

15 March 2023

**Enquiries:** Daniel Lamond  
**Our Ref:** MCUC 2023\_5253/1 (1145805)  
**Your Ref:** 2022-11-28-MARINKO-57 MAHOGOANY

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

A Marinko  
C/- Daniel Favier (Aspire Town Planning)  
PO Box 1040  
MOSSMAN QLD 4873

Dear Sir/Madam

**Development Application for Material Change of Use (Dwelling house and ancillary structures)  
At 57 Mahogany Road DIWAN  
On Land Described as LOT: 3 RP: 738674**

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

Please quote Council's application number: MCUC 2023\_5253/1 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**

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



## Decision Notice

### Approval (with conditions)

*Given under s 63 of the Planning Act 2016*

#### Applicant Details

Name: A Marinko  
Postal Address: C/- Daniel Favier (Aspire Town Planning)  
PO Box 1040  
MOSSMAN QLD 4873  
Email: admin@aspireqld.com

#### Property Details

Street Address: 57 Mahogany Road DIWAN  
Real Property Description: LOT: 3 RP: 738674  
Local Government Area: Douglas Shire Council

#### Details of Proposed Development

Development Permit - Material Change of Use (Dwelling house and ancillary structures)

#### Decision

Date of Decision: 15 March 2023  
Decision Details: Approved (subject to conditions)

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

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

Drawing or Document	Reference	Date
Site Plan	Greg Skyring Design and Drafting Plan 111-22 1 of 4	21 February 2023
Floor Plans	Greg Skyring Design and Drafting Plan 111-22 2 of 4	21 February 2023
Elevations Sheet 1	Greg Skyring Design and Drafting Plan 111-22 3 of 4	21 February 2023

Elevations Sheet 2	Greg Skyring Design and Drafting Plan 111-22 4 of 4	21 February 2023
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### **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.

### **Building Colours**

3. The exterior finishes and colours of Buildings must be non-reflective and must blend with the natural colours of the surrounding environment. Provide exterior colours for endorsement by the Chief Executive Officer prior to the issue of a Development Permit for Building Work.

### **Vehicle Parking and Access**

4. The amount of vehicle parking must be as specified in Council's Planning Scheme which is a minimum of two (2) spaces located on site. Access must be constructed in accordance with A/S2890.1- 2004.

### **Sediment and Erosion Control**

5. All earthworks must be carried out in accordance with section CP1.13 and D5 of the FNQROC Development Manual and;

Measures nominated in the ESCP must be implemented prior to commencement of any earthworks and;

The ESC Plan must address the Institution of Engineers' Australia Guidelines for Soil Erosion and Sediment Control and the Environment Protection (Water) Policy and Clauses CP1.06, CP1.13 and D5.10 of Council's FNQROC Development Manual.

### **Treatment of Onsite Waste**

6. The method of on-site effluent disposal must be in accordance with the *Queensland Plumbing and Drainage Act 2002*. Details of the wastewater treatment system to be installed must be approved by the Chief Executive Officer prior to the issue of a Development Permit for Building Work.

### **Water Supply**

7. 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 screening; 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
  - e. The water tank(s) shall be fitted with a 50 mm ball valve with a camlock fitting.

#### **Vegetation Buffer**

8. The vegetation buffer running along the Eastern side boundary must be retained and maintained for a thickness of no less than 10 metres from the common boundary to Lot 2 on RP738674.

#### **Lawful Point of Discharge**

9. The lawful point of discharge for stormwater is to Hutchinson Creek or Mahogany Road and not to the common boundary to Lot 2 on RP738674.

#### **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*.

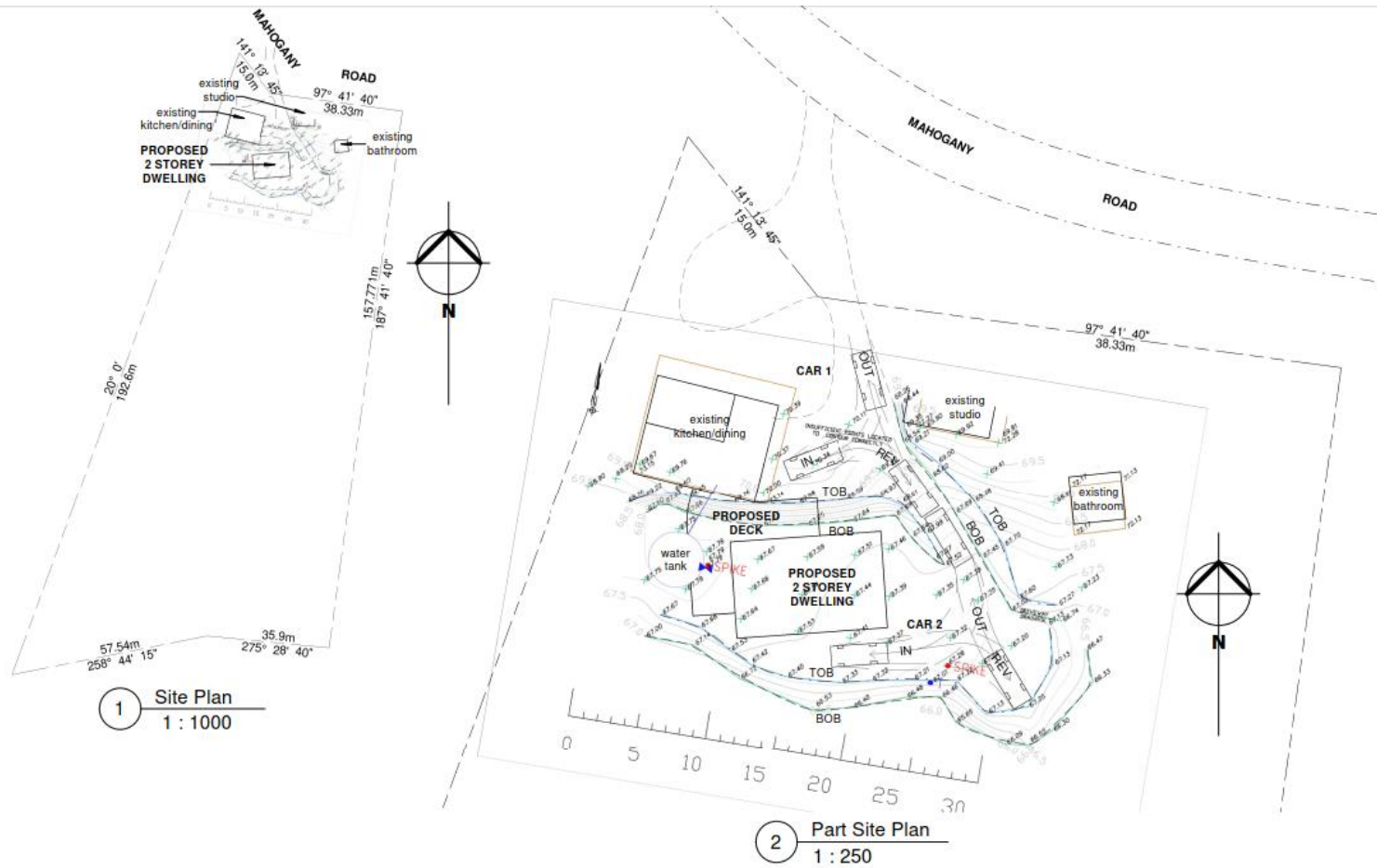
#### **Rights to make Representations & Rights of Appeal**

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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 are attached.

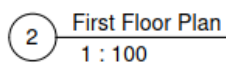
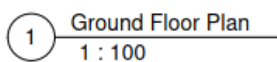
## Approved Drawing(s) and/or Document(s)

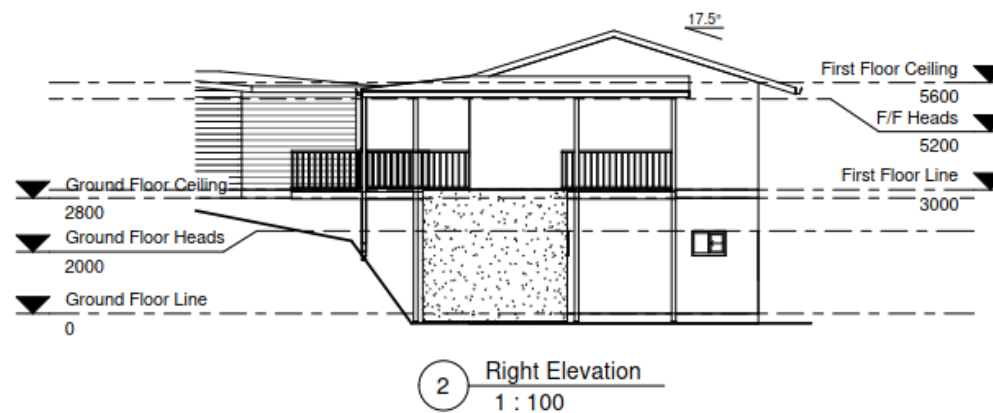
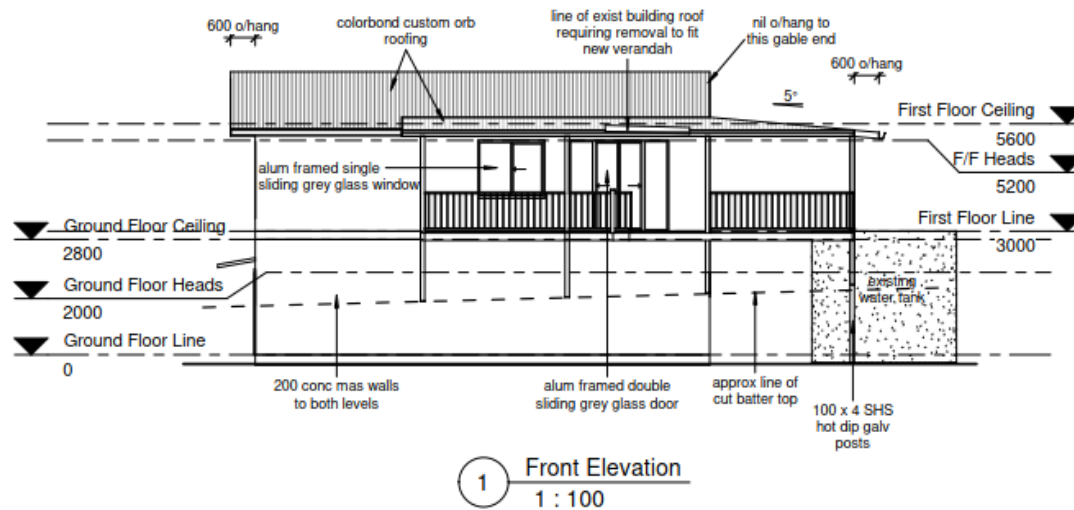


**GREG SKYRING**  
*Design* and DRAFTING Pty. Ltd.  
 Lic Under QBSA Act 1991 - No 1040371  
 11 Noli Close,  
 Mossman Q. 4873  
 Phone/Fax: (07) 40982061  
 Mobile: 0419212652  
 Email: greg@skyringdesign.com.au

PROJECT  
 Proposed Residence,  
 L3 RP738674,  
 57 Mahogany Road,  
 DIWAN

CLIENT A. Marinko		WIND CLASS C2	PLAN NUMBER 111-22	SHEET 1 of 4
SCALES As indicated	PLAN TITLE Site Plan	DATE OF ISSUE prelim 21.02.23		REV A

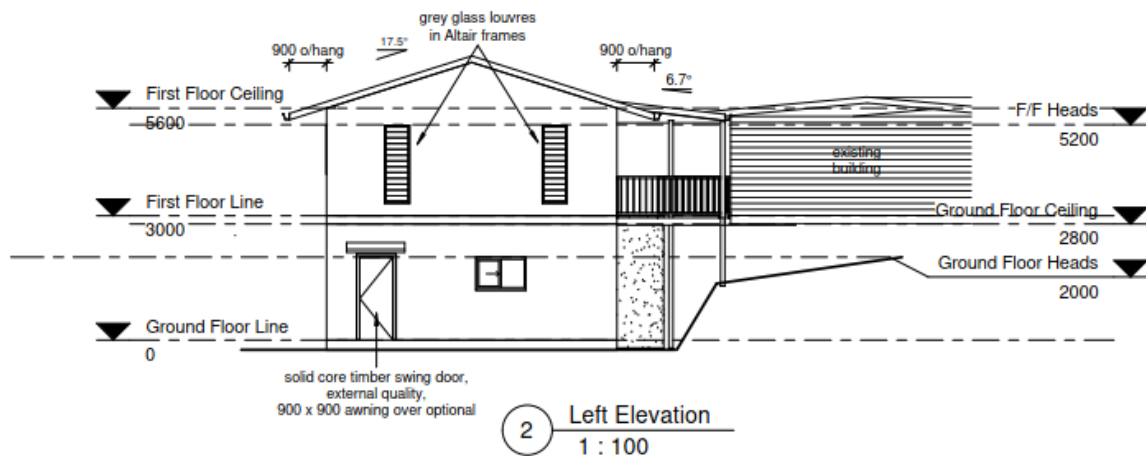
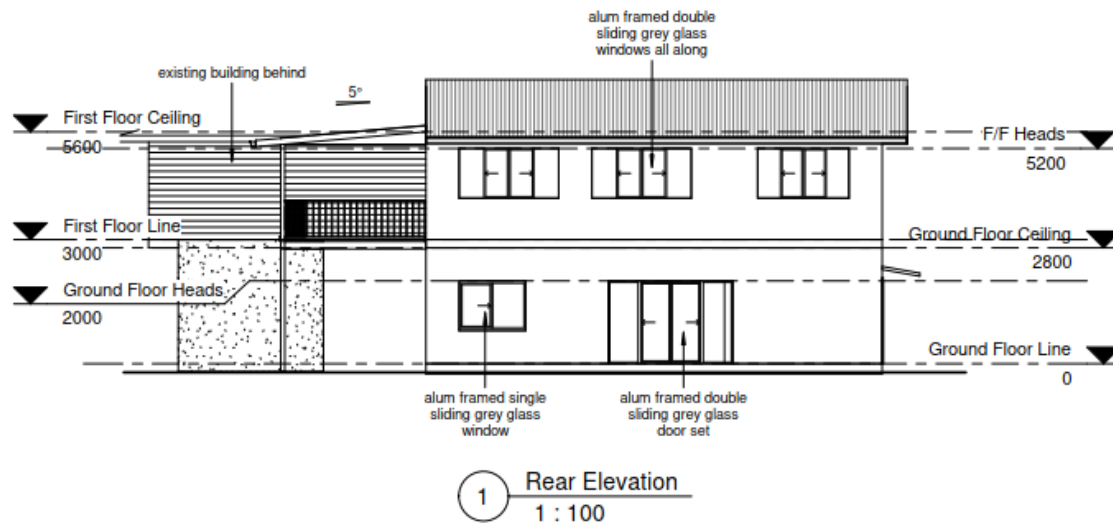
Page 6 of 17



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PROJECT  
Proposed Residence,  
L3 RP738674,  
57 Mahogany Road,  
DIWAN

CLIENT A. Marinko	WIND CLASS C2	PLAN NUMBER 111-22	SHEET 3 of 4
SCALES 1 : 100	PLAN TITLE Elevations - Sheet 1	DATE OF ISSUE prelim 21.02.23	REV A



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PROJECT  
 Proposed Residence,  
 L3 RP738674,  
 57 Mahogany Road,  
 DIWAN

CLIENT  
 A. Marinko

WIND CLASS  
 C2

PLAN NUMBER  
 111-22

SHEET  
 4 of 4

SCALES  
 1 : 100

PLAN TITLE  
 Elevations - Sheet 2

DATE OF ISSUE  
 prelim  
 21.02.23

REV  
 A



## Reasons for Decision

1. The reasons for this decision are:
  - a. Sections 60, 62 and 63 of the *Planning Act 2016*;
  - b. to ensure the development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme Version 1.0; and
  - c. 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 1 February 2023 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 Conservation 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.

Planning Act 2016  
Chapter 3 Development assessment

[s 74]

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## **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

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

## **76 Deciding change representations**

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

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



## Chapter 6 Dispute resolution

### Part 1 Appeal rights

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

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

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

*Note—*

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

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.

- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—
  - (a) the adopted charge itself; or
  - (b) for a decision about an offset or refund—
    - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
    - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

## **230 Notice of appeal**

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



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

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

- (1) Subject to this chapter, section 316(2), schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.



- (2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section—  
**decision** includes—
  - (a) conduct engaged in for the purpose of making a decision; and
  - (b) other conduct that relates to the making of a decision; and
  - (c) the making of a decision or the failure to make a decision; and
  - (d) a purported decision; and
  - (e) a deemed refusal.**non-appealable**, for a decision or matter, means the decision or matter—
  - (a) is final and conclusive; and
  - (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the *Judicial Review Act 1991* or otherwise, whether by the Supreme Court, another court, any tribunal or another entity; and
  - (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, any tribunal or another entity on any ground.

## 232 Rules of the P&E Court

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with rules of the P&E Court.