

7 September 2020

**Enquiries:** Jenny Elphinstone  
**Our Ref:** MCUC 2020\_3662/1 (Doc ID 970378)  
**Your Ref:** 20201378

Administration Office  
64 - 66 Front St Mossman  
P 07 4099 9444  
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Sarah Anne Cutting  
[fruitariansarah@yahoo.com.au](mailto:fruitariansarah@yahoo.com.au)

Dear Madam

**Development Application for Material Change of Use (Dwelling house)  
At Forest Creek Road Forest Creek  
On land described as Lot 74 on RP733654**

Please find attached the Negotiated Decision Notice for the above-mentioned development application. This Negotiated Decision Notice replaces the Decision notice issued on 25 August 2020.

Please quote Council's application number: MCUC 2020\_3662/1 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



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

encl.

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

Cc – [Patrick.c@macert.com.au](mailto:Patrick.c@macert.com.au)



## Negotiated Decision Notice

### Approval (with conditions)

*Given under sections 60, 63, 65 and 76 of the Planning Act 2016*

#### Applicant Details

Name: Sarah Anne Cutting  
Postal Address: [fruitariansarah@yahoo.com.au](mailto:fruitariansarah@yahoo.com.au)

#### Property Details

Street Address: Forest Creek Road Forest Creek  
Real Property Description: Lot 74 on RP733654  
Local Government Area: Douglas Shire Council

#### Details of Proposed Development

Applicant request for change representations seeking the deletion of the conditions 3 and 4 of the Decision Notice for the Development Permit for Material Change of Use for a Dwelling house.

#### Negotiated Decision

Date of Decision: 7 September 2020 replacing the Decision Notice issued on 25 August 2020

Decision Details: Approved in part whereby:

1. Condition 4 is amended as follows:  
Onsite access
  4. a. where the dwelling house is to be sited south of the waterway on the land the developer must:
    - i. Provide a vehicle access and culvert crossover from the car park area, through the existing cleared creek crossing path, to the new house location. The access and crossing must be designed by a RPEQ (Registered Practising Engineer Queensland)- and;
    - ii. The creek crossing must be constructed and certified as having been appropriately

constructed by a RPEQ prior to the commencement of use;

OR

- b. the dwelling house is sited in the existing clearing area north of the waterway on the land in a position to the satisfaction of the Chief Executive Officer having suitable regard to the setback from the adjacent road, the setback from the top of bank of the waterway, and requirements for onsite wastewater infrastructure.

2. All other conditions of the Decision Notice issued on 25 August 2020 remain unchanged.

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

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

Drawing or Document	Reference	Date
Site and Floor Plan, Elevations	Greg Skyring Design and Drafting Pty Ltd, Drawing 307-20, Sheet 1 of 1, Revision A.	21 July 2020
<b>FNQROC Regional Development Manual Standard Drawing/s for Vehicle Access</b>		
Rural Allotment Access	Standard Drawing S1105 Issue E	26 November 2014

**Note** – The plans referenced above will require amending in order to comply with conditions of this Decision Notice.

### Assessment Manager Conditions & Advices

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#### 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.

#### External Works

3. Undertake the following works external to the land at no cost to Council:
  - a. Provide a concrete or bitumen finish over the top surface of the existing culvert crossover and apron from the sealed road pavement to the property boundary. The dimensions of the finish area are to be in accordance with FNQROC Development Manual Standard Drawing S1105;

Where the vehicle crossing is constructed in accordance with the FNQROC Regional Development Manual the works do not constitute Operational Works. Such work must be constructed to the satisfaction of the Chief Executive Officer prior to Commencement of Use.

#### Onsite access

4. a. where the dwelling house is to be sited south of the waterway on the land the developer must:
  - i. Provide a vehicle access and culvert crossover from the car park area, through the existing cleared creek crossing path, to the new house location. The access and crossing must be designed by a RPEQ (Registered Practising Engineer Queensland)- and;
  - ii. The creek crossing must be constructed and certified as having been appropriately constructed by a RPEQ prior to the commencement of use;

#### OR

- b. the dwelling house is sited in the existing clearing area north of the waterway on the land in a position to the satisfaction of the Chief Executive Officer having suitable regard to the setback from the adjacent road, the setback from the top of bank of the waterway, and requirements for onsite wastewater infrastructure.

#### Finished Floor Level

5. The finished floor level of all habitable rooms within the dwelling house must be a minimum of 300mm above the 1% AEP flood event.

#### Building Colours

6. Building colours should be re non-reflective and are moderately dark to darker shades of grey, green, blue and brown or the development is not visible external to the site by vegetation screening.

#### Treatment of Onsite Waste

7. The method of on-site effluent disposal must be in accordance with the *Queensland Plumbing and Drainage Act 2002* and Section 33 of the *Environmental Protection Policy (Water) 1997*.

#### Water Supply

8. Water storage tank(s) with a minimum capacity not less than 10,000 litres must be installed prior to occupation of the premises. Details of the water tank(s) must be shown on plans submitted with the building application. Such water tanks must be provided with:
  - a. Mosquito-proof screens of brass, copper, aluminium or stainless steel gauze not coarser than one (1) mm aperture mesh of substantial construction and installed in such manner as not to cause o accelerate corrosion; or
  - b. Flap valve at every opening of the tank or other receptacle; or
  - c. Other approved means for preventing the ingress or egress of mosquitoes; and
  - d. Where a tank or other receptacle is provided with a manhole, the manhole must have a diameter of no more than 40 cm; and
  - e. The water tank(s) shall be fitted with a 50 mm ball valve with a camlock fitting.

#### Vegetation Clearing

9. Existing vegetation on the subject land is to be retained, except where removal is permitted for this development, the Planning Scheme or otherwise approved under a separate development permit.

## Generators

10. Noise from generators, air-conditioning units, swimming and spa pool filters, service equipment or other mechanical equipment, must not emanate from the subject land to a degree that would, in the opinion of the Chief Executive Officer, create an environmental nuisance having regard to the provisions of Chapter 8 Part 3B of the *Environmental Protection Act 1994*.

## Fuel Storage

11. All fuels must be stored in an undercover and secure location at all times.

## Advices

1. 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*.
2. 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 potential cyclone warning and that relevant emergency telephone contacts are provided to Council officers, prior to commencement of works.
3. This approval does not negate the requirement for compliance with relevant Local Laws and 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 Development Manual, Local Laws and other applicable Policies log on to [www.douglas.qld.gov.au](http://www.douglas.qld.gov.au).
5. It is recommended separate enquiry be made with Council as to the ability to traverse the neighbouring Council reserve on a temporary basis for the transportation of building materials to the site and access by trades on a limited time basis in order to minimise impact on the waterway.

## Further Development Permits

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*.

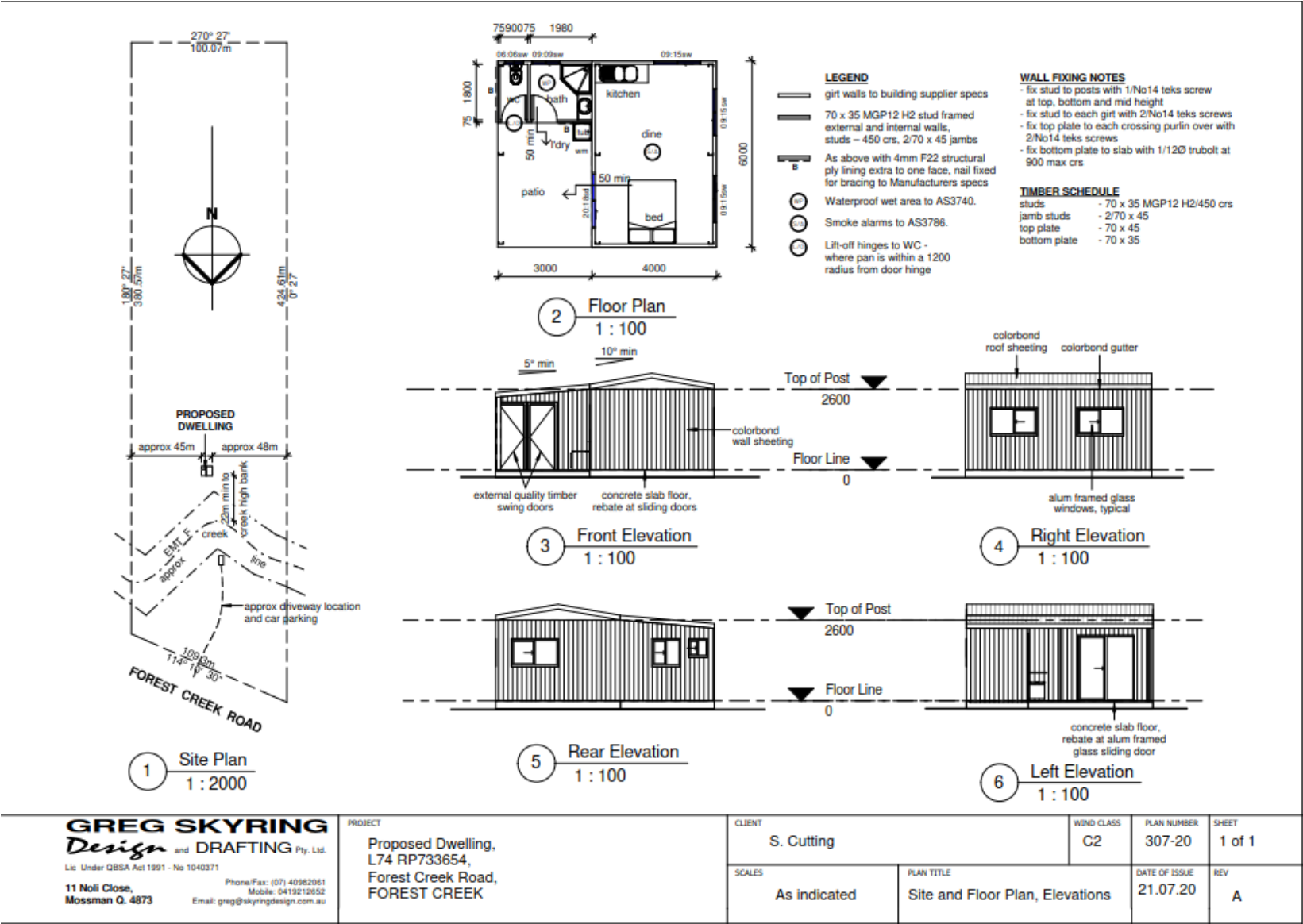
## Rights to make Representations & Rights of Appeal

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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 are attached.

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



## Reasons for Decision – Consideration of Applicant’s Representations for Changes

The reasons for this decision are:

1. Sections 43(2)(b), 60, 63, 65 and 76 of the *Planning Act 2016*:
  - a. to ensure the development satisfies the benchmarks of 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 development application was properly lodged to the Douglas Shire Council 30/07/2020 under section 51 of the *Planning Act 2016* and Part 1 of the *Development Assessment Rules*;
  - b. the development application contained information from the applicant which Council reviewed together with Council’s own assessment against the 2017 State Planning Policy and the 2018 Douglas Shire Planning Scheme Version 1.0 in making its assessment manager decision; and
  - c. the decision notice was issued on 25 August 2020 and the applicant properly lodged change representations on 31 August 2020.
3. Evidence or other material on which findings were based:
  - a. the development triggered assessable development under the Assessment Table associated with the Environmental Management Zone Code;
  - b. Council undertook an assessment in accordance with the provisions of sections 60 and 63 of the *Planning Act 2016*;
  - c. Subject to conditions of the approval Council determined the development satisfactorily meets the Planning Scheme benchmarks;
  - d. the applicant’s change representations as provided on 31 August 2020; and
  - e. the applicant’s change representations have been considered and the following findings are made:
    - i. the approval is appropriate subject to conditions. Condition 4 is amended to provide for an alternative siting of the dwelling house north of the waterway should the applicant so desire.

## Non-Compliance with Assessment Benchmarks

Benchmark Reference	Alternative Measure/Comment
<i>Environmental Zone Code</i> AO6.2 Access and vehicle manoeuvring and parking areas are constructed and maintained to: (a) minimise erosion.	Access through the waterway can minimise erosion by a condition of the approval requiring the construction of a culvert crossing.
<i>Flood Hazard Overlay Code</i> AO1.2 Development within the Flood and Storm Tide hazards overlay maps (excluding the Flood plain assessment sub-category) is designed to provide immunity to the Defined Inundation Event as outlined within Table 8.2.4.3.b plus a freeboard of 300mm. AO1.3 New buildings are: (a) not located within the overlay area;	A condition of the approval requires suitable ground and floor levels to achieve appropriate immunity.
<i>Natural Areas Overlay Code</i> AO9 Development does not occur on that part of the site affected by a waterway corridor.	A condition of the approval requires a culvert crossing over the waterway.

## Consideration of Change Representations

*Representation 1. I wish to access the dwelling by foot to minimise disruption to the creek.*

### Planning Consideration

By foot creates disturbance to the waterway by both the occupant and any visitors. The approval runs with the land and considerations are beyond the current or initial land owner. It is reasonable that appropriate access be provided between the car parking area and the dwelling house. A condition limiting access across the creek by foot passage only is untenable to enforce.

*Representation 2. I will park on the north side of the creek, well away from the creek and existing cleared creek crossing path to minimise erosion. (My vehicle is not capable of driving on the creek crossing).*

### Planning Consideration

The applicant's personal financial circumstances are not matters for consideration of assessment against the relevant benchmark. The approval runs with the land and reasonable use by a future land owner needs to be considered. A condition limiting the land owner's vehicle type is unreasonable to enforce.

*Representation 3. I believe parking well away from the creek, in the cleared area near the road where I intend to park, will ensure the development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme Version 1.0; compliance with the Planning Act 2016 and the 2017 State Planning Policy and the Environmental Management Zone Code; therefore satisfactorily meeting the Planning Scheme benchmarks.*

### Planning Consideration

No issue is raised with the proposed car parking area. The condition of concern is the form of access across the creek.

*Representation 4. The proposed site is not affected by a waterway corridor (Natural Areas Overlay Code) as the creek is very shallow and easily crossed by foot year round. The proposed site is 20 metres away from the creek.*

### Planning Consideration

The development application is made over the entire property. The land is mapped with a waterway, reflecting the existing waterway on the land. It is reasonable to assume there is connectivity between the car parking area and the dwelling house. The nature of the required crossing reflects the physical aspects of the waterway. It is anticipated that this culvert crossing is a very minor work.

*Representation 5. An apron and concrete or bitumen finish is unnecessary as I wish to access the dwelling by foot.*

### Planning Consideration

The condition wording is in regards to vehicle access to the land and reflects the FNQROC Regional Development Manual standard having regard to the nature and extent of the existing vehicle entry. A standard culvert design certified by an RPEQ Engineer is expected to have a sealed finish to ensure longevity, design and construction standards.

*Representation 6. There are other council approved dwellings in the Daintree which do not have an apron or sealed driveway to the dwelling.*

### Planning Consideration

The condition wording the FNQROC Regional Development Manual Standards and the current Planning Scheme requirements.

*Representation 7. It is legal to access a dwelling by foot, and not illegal to park away from your dwelling.*



#### Planning Consideration

No issue is raised with the applicant / land owner accessing the area between the car park and the dwelling by foot. Council takes issue with the path of travel across the creek. The access should be over and not through the waterway.

*Representation 8. I will not drive or take a vehicle or allow visitors to drive anywhere near the creek or the existing cleared creek crossing path.*

#### Planning Consideration

The approval runs with the land and considerations are beyond the current or initial land owner. It is reasonable that appropriate access be provided between the car parking area and the dwelling house. A condition limiting access across the creek by foot passage by the occupier / land owner and all visitors is untenable to enforce, in particular for future land owners.

*Representation 9. The construction works requested will disrupt the fish and eel in the creek and the dredging for the culvert will cause more destruction than what walking through the creek regularly will do.*

#### Planning Consideration

The proposed works are a one-off construction and where undertaken appropriately are accepted instream works.

*Representation 10. It is not illegal to walk through a creek on your own property.*

#### Planning Consideration

The conditions do not prohibit the applicant walking through the creek. The conditions have regard to the development achieving compliance with the respective Planning Scheme codes.

*Representation 11. I do not want concrete or bitumen on the property for both aesthetic and environmental reasons.*

#### Planning Consideration

The existing vehicle crossing onto the land already has both bitumen and concrete. These are standard design finishes having regard to the Regional climate and conditions. No alternative design finish that is RPEQ Certified has been proposed.

*Representation 12. I do not have the money for the works, so if these conditions are not removed it would mean building on the North side of the creek, which would mean crossing the creek more frequently to get to my fruit orchard and preferred part of the property to spend time in for privacy, seclusion and less noise disruption.*

#### Planning Consideration

The personal financial circumstances of the applicant are not considerations for assessment of the benchmark. Council would have no issue with an alternative siting for the dwelling house on the north side of the creek which would negate the need for the culvert creek crossing. Condition 4 can be amended to provide for an alternative siting position of the dwelling house north of the waterway.

- (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

- (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, 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.

# **Part 2 Development tribunal**

## **Division 1 General**

## **233 Appointment of referees**

- (1) The Minister, or chief executive, (the *appointer*) may appoint a person to be a referee, by an appointment notice, if the appointer considers the person—
  - (a) has the qualifications or experience prescribed by regulation; and
  - (b) has demonstrated an ability—
    - (i) to negotiate and mediate outcomes between parties to a proceeding; and
    - (ii) to apply the principles of natural justice; and
    - (iii) to analyse complex technical issues; and
    - (iv) to communicate effectively, including, for example, to write informed succinct and well-organised decisions, reports, submissions or other documents.