

22 August 2017

Enquiries: Jenny Elphinstone
Phone: (07) 4099 9482
Reference: MCUC 1797/2016 D#824826

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

Larette Pty Ltd
C/ Danielle Piat
PO BOX 4
PORT DOUGLAS QLD 4877

Attention Ms Piat

e: jigor1@bigpond.net.au

Dear Madam

**NOTICE OF DECISION – MATERIAL CHANGE OF USE
FOR SHOPS 12-13, 53-61 MACROSSAN STREET PORT DOUGLAS LOT 1 ON SP150461
(GIVEN UNDER SECTION 83 PLANNING ACT 2016)**

Douglas Shire Council advises that the development applications described below have been approved at Council's Ordinary Meeting held on 22 August 2017.

1. Applicant details

Applicant name: Larette Pty Ltd

2. Site details

Lot on plan: Lot 1 on SP150461

Local government area: Douglas Shire Council

3. Application descriptions

Application: Minor change to the development approval for the Development Permit for a Material Change of Use for a Tavern to extend the trading hours to 1:00 am, seven days a week.

4. Description of assessment benchmarks

Benchmarks Applying for the Minor Change	Benchmark Reference	Compliance
State Planning Policy	None applicable	Not required
Current Douglas Shire Planning Scheme	Port Douglas and Environs Locality Code	Continues to comply
	Commercial Planning Area Code	Continues to comply
	No land use code for a Tavern	-
	Vehicle Parking and Access Code General Code	Continues to comply
Proposed Douglas Shire Planning Scheme	Use defined as a <i>Bar</i> .	In the Centre Zone the use of <i>Bar</i> is impact assessable
	Centre Zone Code	Noting the building was established under a previous planning scheme, the proposed change complies with code requirements.
	Port Douglas Local Plan, Precinct 1a	No live entertainment is proposed. The proposed change complies with code.
	No applicable land use code	-
	Access, parking and servicing code	Use continued to satisfy code.

5. Extent change application required impact assessment

None.

6. Submissions

Not applicable.

7. Reasons for decision

- The minor change required an approval under the *Planning Act 2016*.
- The application for a minor change was properly made.
- The application continues to comply with the current planning scheme applicable codes.
- As no live entertainment is proposed the development meets the requirements for the proposed planning scheme.

8. Reasons for approval of change application despite the development not complying with any or all of the benchmarks

Not applicable.

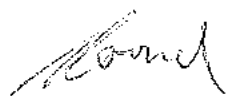
9. Matters prescribed by a regulation

Not applicable.

A Decision Notice for the applications is attached.

Please quote Council's application number: MCUC1797/2016 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



TRACEY COUCH
A/Manager Sustainable Communities

cc. Department of Infrastructure, Local Government and Planning, PO Box 2358, Cairns Q 4870

encl: Decision Notice
 Schedule 1 – Original Approval
 Schedule 2 – *Planning Act 2016* appeal provisions

DOUGLAS SHIRE COUNCIL
DECISION NOTICE — APPROVAL TO CHANGE THE DEVELOPMENT PERMIT
(GIVEN UNDER SECTIONS 81 & 83 *PLANNING ACT 2016*)

1. Applicant's details

Name: Larette Pty Ltd

Postal Address: C/ Ms Danielle Piat
PO Box 4
PORT DOUGLAS QLD 4877

2. Location details

Street Address: Shops 12 -13, 53-61 Macrossan Street, Port Douglas

Real Property Description: Lot 1 on SP150461

Local Government Area: Douglas Shire Council

3. Details of proposed development

Application for a minor change to the development approval for the Development Permit for a Material Change of Use for a Tavern to extend the trading hours to 1:00 am, seven days a week lodged on 14 August 2017.

4. Decisions

Date of decision: 22 August 2017.

Decision details: That Council approves the application to change the development approval for a Material Change of Use for a Tavern over land described as Lot 1 on SP150461, located at Shops 12-13, 53-61 Macrossan Street, Port Douglas, whereby:

A. Condition 7 of the approval is amended as follows:

7. Hours of Use

Hours of use open for trading for food and liquor service are 11:00 am to 12:00 midnight 1:00am the following morning, seven days of the week. All customers must vacate the premises within thirty (30) minutes after the venue closes liquor and food service. The operator must seek to ensure patrons leave in an orderly manner.

- B. All other parts of the Decision Notice issued dated 14 December 2016 remain unchanged.

5. Original Development Permit

A copy of the original Development Permit is included in Schedule 1.

6. Further Development Permits and other Approvals

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

- All Building Work

Separate permits are required for the following:

- All Plumbing and Drainage Work

7. Properly made submissions

Not applicable.

8. Currency period for the approval

The period of approval for this development permit is up to and including 14 December 2020 unless the use is commenced before this date. Where lawfully commenced on or before the 14 December 2020 the approval has effect.

9. Concurrence and Referral Agencies

Development application-- no requirement to refer application for a minor change to the referral agency.

For an application involving	Name of referral agency	Advice agency or concurrence agency	Agency Address
Material change of use of a premises within 25m of a State transport Corridor, Schedule 10, Table 4, <i>Planning Regulation 2017</i> .	Chief Executive Officer	Concurrence	Department of Infrastructure, Local Government and Planning, Far North Queensland Regional Office PO Box 2358 CAIRNS QLD 4870

No requirements.

10. Rights of appeal

The rights of applicants 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*. For particular applications, there may also be a right to make an application for a declaration by a tribunal (see Chapter 6, Part 2 of the *Planning Act 2016*).

A copy of the relevant appeal provisions is included in Schedule 2.

END OF DECISION NOTICE

SCHEDULE 1 – ORIGINAL APPROVAL

YOUR REF: Tavern
OUR REF: MCUC1797/2016 (D#798773)

14 December 2016

L'Arte Pty Ltd
PO Box 4
PORT DOUGLAS QLD 4877

e: jigor888@gmail.com

Attention: Mr Jim Gorman and Ms Danielle Piat

Dear Sir/Madam

**DECISION NOTICE UNDER S 335 SUSTAINABLE PLANNING ACT 2009:
DEVELOPMENT APPLICATION FOR
53-61 MACROSSAN STREET PORT DOUGLAS**

With reference to the abovementioned Development Application, which was determined by Council at the Ordinary Meeting held on 13 December 2016, please find attached the relevant Decision Notice.

The Notice includes extracts from the Act with respect to making representations about conditions, negotiated decisions, suspension of the appeal period, and lodging an Appeal.

This notice also includes an Infrastructure Charges Notice issued in accordance with section 648F of the *Sustainable Planning Act 2009*.

Should you have any enquiries in relation to this Decision Notice, please contact Jenny Elphinstone of Development Assessment and Coordination on telephone number 07 4099 9482.

Yours faithfully

Paul Hoyer
Manager Sustainable Communities

Att

43.2016.1797
1/11 (D#798773)

DECISION NOTICE DETAILS
SUSTAINABLE PLANNING ACT 2009

APPLICANT DETAILS

L'Arte Pty Ltd
PO Box 4
PORT DOUGLAS QLD 4877

ADDRESS

53-61 Macrossan Street, Port Douglas

REAL PROPERTY DESCRIPTION

Lot 1 on SP150461

PROPOSAL

Material Change of Use for a Tavern

DECISION

Approved subject to conditions (refer to approval package below).

DECISION DATE

13 December 2016

TYPE

Material Change of Use (Development Permit)

REFERRAL AGENCIES

For an application involving	Name of referral agency	Advice agency or concurrence agency	Address
State-controlled road	State Referral Assessment Agency, Department of Infrastructure, Local Government and Planning.	Concurrence	Far North Queensland Regional Office PO Box 2358 CAIRNS QLD 4870

No requirements.

43.2016.1797
2/11 : (09755773)

DECISION NOTICE DETAILS
SUSTAINABLE PLANNING
ACT 2009

SUBMISSIONS

There were no submissions for this application.

FURTHER DEVELOPMENT PERMITS REQUIRED

Development Permit for Building Works

CODES TO COMPLY WITH FOR SELF-ASSESSABLE DEVELOPMENT

None

DOES THE ASSESSMENT MANAGER CONSIDER THE APPLICATION TO BE IN CONFLICT WITH APPLICABLE CODES, PLANNING SCHEME, STATE PLANNING POLICIES OR PRIORITY INFRASTRUCTURE PLAN (IF YES, INCLUDE STATEMENT OF REASONS)

Not in conflict

APPROVED DRAWING(S) AND/OR DOCUMENT(S)

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

Drawing or Document	Reference	Date
Site And Internal Floor Plans	Generally as Prepared by The Applicant (to be amended by Condition 3).	As Submitted To Council On 15 November 2016

ASSESSMENT MANAGER CONDITIONS

1. Carry out the approved development generally in accordance with the approved drawing(s) and/or document(s), and in accordance with:
 - a. The specifications, facts and circumstances as set out in the application submitted to Council; and
 - b. The following conditions of approval and the requirements of Council's Planning Scheme and the *FNQROC Development Manual*.

Except where modified by these conditions of approval

Timing of Effect

2. The conditions of the Development Permit must be effected prior to Commencement of Use, except where specified otherwise in these conditions of approval.

43.2016.1797
3/11 (EN758773)

DECISION NOTICE DETAILS
SUSTAINABLE PLANNING
ACT 2009

Amended Plan

3. Prior to commencement of use, provide Council with a properly-scaled and dimensioned plan showing the bar area and internal and external seating arrangements for the proposed use. Any external seating is not to interfere with pedestrian circulation to other tenancies in the development.

Air-Conditioning Screens

4. Air-conditioning units located above ground level and visible from external properties and the street must be screened with appropriate materials to improve the appearance of the building. Such screening must be completed prior to the Commencement of Use.

External Areas and Customer Numbers

5. Any use of external seating areas is limited to undercover areas on the land and the total use is limited to 60 patrons.

Vehicle Parking

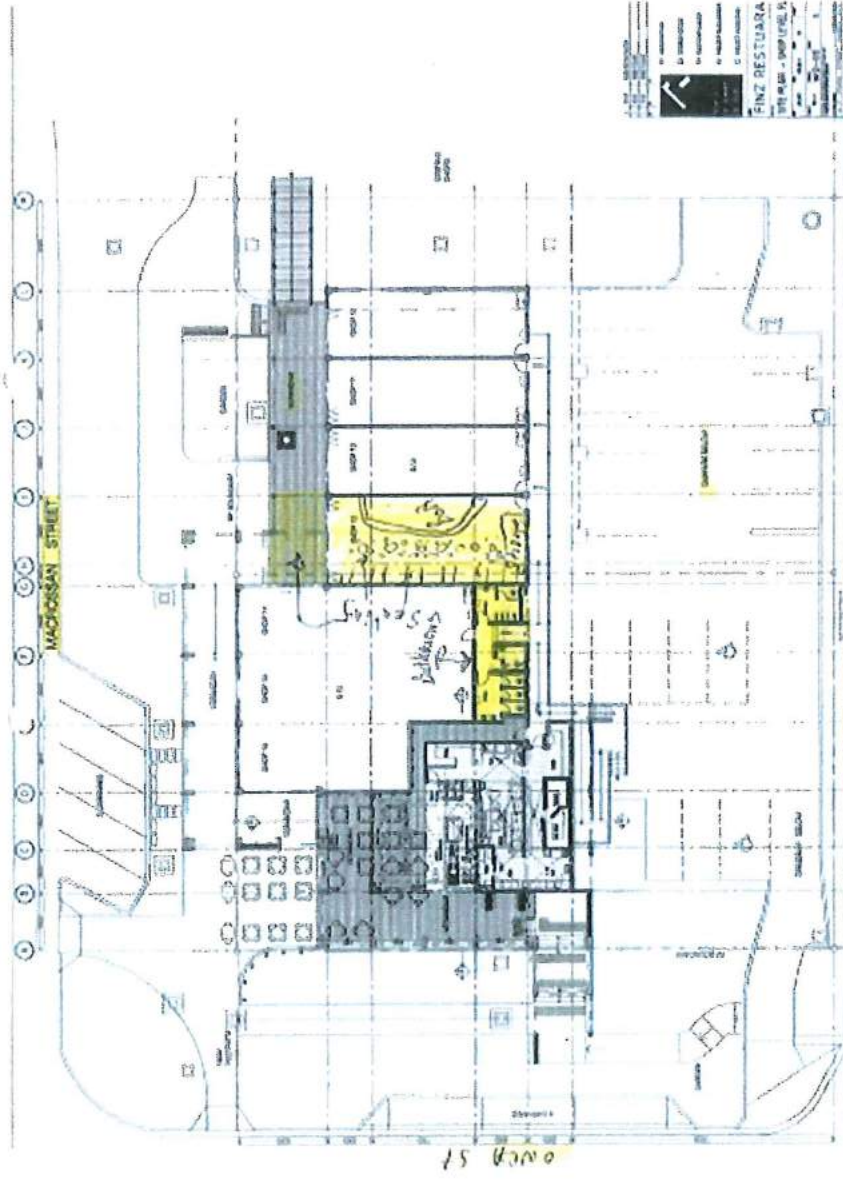
6. The amount of vehicle parking must be as specified in Council's Planning Scheme which is a minimum of seven (7) car spaces for the Tavern use for visitors and employees to be provided on the land. The car parking layout must comply with the Australian Standard AS2890.1 2004 Parking Facilities – off-street car parking and be constructed in accordance with Austroads and good engineering design. In addition, all parking, driveway and vehicular manoeuvring areas must be imperviously sealed, drained and line marked.

Advertising Signage

7. All signage associated with the use must be approved by the Chief Executive Officer. No flashing or animated signage is permitted. The signage must comply with the Design and Siting of Advertising Devices Code contained within the Douglas Shire Planning Scheme and plans detailing the signage must be endorsed by the Chief Executive Officer prior to the Commencement of Use.

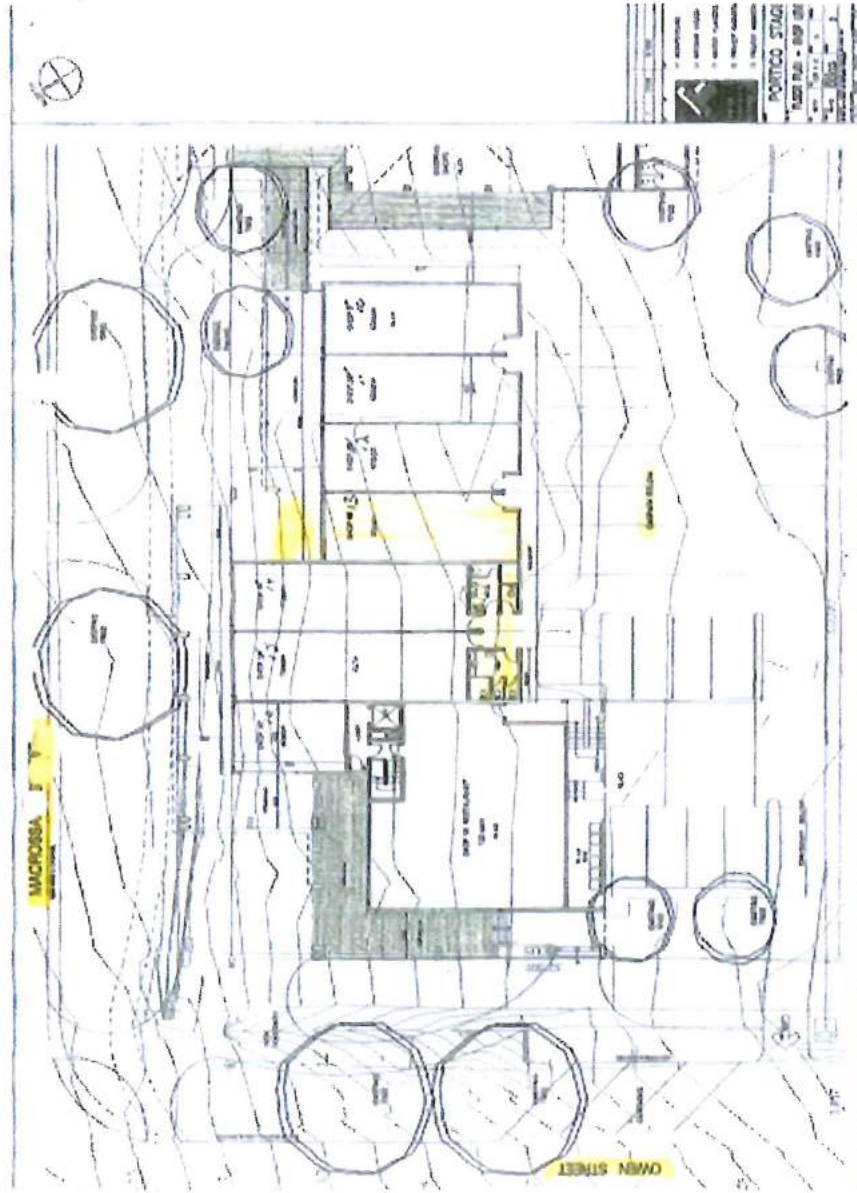
43.2016.1797
4/11 (DN798773)

APPENDIX 1: APPROVED DRAWING(S) & DOCUMENT(S) To be amended by Condition 3.



43.2016.1797
7/11 (D#758773)

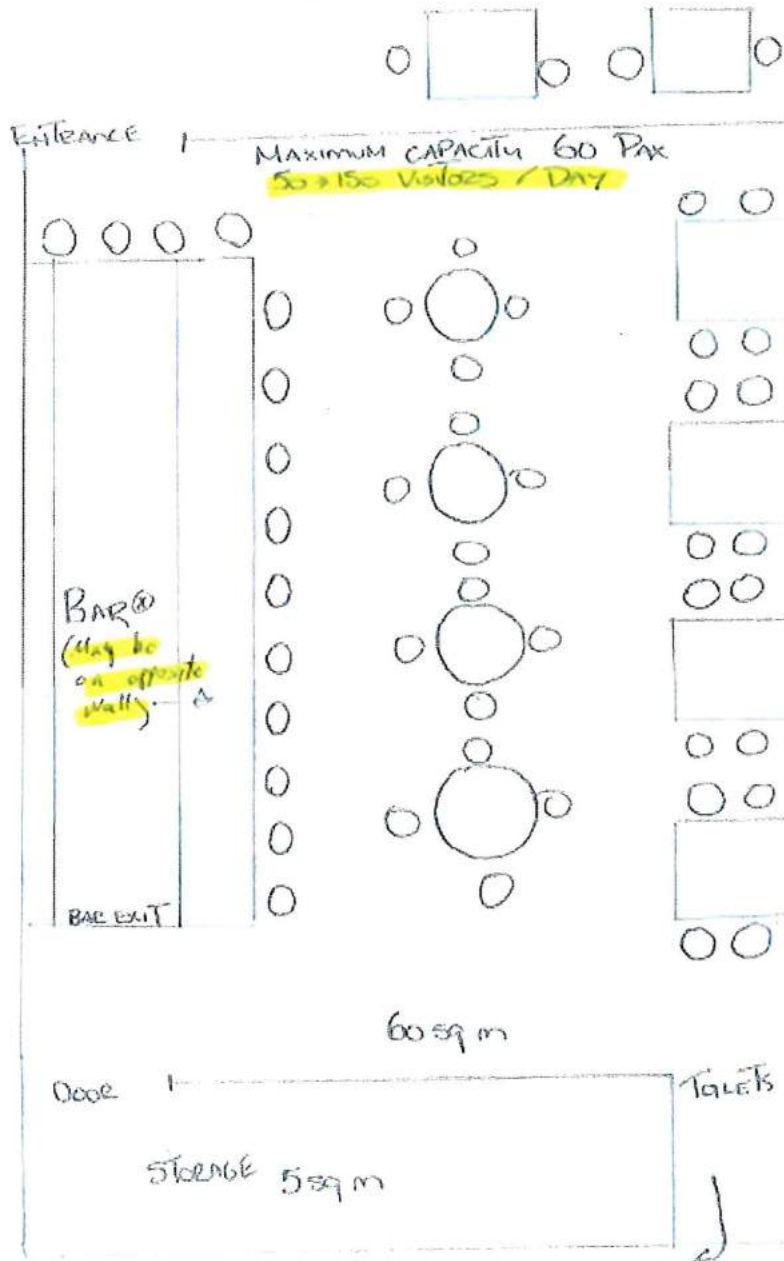
**DECISION NOTICE DETAILS
SUSTAINABLE PLANNING ACT 2009**



43.2016.1797
2/11 (DW798773)

DECISION NOTICE DETAILS
SUSTAINABLE PLANNING ACT 2009

SHOP 13
 53-61 Macdonald ST.



43.2016.1797
 9/11 (DN796773)

SCHEDULE 2 – PLANNING ACT EXTRACT ON APPEAL RIGHTS

Planning Act 2016
Chapter 6 Dispute resolution

[s 229]

- (2) The person is taken to have engaged in the representative's conduct, unless the person proves the person could not have prevented the conduct by exercising reasonable diligence.

- (3) In this section—

conduct means an act or omission.

representative means—

- (a) of a corporation—an executive officer, employee or agent of the corporation; or
- (b) of an individual—an employee or agent of the individual.

state of mind, of a person, includes the person's—

- (a) knowledge, intention, opinion, belief or purpose; and
- (b) reasons for the intention, opinion, belief or purpose.

Chapter 6 Dispute resolution

Part 1 Appeal rights

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states—

- (a) matters that may be appealed to—
 - (i) either a tribunal or the P&E Court; or
 - (ii) only a tribunal; or
 - (iii) only the P&E Court; and
- (b) the person—
 - (i) who may appeal a matter (the *appellant*); and
 - (ii) who is a respondent in an appeal of the matter; and

Current as at 3 July 2017

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Authorised by the Parliamentary Counsel

8. Hours of Use

Hours of use open for trading for food and liquor service are 11:00 am to 12:00 midnight, seven days of the week. All customers must vacate the premises within thirty (30) minutes after the venue closes liquor and food service. The operator must seek to ensure patrons leave in an orderly manner.

ADVICE

1. This approval, granted under the provisions of the *Sustainable Planning Act 2009*, shall lapse four (4) years from the day the approval takes effect in accordance with the provisions of sections 339 and 341 of the *Sustainable Planning Act 2009*.
2. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements. Note a Department of Transport and Main Roads (section 50) approval where the verandah is within the State-controlled road reserve as the use is changing.

Infrastructure Charges Notice

3. A charge levied for the supply of trunk infrastructure is payable to Council towards the provision of trunk infrastructure in accordance with the Adopted Infrastructure Charges Notice, a copy of which is attached for reference purposes only. The original Adopted Infrastructure Charges Notice will be provided under cover of a separate letter.

The amount in the Adopted Infrastructure Charges Notice has been calculated according to Council's Adopted Infrastructure Charges Resolution.

Please note that this Decision Notice and the Adopted Infrastructure Charges Notice are stand-alone documents. The Sustainable Planning Act 2009 confers rights to make representations and appeals in relation to a Decision Notice and an Adopted Infrastructure Charges Notice separately.

The amount in the Adopted Infrastructure Charges Notice is subject to index adjustments and may be different at the time of payment. Please contact Development Assessment and Coordination at Council for review of the charge amount prior to payment.

DECISION NOTICE DETAILS
SUSTAINABLE PLANNING
ACT 2009

The time when payment is due is contained in the Adopted Infrastructure Charges Notice.

4. For information relating to the *Sustainable Planning Act 2009* log on to www.ditpp.qld.gov.au. To access the *FNQROC Development Manual*, Local Laws and other applicable Policies, log on to www.douglas.qld.gov.au.

LAND USE DEFINITIONS*

In accordance with the *Douglas Shire Planning Scheme 2006*, the approved land use of Tavern is defined as:

Means the use of premises for:

- the sale of liquor for consumption on or off the premises;
- dining activities;
- entertainment activities, including gaming machines.

The use may include accommodation of tourists or travellers.

The use includes facilities commonly described as:

- hotel; or
- tavern.

*This definition is provided for convenience only. This Development Permit is limited to the specifications, facts and circumstances as set out in the application submitted to Council and is subject to the abovementioned conditions of approval and the requirements of Council's Planning Scheme and the FNQROC Development Manual.

RIGHTS OF APPEAL

Attached

End of Decision Notice

43.2016.1797
B/11 (DP#256773)

- (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 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, table 1, item 1—each principal submitter for the development application; and
 - (d) for an appeal about a change application under schedule 1, table 1, item 2—each principal submitter for the change application; and
 - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); 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 by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.
- (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 Other appeals

- (1) Subject to this chapter, 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.