

27 June 2019

Pioneer North QLD Pty Ltd
C/- RPS Australia East Pty Ltd
PO Box 1949
CAIRNS QLD 4870

Planning Officer: Carl Ewin
Direct Phone: 4086 4656
Our Reference: MCU/19/0005
Your Reference: 9369-9

Dear Applicant/s

Decision Notice

Planning Act 2016

I refer to your application and advise that on 27 June 2019 under delegated authority, Council decided to approve the application in full subject to conditions.

Details of the decision are as follows:

APPLICATION DETAILS

Application No: MCU/19/0005
Street Address: Bower Road, Mareeba
Real Property Description: Lot 7 on RP800492
Planning Scheme: Mareeba Shire Council Planning Scheme 2016

DECISION DETAILS

Type of Decision: Approval
Type of Approval: Development Permit for Material Change of Use - Extractive Industry (Expansion)
Date of Decision: 27 June 2019

CURRENCY PERIOD OF APPROVAL

The currency period for this development approval is six (6) years starting the day that this development approval takes effect. (Refer to Section 85 "Lapsing of approval at end of currency period" of the *Planning Act 2016*.)

INFRASTRUCTURE

Where conditions relate to the provision of infrastructure, these are non-trunk infrastructure conditions unless specifically nominated as a "*necessary infrastructure condition*" for the provision of trunk infrastructure as defined under Chapter 4 of the *Planning Act 2016*.

ASSESSMENT MANAGER CONDITIONS

(A) ASSESSMENT MANAGER'S CONDITIONS (COUNCIL)

(a) Development assessable against the Planning Scheme

1. Development must be carried out generally in accordance with the approved plans and the facts and circumstances of the use as submitted with the application, subject to any alterations:
 - found necessary by the Council's delegated officer at the time of examination of the engineering plans or during construction of the development because of particular engineering requirements; and
 - to ensure compliance with the following conditions of approval.
2. Timing of Effect
 - 2.1 The conditions of the development permit must be complied with to the satisfaction of Council's delegated officer prior to the commencement of the use except where specified otherwise in these conditions of approval.
 - 2.2 Prior to the commencement of use, the applicant must notify Council that all the conditions of the development permit have been complied with, except where specified otherwise in these conditions of approval.
3. General
 - 3.1 The development approval would not have been issued if not for the conditions requiring the construction of infrastructure within the conditions of approval.
 - 3.2 The applicant/developer is responsible for the cost of necessary alterations to existing public utility mains, services or installations required by works in relation to the proposed development or any works required by condition(s) of this approval.
 - 3.3 All payments or bonds required to be made to the Council pursuant to any condition of this approval must be made prior to commencement of the use and at the rate applicable at the time of payment.
 - 3.4 All works must be designed, constructed and carried out in accordance with FNQROC Development Manual requirements (as amended) and to the satisfaction of Council's delegated officer.

3.5 Hours of Operation

All operations pursuant to the extractive industry, or in any way connected with the extractive industry will, for site operations and for removal of material, be limited to the hours between 7.00 am and 6.00 pm Mondays to Friday and 7:00am to 12:00 noon Saturdays (except Public Holidays), PROVIDED ALWAYS that the Council will have the right at any time, and from time to time, to fix other hours of operation, and upon the fixing of any such other hours of operation pursuant to the permit, or in any way connected therewith, the extractive industry will be limited to such other hours. The Applicant will not be allowed to conduct nor permit nor suffer to be conducted, any extractive industry operation nor run nor start any motors, machinery, or the like, nor remove any materials from the said land on any Sunday or Public Holiday, or at any time outside the hours mentioned or such other hours as will be fixed by Council.

3.6 The Applicant shall provide Council with records of quantities of material extracted from the site on a monthly basis.

3.7 All operations pursuant to the extractive industry must be carried out in accordance with an Environmental Management Plan, except where modifications are required by the conditions of this approval. A copy of the Environmental Management Plan must be provided to Council prior to the commencement of extraction.

3.8 The applicant will be required to take every precaution to avoid spillage and any spillage which occurs on any public road, shall be removed at the end of each working day or within four (4) hours of any verbal requirement by Council's delegated officer.

3.9 Scale and Intensity

The extraction volume must not exceed 100,000 tonnes per annum.

3.10 Rehabilitation

A Site Rehabilitation Management Plan is to be prepared by a suitably qualified and experienced person detailing the timing/staging of vegetation removal, method of removal and the sequence of operations and rehabilitation works.

Site rehabilitation works must be provided in a progressive manner in accordance with extraction sequences and staging. The method of rehabilitation needs to be detailed with appropriate revegetation strategies indicated including the species list to be used including plant source. The plan is to be submitted to Council and operations are not to commence prior to receipt of Council's approval of the plan.

All site rehabilitation is to occur in accordance with the approved Site Rehabilitation Management Plan.

3.11 Prevention of the spread of weeds and pests

The applicant must ensure the development is carried out in a manner that prevents the spread of weeds, seeds or other pests into clean areas or away from any existing infested areas.

3.12 No extraction is to occur within 20 metres of the existing dwelling houses on Lot 20 on RP800492 and Lot 110 on HG399. The sand screening plant and any stockpile/s must be sited at least 200 metres from the existing dwelling houses on Lot 20 on RP800492 and Lot 110 on HG399.

4. Infrastructure Services and Standards

4.1 Access

A Commercial access crossover/s, for the extractive industry access, must be constructed and maintained, to the property boundary in accordance with the FNQROC Development Manual, to the satisfaction of Council's delegated officer.

5. Additional Payment Condition – **Note:** The applicant's obligations under this condition are waived whilst Council continues to levy the special charge for extractive industries in accordance with Council's adopted annual budget.

5.1 The additional payment condition has been imposed as the development will create additional demand on trunk infrastructure which will create additional trunk infrastructure costs for council.

5.2 The developer must pay \$33,596.64 for each 3,333 haul truck movements from the site towards trunk transport infrastructure, with the amount of the contribution increased on 1 July each year in accordance with the increase for the PPI index for the period starting on the day the development approval takes effect, adjusted by reference to the 3-yearly PPI index average to the date of payment.

5.3 The trunk infrastructure for which the payment is required is:

- The trunk transport infrastructure servicing the land - specifically the upgrading of Bower Road and North Walsh Road to rural road (8 metres wide) bitumen sealed standard.

5.4 The developer may elect to provide part of the trunk infrastructure instead of making the payment.

5.5 If the developer elects to provide part of the trunk infrastructure the developer must:

- Discuss with Council's delegated officer the part of the works to be undertaken;
- Obtain the necessary approvals for the part of the works;
- Indemnify the Council in relation to any actions, suits or demands relating to or arising from the works;
- Take out joint insurance in the name of the Council and the developer in the sum of \$20,000,000 in relation to the undertaking of the works;
- Comply with the reasonable direction of Council officers in relation to the completion of the works;
- Complete the works to the standards required by the Council; and
- Complete the works prior to commencement of the use.

REFERRAL AGENCIES

The referral agencies applicable to this application are:

| Table 1 - Aspect of development stated in schedule 20 | | |
|--|--|--|
| <p>Development application for an aspect of development stated in schedule 20 that is assessable development under a local categorising instrument or section 21, if—</p> <p>(a) the development is for a purpose stated in schedule 20, column 1 for the aspect; and</p> <p>(b) the development meets or exceeds the threshold—</p> <p style="padding-left: 20px;">(i) for development in local government area 1—stated in schedule 20, column 2 for the purpose; or</p> <p style="padding-left: 20px;">(ii) for development in local government area 2—stated in schedule 20, column 3 for the purpose; and</p> <p>(c) for development in local government area 1—the development is not for an accommodation activity or an office at premises wholly or partly in the excluded area. However, if the development is for a combination of purposes stated in the same item of schedule 20, the threshold is for the combination of purposes and not for each individual purpose.</p> | <p>Schedule 10, Part 9, Division 4, Subdivision 1, Table 1</p> | <p>State Assessment & Referral Agency (SARA) Department of State Development, Manufacturing, Infrastructure & Planning PO Box 2358 Cairns Qld 4870</p> <p>CairnsSARA@dsdmip.qld.gov.au</p> |

A copy of any referral agency conditions are attached.

APPROVED PLANS

The following plans are Approved plans for the development:

| Plan/Document Number | Plan/Document Title | Prepared by | Dated |
|----------------------|--|-------------|----------|
| 9369-31a | Proposed Expansion of Sand Extraction on Lot 7 on RP800492 | RPS | 9-4-2019 |

ADVISORY NOTES

The following notes are included for guidance and information purposes only and do not form part of the assessment manager conditions:

(A) ASSESSMENT MANAGER'S ADVICE

- (a) A number of other charges or payments may be payable as conditions of approval. The applicable fee is set out in Council's Fees & Charges Schedule for each respective financial year.

- (b) Compliance with applicable codes/policies

The development must be carried out to ensure compliance with the provisions of Council's Local Laws, Planning Scheme Policies, Planning Scheme and Planning Scheme Codes to the extent they have not been varied by a condition of this approval.

- (c) Compliance with Acts and Regulations

The erection and use of the building must comply with the Building Act and all other relevant Acts, Regulations and Laws, and these approval conditions.

- (d) Environmental Protection and Biodiversity Conservation Act 1999

The applicant is advised that referral may be required under the *Environmental Protection and Biodiversity Conservation Act 1999* if the proposed activities are likely to have a significant impact on a matter of national environmental significance. Further information on these matters can be obtained from www.environment.gov.au.

(e) Cultural Heritage

In carrying out the activity the applicant must take all reasonable and practicable measures to ensure that no harm is done to Aboriginal cultural heritage (the "cultural heritage duty of care"). The applicant will comply with the cultural heritage duty of care if the applicant acts in accordance with gazetted cultural heritage duty of care guidelines. An assessment of the proposed activity against the duty of care guidelines will determine whether or to what extent Aboriginal cultural heritage may be harmed by the activity. Further information on cultural heritage, together with a copy of the duty of care guidelines and cultural heritage search forms, may be obtained from www.datsip.qld.gov.au.

(B) CONCURRENCE AGENCY CONDITIONS

Department of State Development, Manufacturing, Infrastructure and Planning Referral Agency Response dated 18 June 2019.

PROPERTY NOTES

Not Applicable.

FURTHER DEVELOPMENT PERMITS REQUIRED

- Access approval arising from condition number 4.1 (Please contact Planning Section to obtain application form and applicable fee)

SUBMISSIONS

Not Applicable.

RIGHTS OF APPEAL

You are entitled to appeal against this decision. A copy of the relevant appeal provisions from the *Planning Act 2016* is attached.

During the appeal period, you as the applicant may suspend your appeal period and make written representations to council about the conditions contained within the development approval. If council agrees or agrees in part with the representations, a "negotiated decision notice" will be issued. Only one "negotiated decision notice" may be given. Taking this step will defer your appeal period, which will commence again from the start the day after you receive a "negotiated decision notice".

OTHER DETAILS

If you wish to obtain more information about Council's decision, electronic copies are available on line at www.msc.qld.gov.au, or at Council Offices.

Yours faithfully

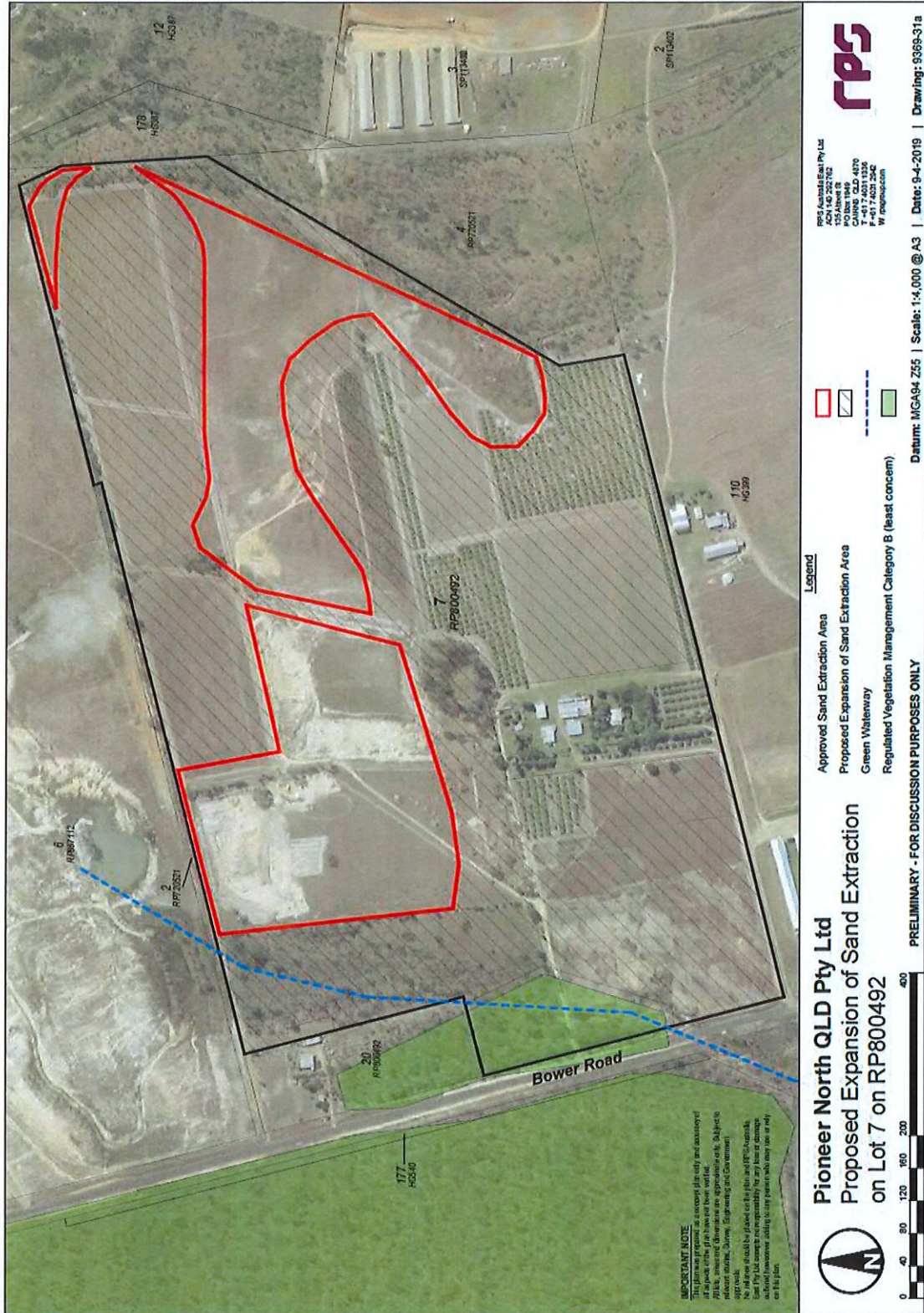


for **BRIAN MILLARD**
SENIOR PLANNER

Enc: Approved Plans/Documents
Referral Agency Response
Appeal Rights

Copy: Department of State Development, Manufacturing, Infrastructure and Planning
CairnsSARA@dsdmip.qld.gov.au

Approved Plans/Documents



Referral Agency Response

RA6-N



Department of
State Development,
Manufacturing,
Infrastructure and Planning

SARA reference: 1905-11079 SRA
Council reference: MCU/19/0005
Applicant reference: 9369-9

18 June 2019

Chief Executive Officer
Mareeba Shire Council
PO Box 154
Mareeba Qld 4880
planning@msc.qld.gov.au

Attention: Carl Ewin

Dear Sir/Madam

SARA response—Bower Road, Mareeba

(Referral agency response given under section 56 of the *Planning Act 2016*)

The development application described below was confirmed as properly referred by the Department of State Development, Manufacturing, Infrastructure and Planning on 20 May 2019.

Response

| | |
|-------------------|---|
| Outcome: | Referral agency response – with conditions. |
| Date of response: | 18 June 2019 |
| Conditions: | The conditions in Attachment 1 must be attached to any development approval. |
| Advice: | Advice to the applicant is in Attachment 2 . |
| Reasons: | The reasons for the referral agency response are in Attachment 3 . |

Development details

| | | |
|-----------------|--|---|
| Description: | Development permit | Material change of use for an extractive industry |
| SARA role: | Referral Agency | |
| SARA trigger: | 10.9.4.1.1.1 (Planning Regulation 2017) - Development application for a material change of use that exceeds the thresholds identified in Schedule 20 of the Planning Regulation 2017 (10 000 tonnes) | |
| SARA reference: | 1905-11079 SRA | |

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Far North Queensland regional office
Ground Floor, Cnr Grafton and Hartley
Street, Cairns
PO Box 2358, Cairns QLD 4870

1905-11079 SRA

Assessment Manager: Mareeba Shire Council
Street address: Bower Road, Mareeba
Real property description: Lot 7 on RP800492
Applicant name: Pioneer North Queensland Pty Ltd
Applicant contact details: C/- RPS Australia East Pty Ltd
135 Abbott Street
Cairns QLD 4870
owen.caddick-king@rpsgroup.com.au

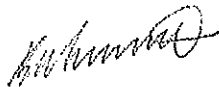
Representations

An applicant may make representations to a concurrence agency, at any time before the application is decided, about changing a matter in the referral agency response (s.30 Development Assessment Rules) Copies of the relevant provisions are in Attachment 4.

A copy of this response has been sent to the applicant for their information.

For further information please contact Belinda Jones, Senior Planning Officer, on 40373239 or via email CairnsSARA@dsmip.qld.gov.au who will be pleased to assist.

Yours sincerely



Brett Nancarrow
Manager (Planning)

cc Pioneer North Queensland Pty Ltd, owen.caddick-king@rpsgroup.com.au

enc Attachment 1 - Referral agency conditions
Attachment 2 - Advice to the applicant
Attachment 3 - Reasons for referral agency response
Attachment 4 - Change representation provisions

1905-11079 SRA

Attachment 1—Referral agency conditions

(Under section 56(1)(b)(i) of the *Planning Act 2016* the following conditions must be attached to any development approval relating to this application)

| No. | Conditions | Condition timing |
|--|---|------------------|
| Material change of use | | |
| 10.9.4.1.1.1—The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of the Department of Transport and Main Roads to be the enforcement authority for the development to which this development approval relates for the administration and enforcement of any matter relating to the following condition(s): | | |
| 1. | Heavy vehicles as defined in the <i>Transport Operations (Road Use Management Act) 1995</i> associated with the proposed development must use the haulage route via Bowen Road and North Walsh Road / Mareeba Dimbulah Road T intersection. | At all times |

1905-11079 SRA

Attachment 2—Advice to the applicant

| General advice | |
|----------------|---|
| 1. | Terms and phrases used in this document are defined in the <i>Planning Act 2016</i> its regulation or the State Development Assessment Provisions (SDAP) (v2.4). If a word remains undefined it has its ordinary meaning. |

1905-11079 SRA

Attachment 3—Reasons for referral agency response*(Given under section 56(7) of the Planning Act 2016)***The reasons for the department's decision are:**

- The department carried out an assessment of the development application against State code 6 and with conditions the proposal complies with the relevant performance outcomes.
- The proposed development will utilise the local road network and the Mareeba-Dimbulah / North Walsh Road intersection which has been upgraded to accommodate extractive haulage vehicles within the key resource area.
- The proposed development does not compromise the safe and efficient management or operation of the state-controlled road.

Material used in the assessment of the application:

- The development application material and submitted plans
- *Planning Act 2016*
- *Planning Regulation 2017*
- The *State Development Assessment Provisions (version (2.4))*, as published by the department
- The Development Assessment Rules
- SARA DA Mapping system

1905-11079 SRA

Attachment 4—Change representation provisions

(page left intentionally blank – change representation provisions are separately attached)

Development Assessment Rules—Representations about a referral agency response (concurrency)

The following provisions are those set out in sections 28 and 30 of the *Development Assessment Rules*¹ regarding representations about a referral agency response (concurrency).

Part 6: Changes to the application and referral agency responses and Part 7: Miscellaneous

28 Concurrency agency changes its response or gives a late response

- 28.1. Despite part 2, a concurrency agency may, after its referral agency assessment period and any further period agreed ends, change its referral agency response or give a late referral agency response before the application is decided, subject to section 28.2 and 28.3.
- 28.2. A concurrency agency may change its referral agency response at any time before the application is decided if—
- (a) the change is in response to a change which the assessment manager is satisfied is a change under section 26.1; or
 - (b) the Minister has given the concurrency agency a direction under section 99 of the Act; or
 - (c) the applicant has given written agreement to the change to the referral agency response.²
- 28.3. A concurrency agency may give a late referral agency response before the application is decided, if the applicant has given written agreement to the late referral agency response.
- 28.4. If a concurrency agency proposes to change its referral agency response under section 28.2(a), the concurrency agency must—
- (a) give notice of its intention to change its referral agency response to the assessment manager and a copy to the applicant within 5 days of receiving notice of the change under section 25.1; and
 - (b) the concurrency agency has 10 days from the day of giving notice under paragraph (a), or a further period agreed between the applicant and the concurrency agency, to give an amended referral agency response to the assessment manager and a copy to the applicant.

¹ Pursuant to Section 68 of the *Planning Act 2016*

² In the instance an applicant has made representations to the concurrency agency under section 30, and the concurrency agency agrees to make the change included in the representations, section 28.2(c) is taken to have been satisfied.

30 Representations about a referral agency response

- 30.1. An applicant may make representations to a concurrence agency at any time before the application is decided, about changing a matter in the referral agency response.³

³ An applicant may elect, under section 32, to stop the assessment manager's decision period in which to take this action. If a concurrence agency wishes to amend their response in relation to representations made under this section, they must do so in accordance with section 28.

Appeal Rights

PLANNING ACT 2016 & THE PLANNING REGULATION 2017

Chapter 6 Dispute resolution

Part 1 Appeal rights

229 Appeals to tribunal or P&E Court

(1) Schedule 1 of the Planning Act 2016 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.

(Refer to Schedule 1 of the Planning Act 2016)

(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 has 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.

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 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, a tribunal or another entity; and
- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a 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 the rules of the P&E Court.