

18 August 2020

Enquiries: Daniel Lamond
Our Ref: MCUC 2020_3663/1 (966992)
Your Ref: 20202033

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

B D Rowsell & S L Sondergeld
C/- GMA Certification Group
PO Box 831
PORT DOUGLAS QLD 4877

Email: adminpd@gmacer.com.au

Dear Sir/Madam

**Development Application for Material Change of Use (Dwelling house) & Concurrence
Agency Response for Alternative Siting Request**

At 6 Calophyllum Close, Wonga Beach

On Land Described as LOT: 4 RP: 739689

Please find attached the Decision Notice for the above-mentioned development application. Please note that this Decision Notice is also to be taken as the concurrence agency response for the purpose of section 56 of the Planning Act 2016 for the alternative siting request.

Please quote Council's application number: MCUC 2020_3663/1 in all subsequent correspondence relating to this development application.

Should you require any clarification regarding this, please contact Daniel Lamond 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 - non-compliance with assessment benchmark
- Advice For Making Representations and Appeals (Decision Notice)



Decision Notice

Approval (with conditions)

Given under section 63 of the Planning Act 2016

Applicant Details

Name: B D Rowsell & S L Sondergeld

Postal Address: C/- GMA Certification Group
PO Box 831
PORT DOUGLAS QLD 4877

Email: adminpd@gmacer.com.au

Property Details

Street Address: 6 Calophyllum Close WONGA BEACH

Real Property Description: LOT: 4 RP: 739689

Local Government Area: Douglas Shire Council

Details of Proposed Development

Development Permit - Material Change of Use (Dwelling house)

Decision

Date of Decision: 18 August 2020

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 or Document	Reference	Date
Site Plan	Plan prepared by Greg Skyring Design and Drafting Pty Ltd. Plan no. 703-20 sheet 1 of 11	Not nominated
Floor Plan	Plan prepared by Greg Skyring Design and Drafting Pty Ltd. Plan no. 703-20 sheet 3 of 11	22 May 2020
Elevations- Sheet 1	Plan prepared by Greg Skyring Design and Drafting Pty Ltd. Plan no. 703-20 sheet 4 of 11	22 May 2020
Elevations- Sheet 2	Plan prepared by Greg Skyring	22 May 2020

	Design and Drafting Pty Ltd. Plan no. 703-20 sheet 5 of 11	
FNQROC Regional Development Manual Standard Drawing/s for Vehicle Access		
Access Crossovers	Standard Drawing S1015 Issue D	23 October 2017

Assessment Manager Conditions & Advices

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;
 - 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.

Finished Floor Level

3. The finished floor level of all habitable rooms within the dwelling house must be a minimum of 4.34m AHD and the applicant accepts all responsibility for development of the house and shed with finished floor levels below the recommended 5.04m AHD level.

Damage to Council Infrastructure

4. In the event that any part of Council's existing water or road infrastructure is damaged as a result of construction activities occurring on the site, the applicant/owner must notify Council immediately of the affected infrastructure and have it repaired or replaced at no cost to Council.

Ponding and/or Concentration of Stormwater

5. The development is not to create ponding nuisances and/or concentration of stormwater flows to adjoining properties.

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. The recommended finished floor level to provide for storm tide inundation immunity is

5.04m AHD.

5. The Q100 rainfall flood level is unknown for the area but is expected to be lower than the storm tide inundation level.

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

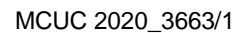
This approval, granted under the provisions of the *Planning Act 2016*, shall lapse six (6) years from the day the approval takes effect in accordance with the provisions of Section 85 of the *Planning Act 2016*.

Rights to make Representations & Rights of Appeal

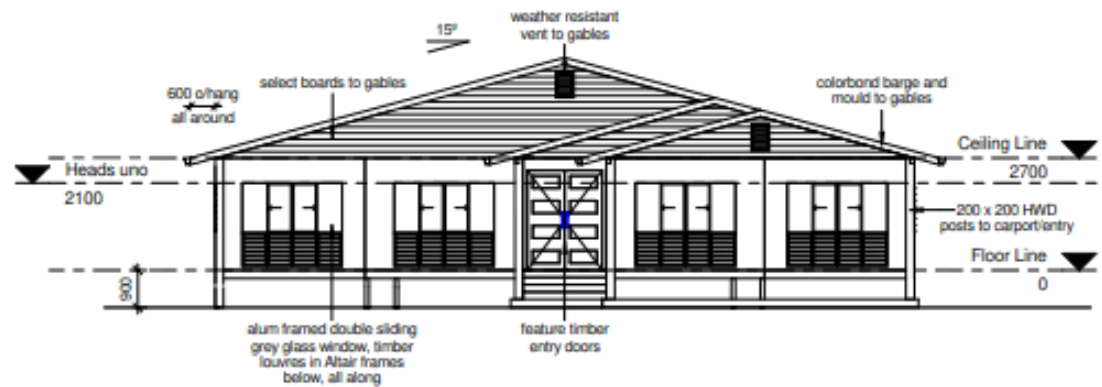
The rights of applicants to make representations and rights to appeal to a Tribunal or the Planning and Environment Court against decisions about a development application are set out in Chapter 6, Part 1 of the *Planning Act 2016*.

A copy of the relevant appeal provisions are attached.

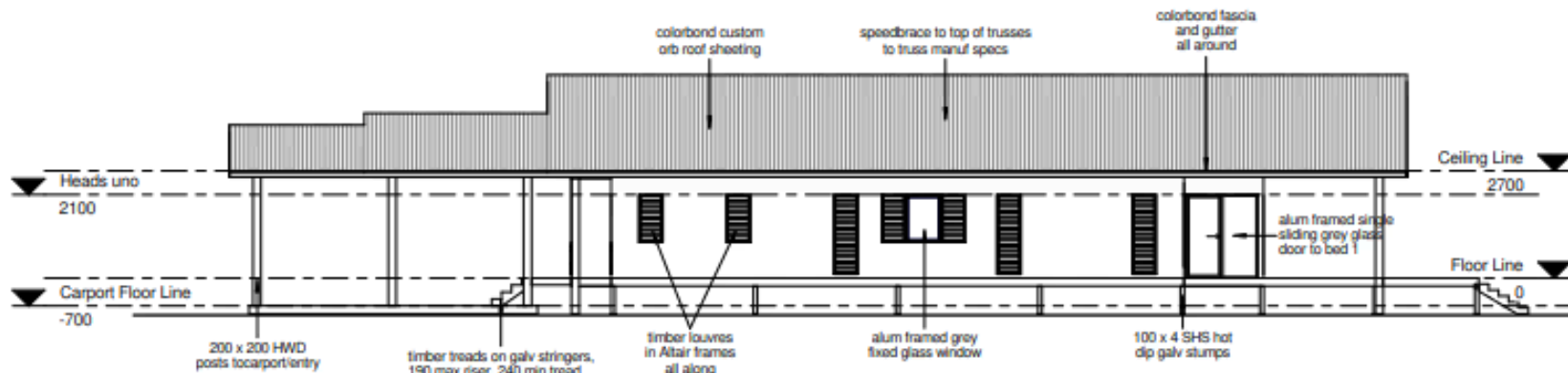
Doc ID: 966992



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1 Front Elevation
1 : 100

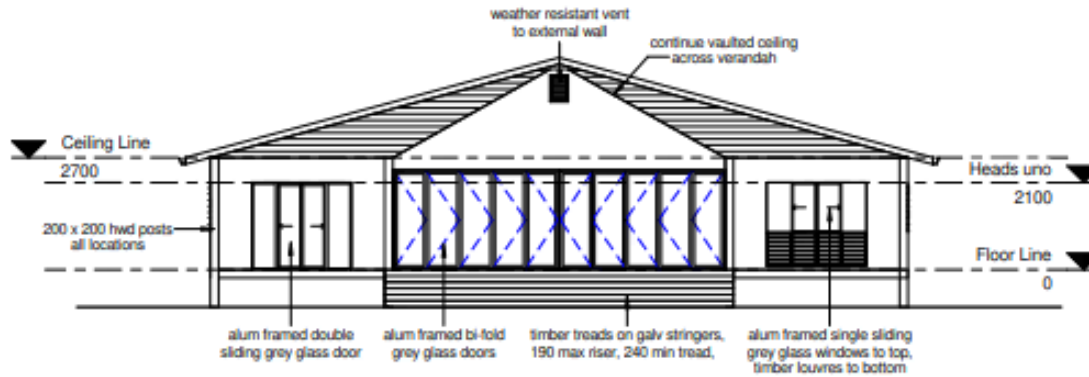


2 Right Elevation
1 : 100

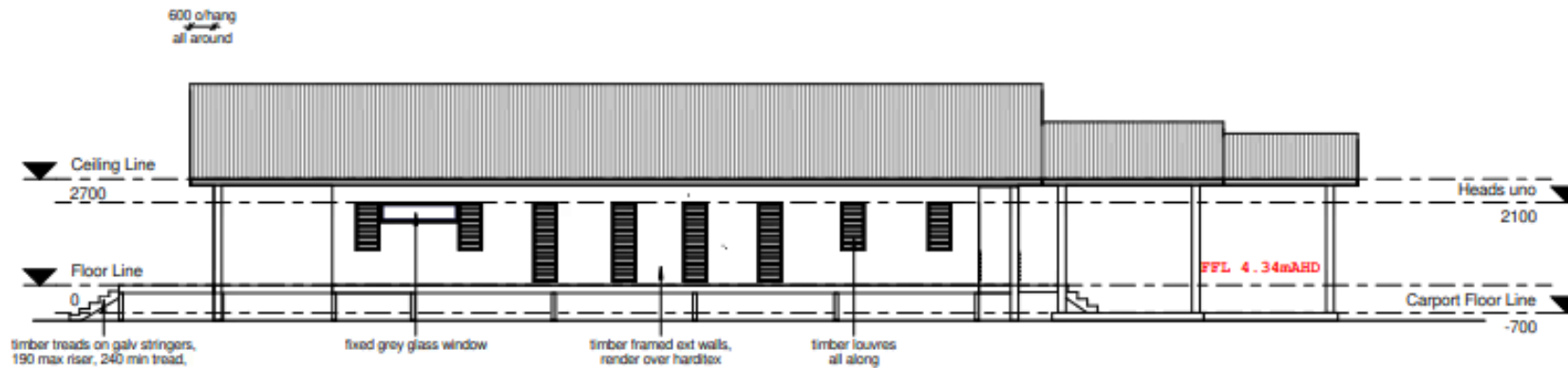
GREG SKYRING
Design and DRAFTING Pty. Ltd.
Lic. Under QBSA Act 1991 - No 1648371
11 Nail Close,
Mossman Q. 4873
Phone/Fax: (07) 40882061
Mobile: 9419212652
Email: greg@skyringdesign.com.au

PROJECT
Proposed Residence,
6 Calophyllum Close,
L4 RP739689,
WONGA

CLIENT B. Rowsell & S. Sondergeld		WIND CLASS C3	PLAN NUMBER 703-20	SHEET 4 of 11
SCALES 1 : 100	PLAN TITLE Elevations - Sheet 1	DATE OF ISSUE prelim 22.05.20	REV D	



1 Rear Elevation
1 : 100

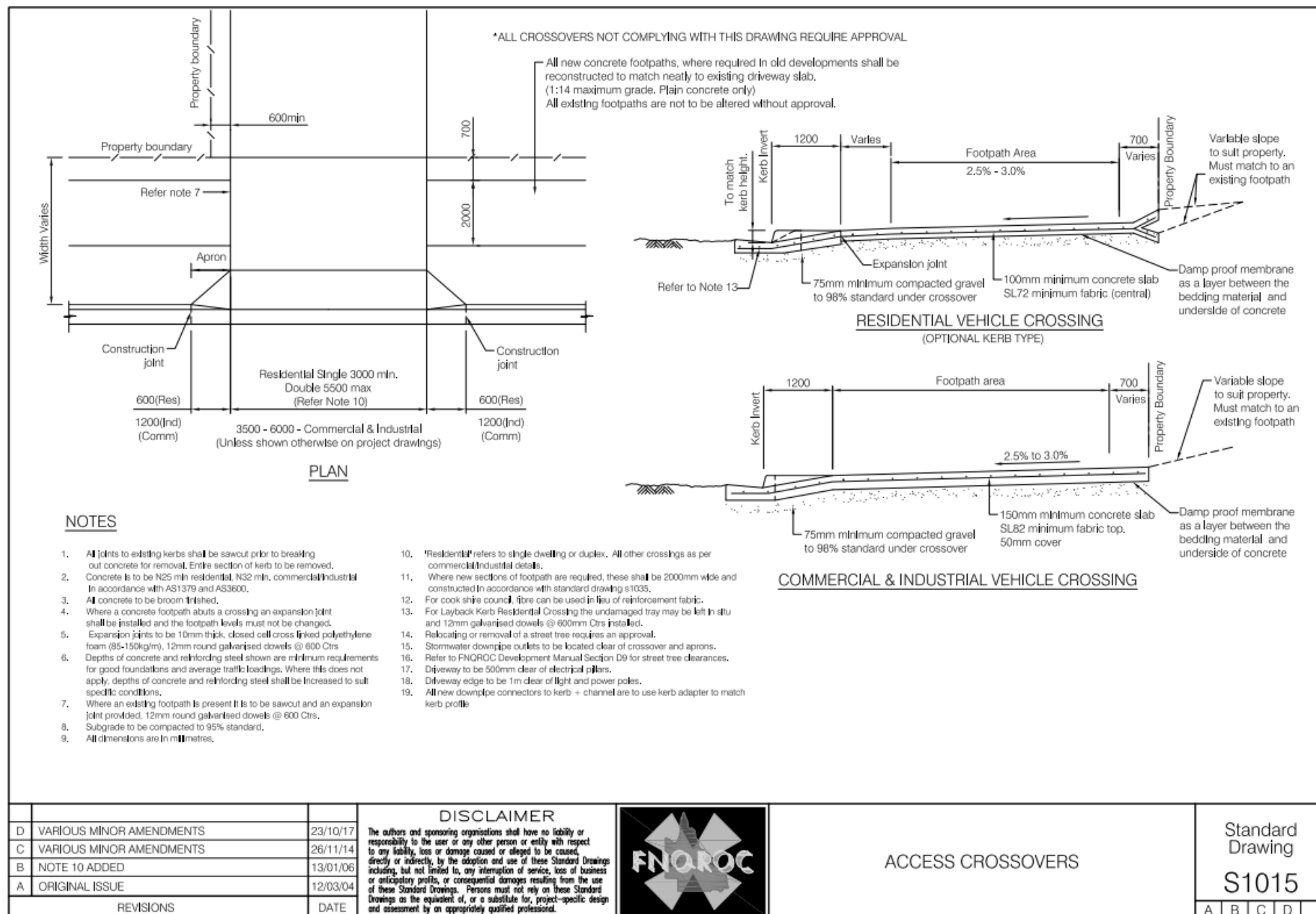


2 Left Elevation
1 : 100

GREG SKYRING
Design and DRAFTING Pty. Ltd.
Lic. Under QBQA Act 1981 - No 1040371
11 Noll Close,
Mossman Q. 4873
Phone/Fax: (07) 40982061
Mobile: 0419212652
Email: greg@skyringdesign.com.au

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Proposed Residence,
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CLIENT B. Rowsell & S. Sondergeld		WIND CLASS C3	PLAN NUMBER 703-20	SHEET 5 of 11
SCALES 1 : 100	PLAN TITLE Elevations - Sheet 2		DATE OF ISSUE prelim 22.05.20	REV D



Reasons for Decision

The reasons for this decision are:

1. Sections 60, 62 and 63 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 5 August 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.
3. Evidence or other material on which findings were based:
 - a. the development triggered assessable development under the Assessment Table associated with the Low Density Residential Zone Code;
 - b. Council undertook an assessment in accordance with the provisions of sections 60, 62 and 63 of the *Planning Act 2016*; and
 - c. 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.

Non Compliance with Assessment Benchmarks

Benchmark Reference	Alternative Measure/Comment
AO1.3 of the Flood and Storm Tide Hazard Overlay Code from the 2018 Douglas Shire Planning Scheme is not complied with as it requires that development is not sited within the overlay area	The applicant proposed finished habitable floor levels for the house to be a minimum of 4.34m AHD because the overlay code requires 300mm immunity above the defined Q100 inundation event of 4.04m AHD within the wave zone of Wonga. Council's storm tide inundation study referenced above recommends an additional freeboard of 1 metre above the 4.04m AHD Q100 level in the wave zone. Council has recommended a finished floor level of 5.04m AHD but the applicant has written to Council advising that they accept responsibility for any flood event that may breach the finished floor levels of the house at 4.34m AHD. The proposed shed is not proposed to be above the 4.04m Q100 level and is proposed at 3.1m AHD with the applicant accepting the risk associated with this. An advice statement has been included to recommend a level of immunity for the house and shed.
P2 (a) of the QDC MP1.2 Provide adequate daylight and ventilation to habitable rooms;	The proposed setbacks to the side boundaries will not affect natural light and ventilation to habitable rooms. There are additional windows provided to the western and eastern elevations to ensure natural light and ventilation is provided to habitable rooms with respect to the northern elevation. The southern elevation is

	adjacent to a public walkway.
P2 (b) of the QDC MP1.2 Allow adequate light and ventilation to habitable rooms of buildings on adjoining lots	There are no dwellings within several metres to the proposed dwelling on adjoining lots.
P2 (c) of the QDC MP1.2 Do not adversely impact on the amenity and privacy on adjoining lots	The proposed dwelling will not detrimentally impact on the amenity and privacy of adjoining lots. There is sufficient separation between dwellings and fencing to afford adequate amenity and privacy to adjoining lots.

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.

- (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.