentioned herein in accordance with the conditions of this approval, should the developer fail to do so."

## E. Submitters

D J Hooper Staff Qtrs - Room 76 Coconut Beach Resort Cape Tribulation Qld 4873	Tony Young Staff Qtrs - Room 76 Coconut Beach Resort Cape Tribulation Qld 4873
Henry Walker Cape Tribulation Road Thomson Creek Qld 4873	Neil Sykes 81 Keim Street Wujal Wujal Qld 4895
Gregory Ryan Staff Qtrs - Room 76 Coconut Beach Resort Cape Tribulation Qld 4873	Veronica Friday C/- Post Office Wujal Wujal Qld 4895
Denise Semple C/- Sanctuary BB Rykers Road Cape Tribulation Qld 4873	Rob Lapaer 19 Camelot close Cape Tribulation Qld 4873
Anne Colquhoun Lot 23 Nicole Drive Cape Tribulation Qld 4873	A & D Gotts Lot 5 Nicole Drive Cape Tribulation Qld 4873
Stuart Marquardt Warranga Community Justice Group C/- Post Office Wujal Wujal Qld 4895	Winfred Ann and Lawrence Mason C/- Brazier Motti P.O. Box 1185 Cairns Qld 4870
Mervyn Nunn Hartwig Street Wujal Wujal Qld 4895	Cedric Friday C/- Post Office Wujal Wujal Qld 4895
Peter Davidson & Astrid Van Peelen C/- PK's Jungle Village Cape Tribulation Road Cape Tribulation Qld 4873	C S Gray MS 2041 Cape Tribulation Qld 4873
Rachel Friday C/- Post Office Wujal Wujal Qld 4895	Daniel Solomon Forest Creek Road Forest Creek Qld 4873
Marilyn Wallace 2 Hartwig Street Wujal Wujal Qld 4895	Christine Friday C/- Post Office Wujal Wujal Qld 4895

J Grace PMB 10 PS2041 Mossman Qld 4873	P Davidson & A Van Peelen 8 Nicole Drive Cape Tribulation Qld 4873
Lyll Naylor 23 Thornton Peak Drive Forest Creek Qld 4873	Dr Hugh Spencer Austrop Foundation PMB 5 Cape Tribulation Qld 4873
F Cavallero Lot 4 Evergreen Road Degarra	Cape Tribulation Beach House Pty Ltd C/- Flanagan Consulting Group P.O. Box 5820 Cairns Qld 4870

**F. Further Development Approvals Required:**

None applicable

Paul Trotman  
**General Manager – Development & Environment**

## Appendix A – Department of Natural Resources & Water response

### Referral Agency Response – Material Change of Use / Reconfiguring a Lot

s 3.3.18 Integrated Planning Act 1997

#### 1. Application information

- 1.1. Applicant's name: MFB Properties NQ Pty Ltd  
C/- Victor G Feros Town Planning Consultants
- 1.2. Property description: Lot 11 on SK740 - Douglas Shire Council
- 1.3. Assessment Manager/Reference: Douglas Shire Council TPC 1261
- 1.4. Date application was referred to Department: 28 August 2006
- 1.5. Departmental Reference: eLVAS Case No: 2006/009688, File Ref. No: MHA/000129, Trackjob No: IC0609MHA0002
- 1.6. Type/s of development sought by the application:
  - Material Change of Use

#### 2. Concurrence Agency response:

The Chief Executive of the Department of Natural Resources, Mines and Water directs the following conditions must be imposed on any approval given by the Assessment Manager:

- The applicant must adhere to the plan Material Change of Use - Impact Assessment, Cape Tribulation Road, Cape Tribulation MFB Properties NQ Pty Ltd Proposal Plan, Appendix B July 2006.
- Infrastructure will not be located in assessable vegetation where the infrastructure would require clearing for any reason including, but not limited to, construction, maintenance, safety, firebreaks;
- Clearing of assessable vegetation will not occur unless it is already exempt under Schedule 8 of the Integrated Planning Act 1997 in the absence of an approval from the MCU.

#### 3. Reasons:

A Statement of Reasons is attached at Schedule 1.

#### 4. Additional comments or information:

##### Aboriginal Cultural Heritage

Under section 23 of the *Aboriginal Cultural Heritage Act 2003* a person who carries out an activity must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage (the 'cultural heritage duty of care'). Maximum penalties for breaching the duty of care are \$750,000 for a corporation and \$75,000 for an individual.

Applicants will comply with the duty of care in relation to Aboriginal cultural heritage if they are acting in compliance with cultural heritage duty of care guidelines gazetted under the *Aboriginal Cultural Heritage Act 2003*, available on the Department's website, or in accordance with an agreement with the Aboriginal party for the area or a cultural heritage management plan approved under part 7 of the *Aboriginal Cultural Heritage Act 2003*.

Applicants should also undertake a search of the Aboriginal Cultural Heritage Database and the Aboriginal Cultural Heritage Register, administered by the Cultural Heritage



Coordination Unit, Department of Natural Resources, Mines and Water. Application forms to undertake a free search of the Cultural Heritage Register and the Database may be obtained by contacting the Cultural Heritage Coordination Unit on (07) 323 83838 or on the Department's website [www.nrm.qld.gov.au/cultural\\_heritage](http://www.nrm.qld.gov.au/cultural_heritage).

5. Authorised Officer Signature:



Michael Whittle  
Acting Senior Vegetation Management Officer  
North Region

6 October 2006

Att. Schedule 1 – Statement of Reasons

elVAS Case No:	2006/09888
File Ref. No:	MBAC00125
Task No:	IC040908A0002

### Schedule I

#### Statement of Reasons Referral Agency Response Application for Material Change of Use MFB Properties NQ Pty Ltd

The following Statement of Reasons is provided pursuant to s. 3.3.18(7) of the *Integrated Planning Act 1997*

#### Introduction

1. The Department of Natural Resources, Mines and Water (NRM&W) received an application from MFB Properties NQ Pty Ltd on 28 August 2006.
2. The application is for MCU (Concurrence-Single Issue) on Lot 11 SR740 - Douglas Shire Council.
3. An Assessment Report was sent to the Delegate of the Chief Executive, Rachael Whittle, on 11 September 2006.
4. The Delegate determined the Referral Agency Response on 6 October 2006

#### Evidence

1. Application dated 28 August 2006.
  - a) Completed IDAS Form 1 Part "J".
  - b) Property Vegetation Management Plan.
2. *Integrated Planning Act 1997 & Integrated Planning Regulation 1998 (Schedule 2)*
3. *Vegetation Management Act 1999*
4. *Department of Natural Resources, Mines and Water Concurrence Agency Policy for Material Change of Use/Reconfiguring a Lot dated 27 June 2005*
5. *State Planning Policy (SPP) 1/03 - Mitigating the Adverse Impacts of Flood, Bushfire, and Landslide.*
6. *Natural Resources (IPA) Delegation (No.1) 2005*
7. Assessment Report dated September 2006
8. Regional ecosystem mapping (version 5.0) for the subject lot 11 on SR740 as at the 11 September 2006.
9. The application area submitted by the applicant Material Change of Use - Impact Assessment, Cape Tribulation Road, Cape Tribulation MFB Properties NQ Pty Ltd Proposal Plan, Appendix B July 2006.

#### Findings of fact

1. The subject lot 11 on SR740 contains the remnant Of Concern regional ecosystems 7.2.8 and 7.3.10.
2. The proposed application area occurs in non remnant areas according to the Material Change of Use - Impact Assessment, MFB Properties NQ Pty Ltd Proposal Plan Appendix B July 2006 (submitted by the applicant). The proposed infrastructure is not located in assessable vegetation and that there is no clearing proposed as a result of the proposed Material Change of Use.

**Reasons.**

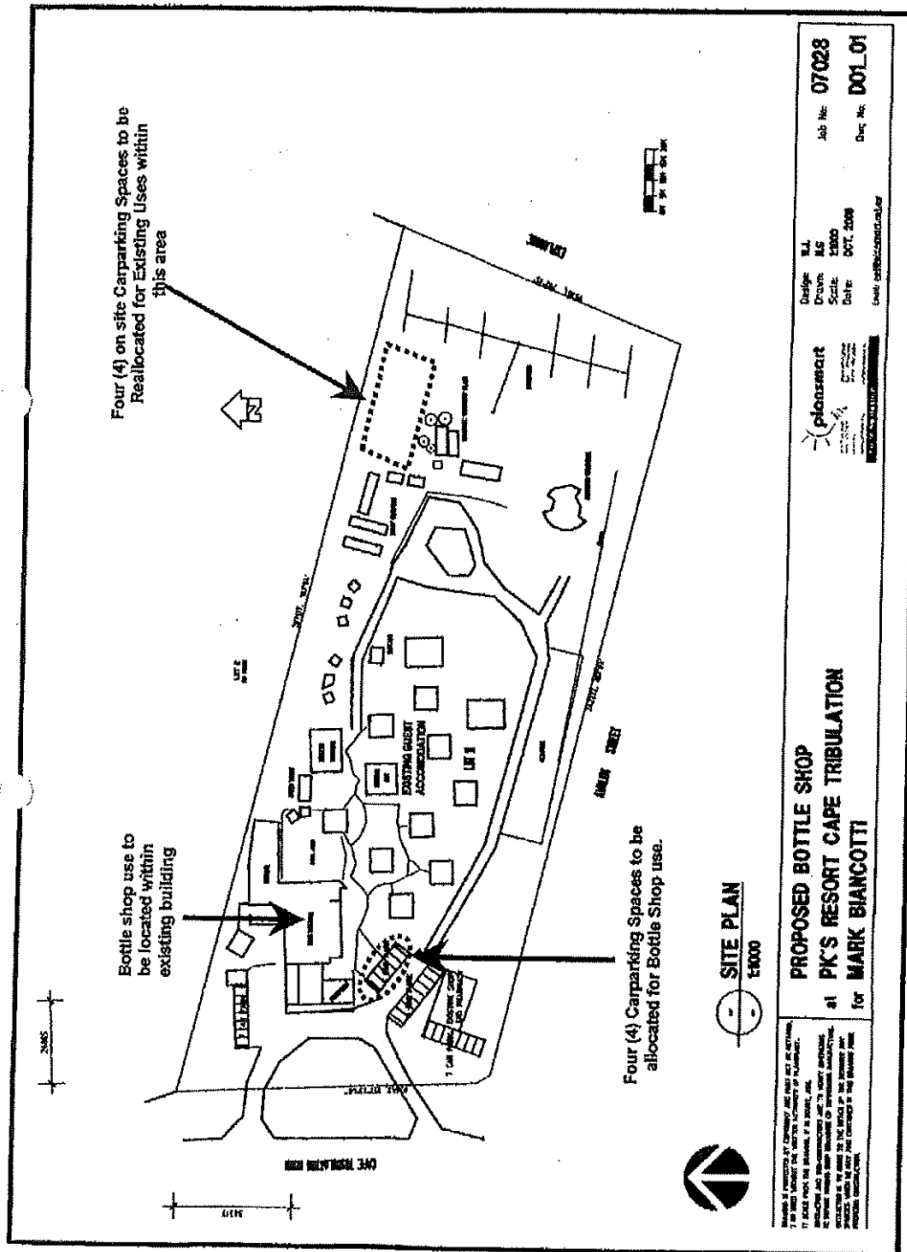
- a) Infrastructure will not be located in assessable vegetation where the infrastructure would require clearing for any reason including, but not limited to, construction, maintenance, safety, firebreaks;
- b) Infrastructure, other than a fence or road, will be located in the area outside of assessable vegetation and associated buffer area;
- c) Clearing of assessable vegetation will not occur unless it is already exempt under Schedule 8 of the Integrated Planning Act 1997 in the absence of an approval from the MCU.



Rachael Whith  
Acting Senior Vegetation Management Officer  
North Region

6 October 2006

[illegible]



## Reasons for Decision

The reasons for this decision are:

1. Sections 78, 78A, 79, 81, 81A and 83 of the Planning Act 2016:
  - a. to ensure the development satisfies the benchmarks of the 1981 Planning Scheme for the Whole of the Douglas Shire and the 2018 Douglas Shire Planning Scheme Version 1.0; and
  - b. to ensure compliance with the Planning Act 2016.
2. Findings on material questions of fact:
  - a. the application for a minor change was properly lodged to the Douglas Shire Council 27 July 2021 under section 78, 78A, 79 of the *Planning Act 2016* and Part 1 of the Development Assessment Rules;
  - b. The application is for a minor change, being a minor change consistent with Schedule 2 of the *Planning Act 2016*;
  - c. the application contained information from the applicant which Council reviewed together with Council's own assessment against the 2017 State Planning Policy, the 1981 Planning Scheme for the Whole of the Douglas Shire, the 1996 Douglas Shire Planning Scheme and the 2018 Douglas Shire Planning Scheme Version 1.0 in making its assessment manager decision.
3. Evidence or other material on which findings were based:
  - a. the development was impact assessable development under the 1981 Planning Scheme for the Whole of the Douglas Shire and the 1996 Douglas Shire Planning Scheme;
  - b. the development, where considered under the 2018 Douglas Shire Planning Scheme Version 1.0 would not have triggered assessable development, as the change of use is for a "pharmacy" shop to a "bottle" shop under the Assessment Table associated with the Conservation Zone Code. For the change of use of the reception area to a dining area associated with the take-away food this is considered as being both ancillary uses associated with the existing approvals and does not in itself give rise to new floor area; for the building work associated with the deck area of the outdoor dining this is code assessable development under the Assessment Table of the Conservation Zone;
  - c. Council undertook an assessment in accordance with the provisions of sections 81, 81A and 83 of the Planning Act 2016; and
  - d. the applicant's reasons have been considered and the following findings are made:
    - i. Subject to conditions, the development satisfactorily meets the Planning Scheme benchmarks.

## Chapter 6 Dispute resolution

### Part 1 Appeal rights

#### 229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states—
  - (a) matters that may be appealed to—
    - (i) either a tribunal or the P&E Court; or
    - (ii) only a tribunal; or
    - (iii) only the P&E Court; and
  - (b) the person—
    - (i) who may appeal a matter (the *appellant*); and
    - (ii) who is a respondent in an appeal of the matter; and
    - (iii) who is a co-respondent in an appeal of the matter; and
    - (iv) who may elect to be a co-respondent in an appeal of the matter.
- (2) An appellant may start an appeal within the appeal period.
- (3) The *appeal period* is—
  - (a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency; or
  - (b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
  - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or

- (d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
- (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or
- (f) for an appeal relating to the *Plumbing and Drainage Act 2018*—
  - (i) for an appeal against an enforcement notice given because of a belief mentioned in the *Plumbing and Drainage Act 2018*, section 143(2)(a)(i), (b) or (c)—5 business days after the day the notice is given; or
  - (ii) for an appeal against a decision of a local government or an inspector to give an action notice under the *Plumbing and Drainage Act 2018*—5 business days after the notice is given; or
  - (iii) otherwise—20 business days after the day the notice is given; or
- (g) for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

*Note—*

See the P&E Court Act for the court's power to extend the appeal period.

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—
  - (a) the adopted charge itself; or



- (b) for a decision about an offset or refund—
  - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
  - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

### **230 Notice of appeal**

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—
  - (a) is in the approved form; and
  - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar, must, within the service period, give a copy of the notice of appeal to—
  - (a) the respondent for the appeal; and
  - (b) each co-respondent for the appeal; and
  - (c) for an appeal about a development application under schedule 1, section 1, table 1, item 1—each principal submitter for the application whose submission has not been withdrawn; and
  - (d) for an appeal about a change application under schedule 1, section 1, table 1, item 2—each principal submitter for the application whose submission has not been withdrawn; and
  - (e) each person who may elect to be a co-respondent for the appeal other than an eligible submitter for a development application or change application the subject of the appeal; and
  - (f) for an appeal to the P&E Court—the chief executive; and

- (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The *service period* is—
  - (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
  - (b) otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent to an appeal by filing a notice of election in the approved form—
  - (a) if a copy of the notice of appeal is given to the person—within 10 business days after the copy is given to the person; or
  - (b) otherwise—within 15 business days after the notice of appeal is lodged with the registrar of the tribunal or the P&E Court.
- (7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department's website for this purpose.

## **231 Non-appealable decisions and matters**

- (1) Subject to this chapter, 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.