



# Mareeba

## SHIRE COUNCIL

65 Rankin Street  
PO Box 154 MAREEBA QLD 4880

P: 1300 308 461  
F: 07 4092 3323

W: [www.msc.qld.gov.au](http://www.msc.qld.gov.au)  
E: [info@msc.qld.gov.au](mailto:info@msc.qld.gov.au)

3 October 2019

KVN Australia Trust  
C/- Planz Town Planning  
PO Box 181  
EDGE HILL QLD 4870

Planning Officer: Brian Millard  
Direct Telephone: (07) 4086 4657  
Our Reference: MCU/19/0013  
Your Reference: P71880

Dear Applicant/s

## Decision Notice

### *Planning Act 2016*

I refer to your application and advise that on 3 October 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/19/0013
Street Address:	3727 Mareeba - Dimbulah Road, Mutchilba
Real Property Description:	Lot 225 on HG293
Planning Scheme:	Mareeba Shire Council Planning Scheme 2016

#### DECISION DETAILS

Type of Decision:	Approval
Type of Approval:	Development Permit for Material Change of Use - Rural Industry (Packing Shed)
Date of Decision:	3 October 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 substantially 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 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 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.
  - 3.2 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.
  - 3.3 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.

### 3.4 Noise Nuisance

Refrigeration equipment, pumps, compressors and mechanical ventilation systems must be located, designed, installed and maintained to achieve a maximum noise level of 3dB(A) above background levels as measured from noise sensitive locations and a maximum noise level of 8dB(A) above background levels as measured from commercial locations.

### 3.5 Waste Management

On site refuse storage area must be provided and be screened from view from adjoining properties and road reserve by 1 metre wide landscaped screening buffer, 1.8m high solid fence or building.

Where bulk bins are used and are to be serviced on site, certification by a Registered Professional Engineer of Queensland (RPEQ) must be provided to Council prior to the issue of a building permit which demonstrates that internal access is of adequate design and construction to allow waste collection/delivery vehicles to enter and exit the site in a forward gear.

### 3.6 Flood Immunity

**Note:** This approval is issued on the basis that the applicant/developer accepts that the cost of flood impact is an operational cost of the rural industry.

Prior to the commencement of the use, the applicant/developer must obtain a Flood Emergency Evacuation Plan for the rural industry (packing shed) prepared by suitably qualified persons having regard to Floodplain Management in Australia: Best Practice Principles and Guidelines (2000), prepared by Standing Committee on Agriculture and Resource Management (SCARM), CSIRO. The Flood Emergency Evacuation Plan must be prominently displayed in the rural industry.

## 4. Infrastructure Services and Standards

### 4.1 Stormwater Drainage

- (a) The applicant/developer must take all necessary steps to ensure a non-worsening effect on surrounding land as a consequence of the development.
- (b) All stormwater drainage concentrated by the development must be collected from site and discharged to an approved legal point of discharge.

#### 4.2 Car Parking/Internal Driveways

- (a) The applicant/developer must ensure the development is provided with on-site car parking spaces in accordance with the approved plans, which are available solely for the parking of vehicles associated with each use of the premises.
- (b) All car parking spaces and trafficable areas must be concrete, bitumen or asphalt sealed, line-marked and appropriately drained prior to the commencement of the use, to the satisfaction of Council's delegated officer.
- (c) All car parking spaces and internal driveways must be constructed in compliance with the following standards, to the satisfaction of Council's delegated officer:
  - Australian Standard AS2890:1 Off Street Parking – Car Parking Facilities;
  - Australian Standard AS1428:2001 – Design for Access and Mobility.
- (d) All parking spaces and trafficable areas must be maintained in good order and safe repair for the life of the development, to the satisfaction of Council's delegated officer.

A sign must be erected in proximity to the access driveway indicating the availability of on-site parking.

#### 4.3 Landscaping

- (a) Prior to the commencement of the use, a landscape plan must be prepared for the site and submitted to Council's delegated officer for consideration and approval. The plan is to include landscaping generally in accordance with the approved site layout plan.
- (b) Plant species used must be selected from the Plant Schedule in Planning Scheme Policy 6 - Landscaping and preferred plant species.
- (c) The landscaping of the site must be carried out in accordance with the endorsed landscaping plan, and irrigated, mulched and maintained to the satisfaction of Council's delegated officer.

#### 4.4 Non-Reticulated Water Supply

The development must be provided with a potable water supply that can satisfy the standards for drinking water set by the Australian Drinking Water Guidelines 2004 (National Health and Medical Research Council and the National Resource Management Ministerial Council).

All non-potable sources of water must be sign posted "non-potable water supply" or similar in order to deter consumption.

#### 4.5 On-Site Wastewater Management

All on site effluent disposal associated with the approved use must be in compliance with the latest version of On-Site Domestic Wastewater Management Standard (ASNZ1547) to the satisfaction of the Council's delegated officer.

**Note:** Any on-site wastewater treatment system with a total daily peak design capacity of at least 21 equivalent persons (EP) is an Environmentally Relevant Activity (ERA 63 - Sewerage Treatment) and an Environmental Authority is required.

### REFERRAL AGENCIES

The referral agencies applicable to this application are:

Material change of use of premises near a State transport corridor or that is a future State transport corridor		
Development application for a material change of use, other than an excluded material change of use, that is assessable development under a local categorizing instrument, if all or part of the premises—	Schedule 10, Part 9, Division 4, Subdivision 2, Table 4	State Assessment & Referral Agency (SARA) Department of State Development, Manufacturing, Infrastructure and Planning PO Box 2358 Cairns Qld 4870  <a href="mailto:CairnsSARA@dsdmip.qld.gov.au">CairnsSARA@dsdmip.qld.gov.au</a>
(a) are within 25m of a State transport corridor; or		
(b) are a future State transport corridor; or		
(c) are—		
(i) adjacent to a road that intersects with a State-controlled road; and		
(ii) within 100m of the intersection		

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
0507 DA01, Issue D	Location Plan	Gregory G Terzi	19/08/2019
0507 DA1-01 A	Site Plan	Gregory G Terzi	Nov 2018

0507 DA02, Issue E	Site Plan Proposed	Gregory G Terzi	02/09/2019
0507 DA03, Issue E	Shed Facilities Layout - Proposed	Gregory G Terzi	19/08/2019
0507 DA04, Issue E	Shed Facilities Layout - Proposed Detail	Gregory G Terzi	19/08/2019
0507 DA05, Issue C	Part Floor Plan	Gregory G Terzi	19/08/2019
0507 DA06, Issue C	Part Floor Plan	Gregory G Terzi	19/08/2019
0507 DA07, Issue C	Cold Room Shed - typical cross section	Gregory G Terzi	19/08/2019
0507 DA08, Issue B	Road Elevation	Gregory G Terzi	19/08/2019
0507 DA09, Issue C	Trucks Operation - Proposed	Gregory G Terzi	19/08/2019
0507 DA10, Issue B	Ground Heights	Gregory G Terzi	19/08/2019

#### 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](http://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](http://www.datsip.qld.gov.au).

(B) CONCURRENCE AGENCY CONDITIONS

Department of State Development, Manufacturing, Infrastructure and Planning conditions dated 27 September 2019.

**PROPERTY NOTES**

Not Applicable.

**FURTHER DEVELOPMENT PERMITS REQUIRED**

- Development Permit for Building Work
- Compliance Permit for Plumbing and Drainage Work

**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.

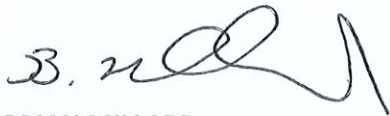
During the appeal period, you as the applicant may suspend your appeal period and make written representations to council about the conditions contained within the development approval. If council agrees or agrees in part with the representations, a "negotiated decision notice" will be issued. Only one "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".

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**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](http://www.msc.qld.gov.au), or at Council Offices.

Yours faithfully



**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](mailto:CairnsSARA@dsdmip.qld.gov.au)



## Approved Plans/Documents

## DRAWING SCHEDULE sheet size

DA 01	EXISTING SITE
DA 02	PROPOSED SITE PLAN
DA 03	SHED FACILITIES PROPOSED & FUTURE
DA 04	SHED FACILITIES PROPOSED -DETAIL
DA 05	part SHED FLOOR PLAN
DA 06	part SHED FLOOR PLAN
DA 07	typical SECTION
DA 08	ELEVATIONS
DA 09	TRUCKS OPERATION
DA 10	EXISTING GROUND HEIGHTS

43

Date: 03/05/2019

PROJECT: PROPOSED PACKING SHED

3727 MAREBA - DINGULAH RD  
MUTCHILBA. 4872

Drawing No. SHEET No. ISSUE  
 0507 DA 01 D

phone: 0428 294 735 EDMENTON 4855. QUEENSLAND

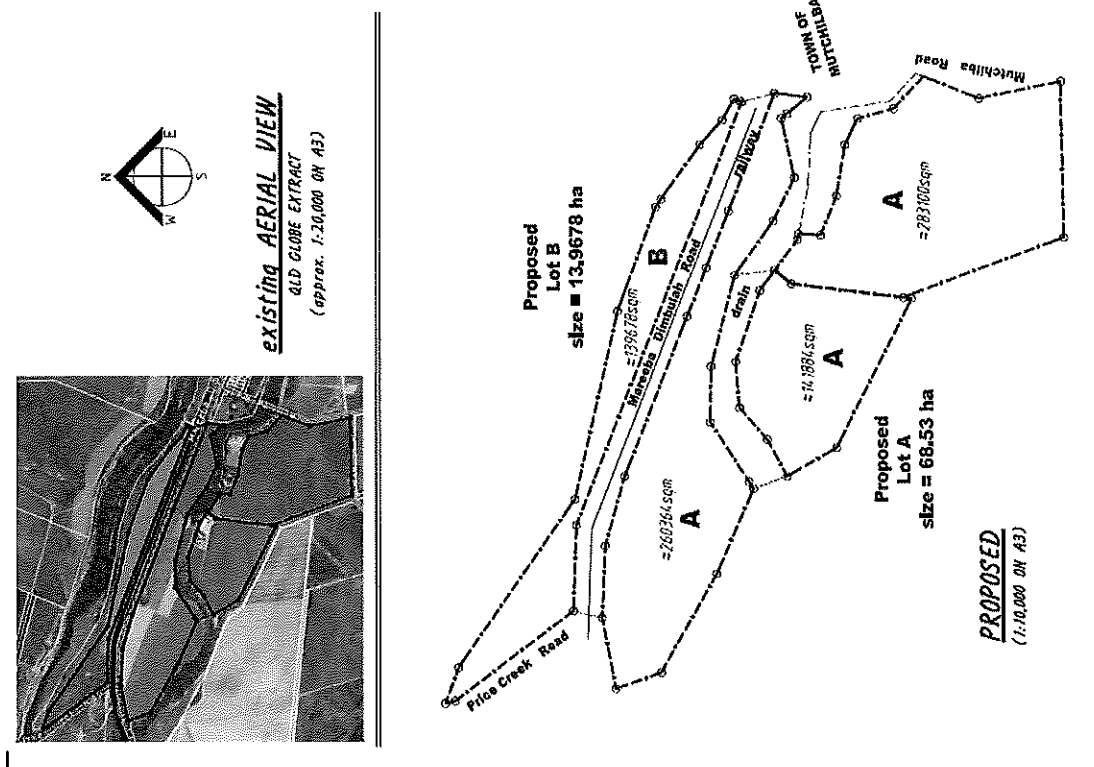
**GREGORY G TERZI** Architect **Building Design & Drafting**  
-Building Designer- -Medium Rise- -CBC LICENSE 117748-8-

**Lot 225 on HG 293**  
**3 portions totals 54.1ha**

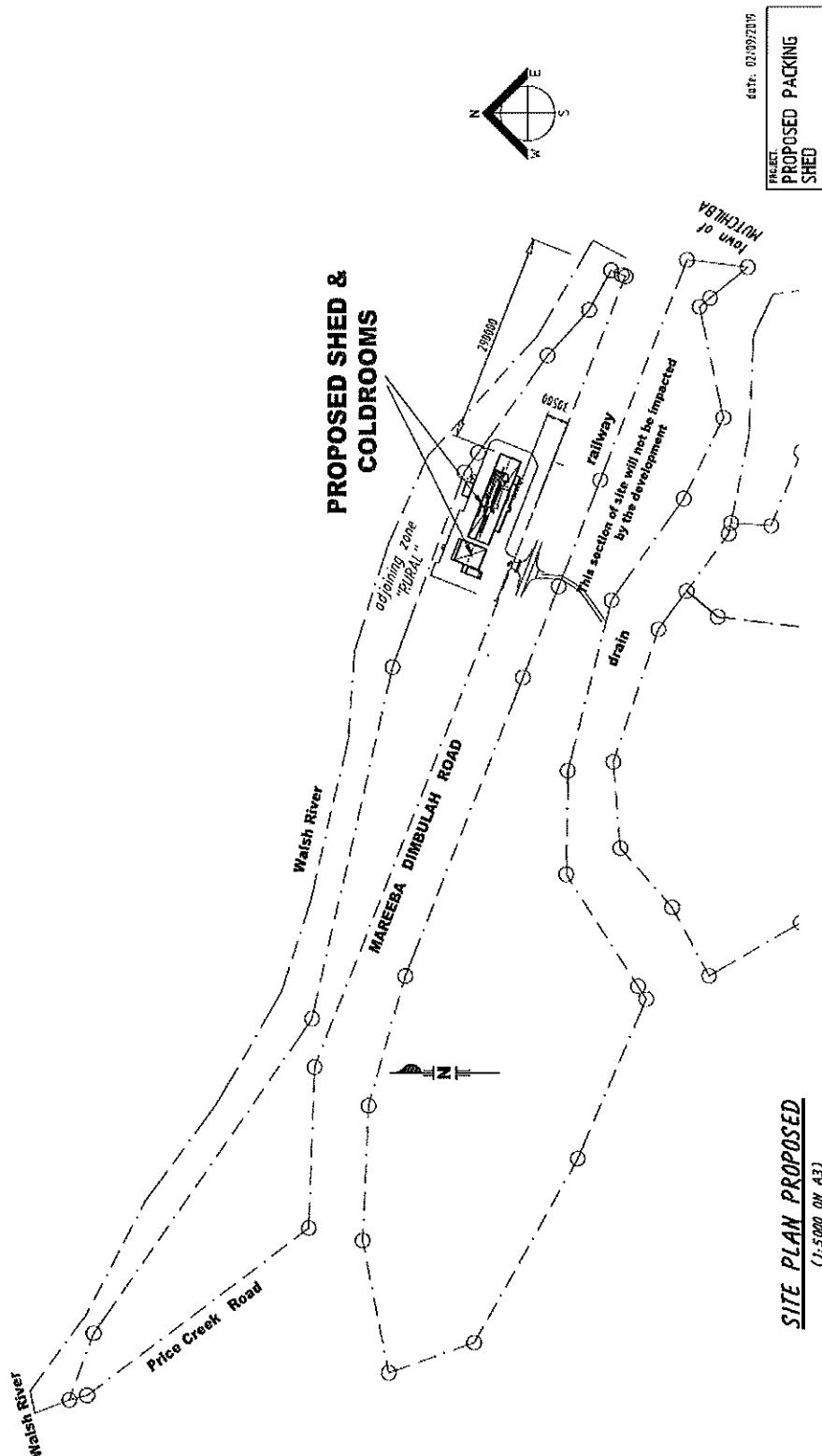
**PORTION ON NORTH SIDE SITE**  
**AREA = 13,9678 ha**

LOCATION PLAN  
(approx. 1:30,000 ON A3)

3/14/2019  
B. M. [Signature]



3/10/2019  
 [Signature]



DATE: 02/09/2019

PROJECT: PROPOSED PACKING SHED

3727 MAREEBA - DIMBULAH RD MUTHILBA 4872

Drawing No. SHEET No. 057 DA 02 E

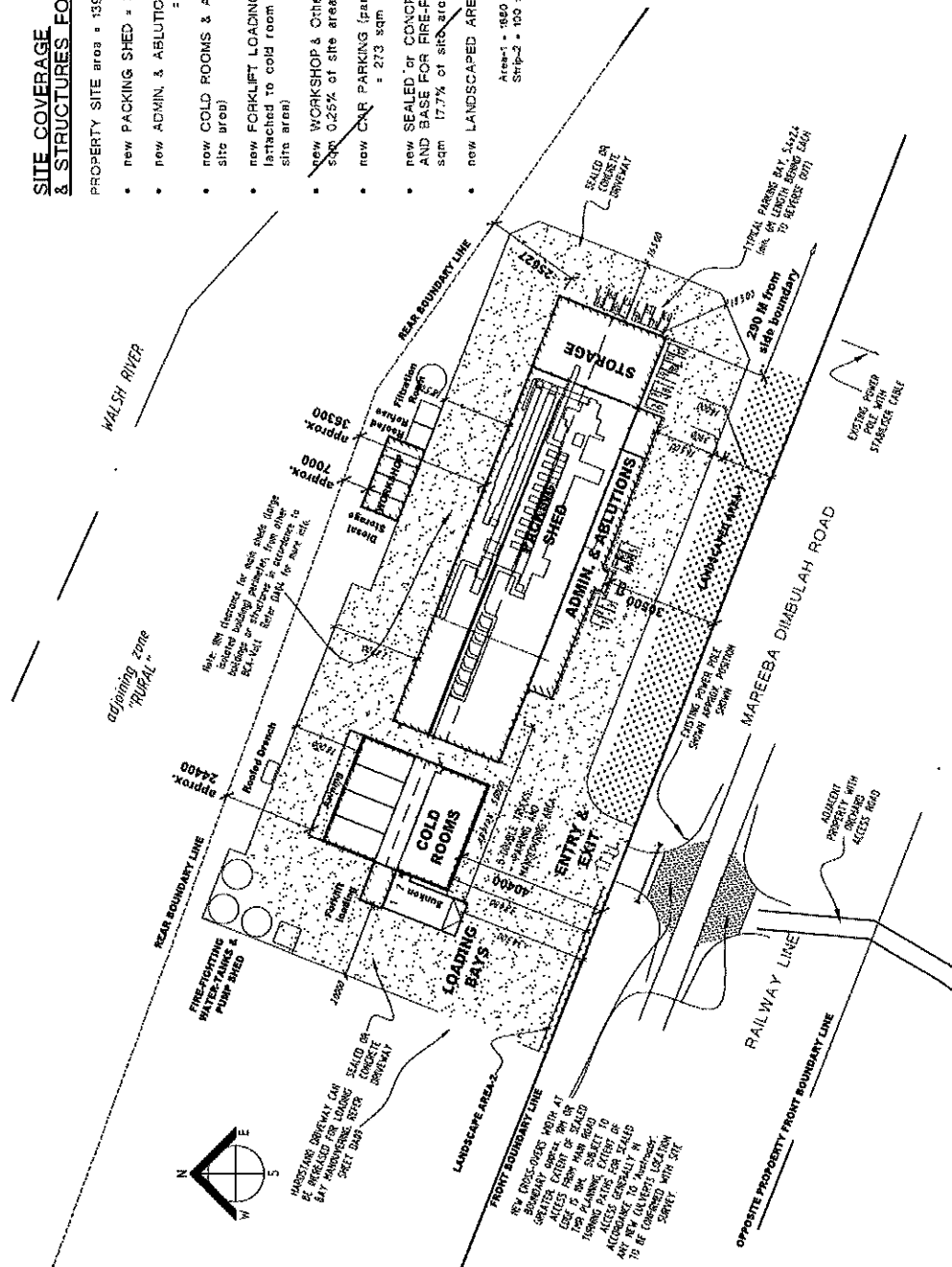
Plan: 1/28 7/4 3/8 EDWINSON A&S DUBOULAN  
GREGORY G TERZIANI Building Design & Drafting  
-Building Designer- -Medium Res- -BEC LICENCE: 1173249-

**SITE PLAN PROPOSED**  
(1:5000 ON A3)

3/10/2019  
B. M. [Signature]

# **SITE COVERAGE & STRUCTURES FOOTPRINT:**

- PROPERTY SITE area = 135,678 sqm
- new PACKING SHED = 3771 sqm (2.8% of site area)
  - new ADMIN. & ABLUTIONS (attached) = 580.5 sqm (0.4% of site area)
  - new COLD ROOMS & Awning = 1237 sqm (0.9% of site area)
  - new FORKLIFT LOADING and DOCKING BAYS (attached to cold room building) = 283 sqm (0.2% of site area)
  - new WORKSHOP & Other Misc. roofed areas = 342 sqm (0.25% of site area)
  - new CAR PARKING (part of driveway) = 273 sqm (0.2% of site area)
  - new SEALED or CONCRETE for DRIVEWAYS, PATHS, AND BASE FOR FIRE-FIGHTING FACILITY = 10,850 sqm (7.7% of site area)
  - new LANDSCAPED AREAS = 1780 sqm total (1.3% of site area)
- Area-1 = 1850 sqm  
Strip-2 = 100 sqm



date: 17/06/2019

PROJECT:  
**PROPOSED PACKING  
SHED**

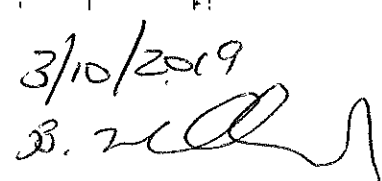
3773 MAREEBA - DIMULLAH RD  
MUTCHILBA, 4872

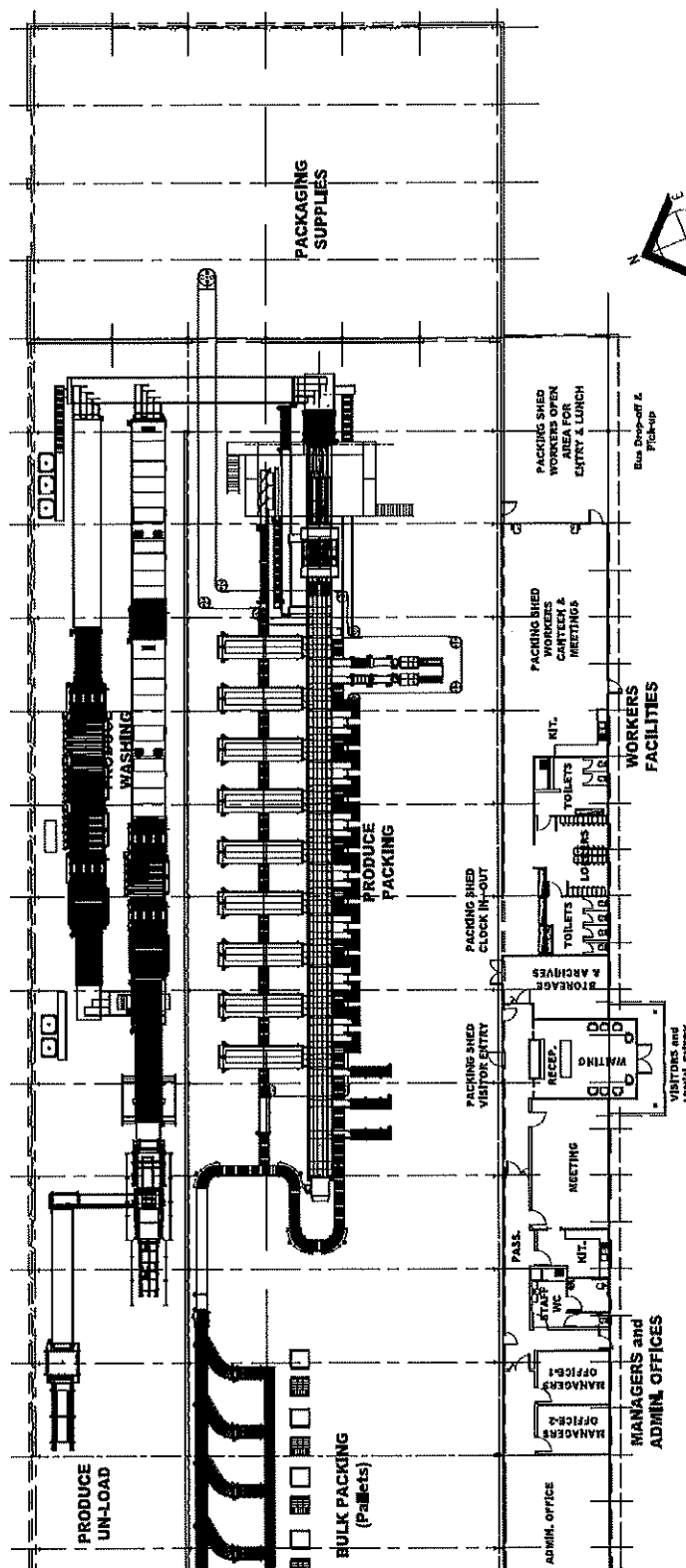
Drawing No. **DA 03** E  
Issue

OWNER: 6028 742 38, EDWINTON ABL, GURULAND  
**GREGORY G TERZIAN** ~~TERZIAN~~ <sup>TERZIAN</sup> Building Design & Drafting  
-Building Designer- -Medium Rise- -SECC Licence: 107043-

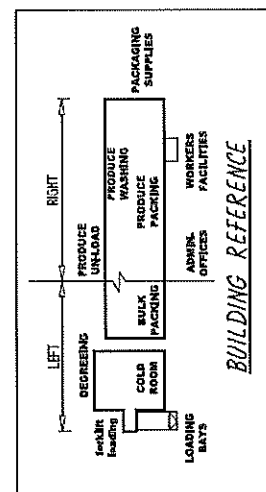
**SHED FACILITIES LAYOUT -Proposed**  
(1:1000 on A3)

3/10/2019  
23.21





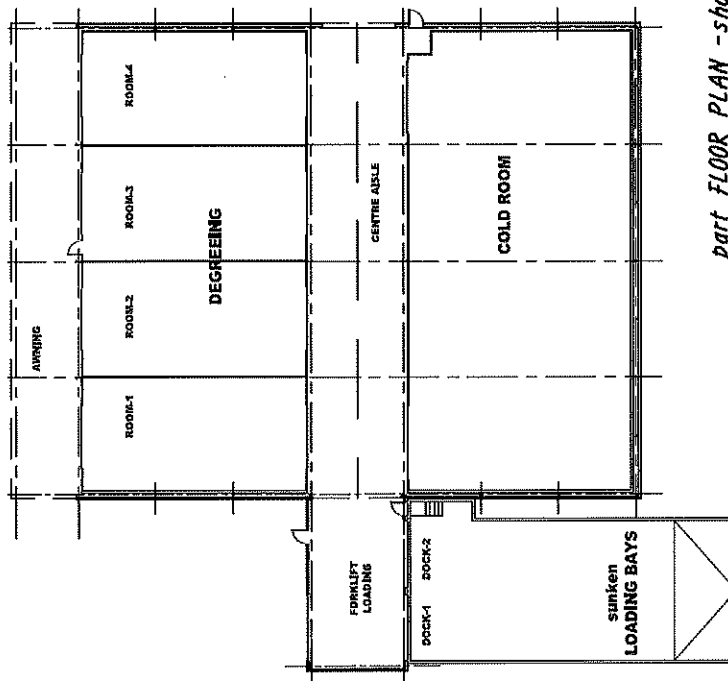
*part FLOOR PLAN - showing right end*  
(1:250 ON A3)



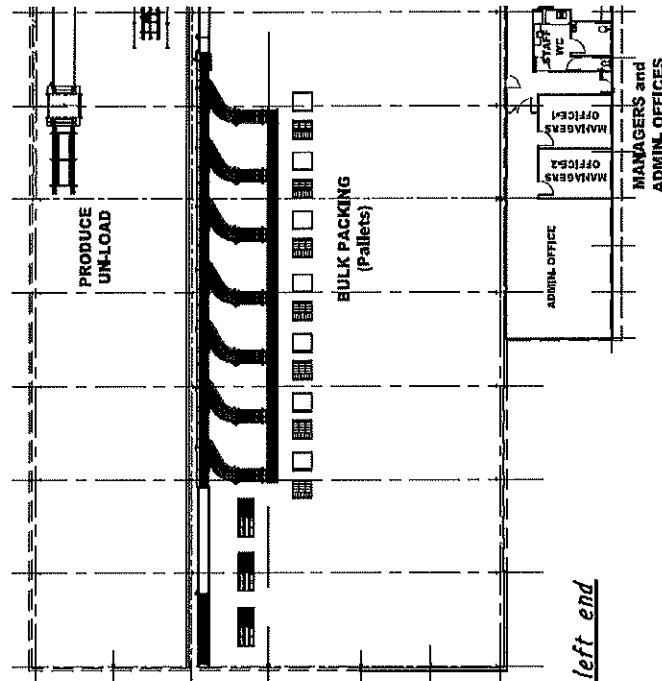
PROJECT	PROPOSED PACKING SHED
DATE	19/09/2019
3777 MAREEBA - DINELLAH RD	
MUTUNILBA, 4872	
Drawing No.	050
Sheet No.	DA 05
Issue	C
Author	GREGORY G. TERZEMANN
Building Designer	-BCC LICENCE 117043-
Building Designer	-Medium Risk-

3/10/2019  
8.2

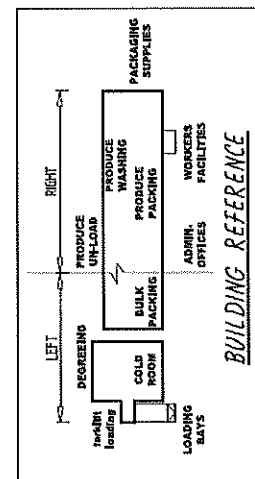




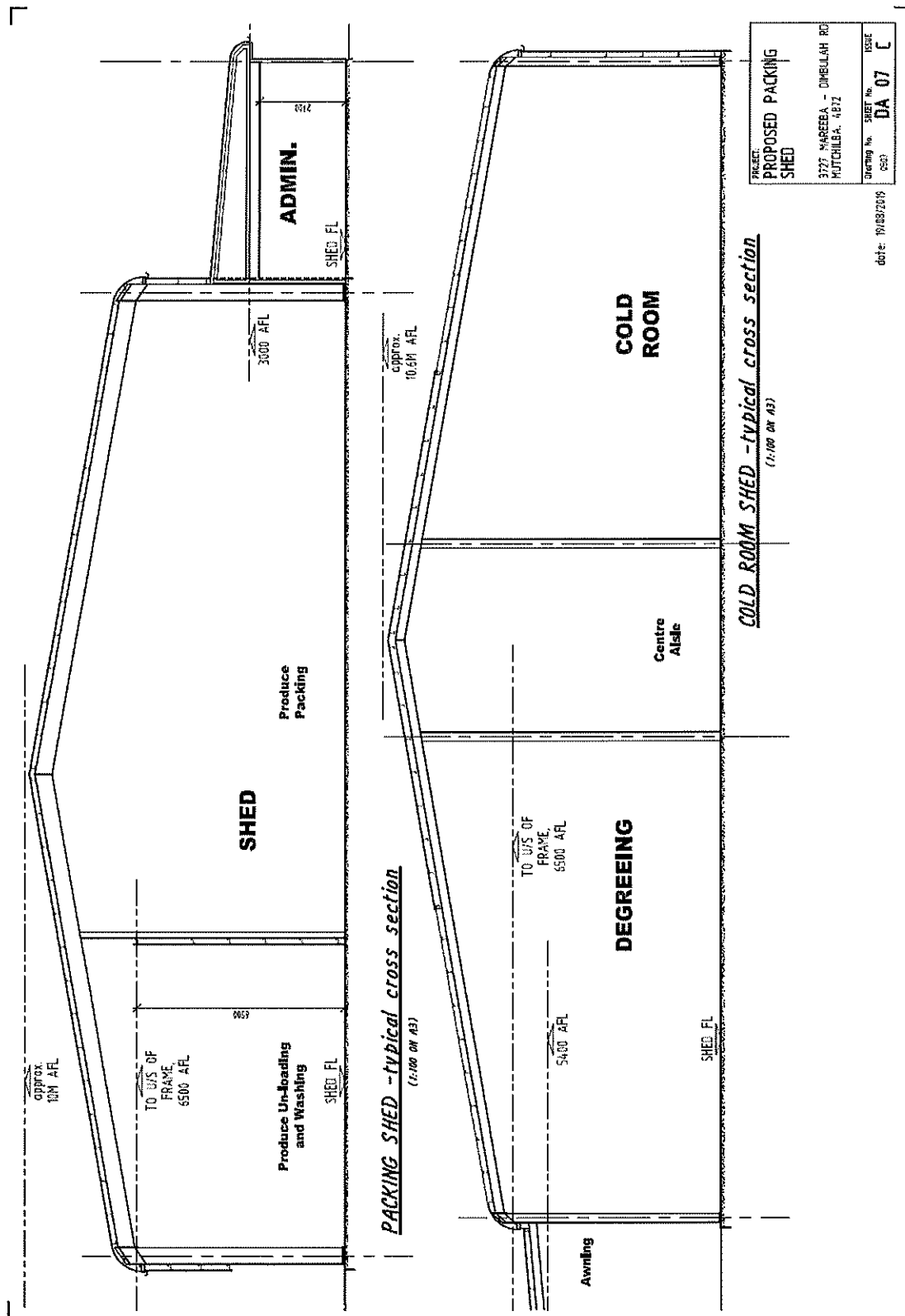
*part FLOOR PLAN - showing left end*  
(1:250 ON A3)



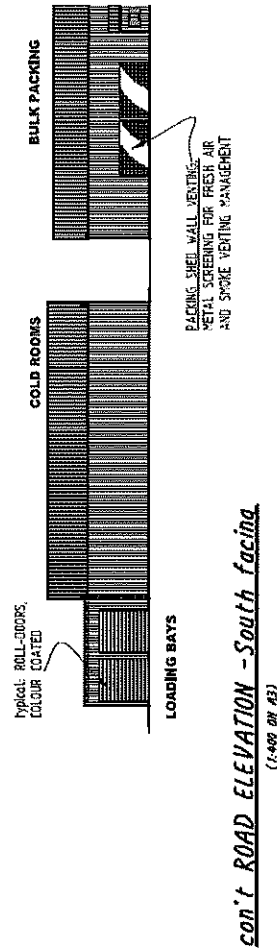
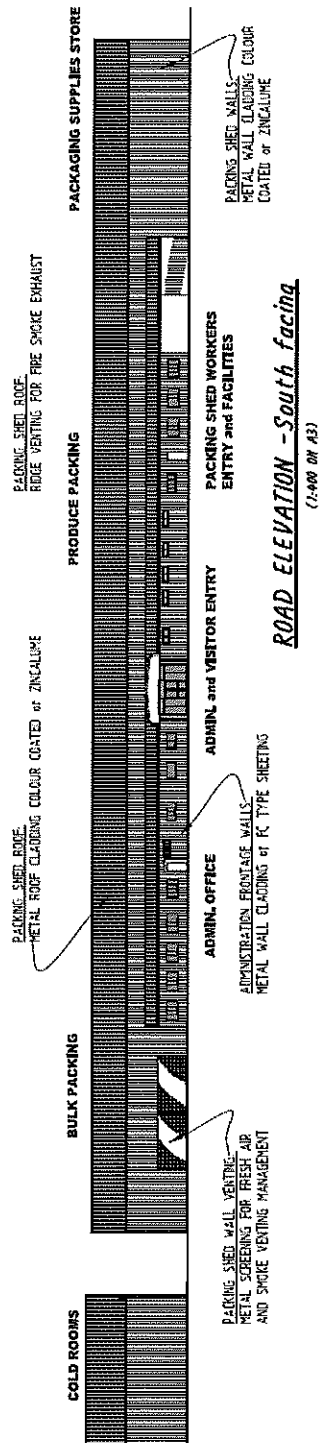
PROJECT <b>PROPOSED PACKING SHED</b>		3727 MAREEBA - DIMULLAH RD MUTCHILBA, 4872	
date: 16/09/2019		sheet No. 1550	
drawing No. 050		DA 06 C	
phone: 0428 745 735 EDWINSON ARCH. QUEENSLAND <b>GREGORY G. TERZEMONT</b> Building Design & Drafting -Building Designer- -Medium Res- -BCC Licence: 1177043-			



3/10/2019  
B. [Signature]



3/10/2019  
B. Will

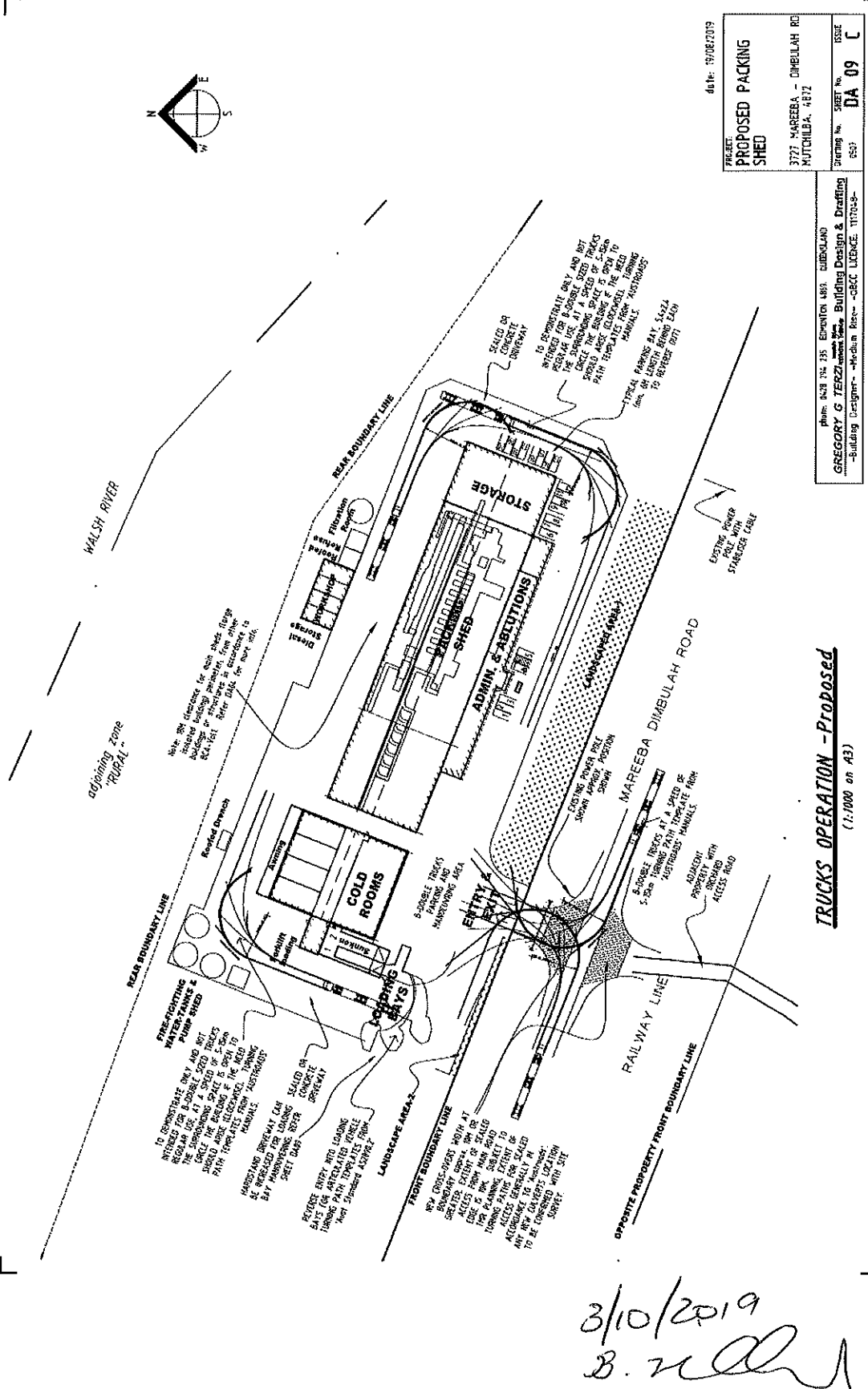
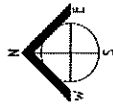


DATE: 19/08/2019

PROJECT	PROPOSED PACKING SHED
CLIENT	3772 MAREEBA - OMBULAH RD MUTHILBA 4872
DESIGNER	GREGORY G TERZIAN
DATE	19/08/2019
ISSUE	DA 08 B

DATE: 19/08/2019  
GREGORY G TERZIAN  
Building Designer - Medium Risk - BCC Licence: 117043-  
Building Designer - Medium Risk - BCC Licence: 117043-

3/10/2019  
B. V. [Signature]



3/10/2019  
B. [Signature]



3/10/2019  
B. W. R.



## Referral Agency Response

RA6-N



Department of  
**State Development,  
Manufacturing,  
Infrastructure and Planning**

SARA reference: 1908-12907 SRA  
Council reference: MCU/19/0013  
Applicant reference: P71880

27 September 2019

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

Attention: Susie Lord

Dear Sir/Madam

### SARA response—3727 Mareeba Dimbulah Road, Mutchilba

(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 2 September 2019.

#### Response

Outcome:	Referral agency response – with conditions.
Date of response:	27 September 2019
Conditions:	The conditions in <b>Attachment 1</b> must be attached to any development approval.
Advice:	Advice to the applicant is in <b>Attachment 2</b> .
Reasons:	The reasons for the referral agency response are in <b>Attachment 3</b> .

#### Development details

Description:	Development permit	Material change of use for MCU Rural Industry (Packing Shed)
SARA role:	Referral Agency.	
SARA trigger:	10.9.4.2.4.1 - State transport corridors and future State transport corridors (Planning Regulation 2017)	

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



1908-12907 SRA

SARA reference: 1908-12907 SRA  
Assessment Manager: Mareeba Shire Council  
Street address: 3727 Mareeba Dimbulah Road, Mutchilba  
Real property description: Lot 225 on HG293  
Applicant name: KVN Australia  
Applicant contact details: C/- Susie Lord  
PO Box 181  
Edge Hill QLD 4870  
info@planztp.com

State-controlled road access permit: This referral included an application for a road access location, under section 62A(2) of *Transport Infrastructure Act 1994*. Below are the details of the decision:

- Approved
- Reference: TMR19-028190 (500-1322)
- Date: 26 September 2019

If you are seeking further information on the road access permit, please contact the Department of Transport and Main Roads  
[ron.p.kaden@tmr.qld.gov.au](mailto:ron.p.kaden@tmr.qld.gov.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@dsgmip.qld.gov.au](mailto:CairnsSARA@dsgmip.qld.gov.au) who will be pleased to assist.

Yours sincerely



Joanne Manson  
A/Manager (Planning)

cc KVN Australia, [info@planztp.com](mailto:info@planztp.com)

enc Attachment 1 - Referral agency conditions  
Attachment 2 - Advice to the applicant  
Attachment 3 - Reasons for referral agency response  
Attachment 4 - Representations provisions  
Attachment 5 - Approved plans and specifications

1908-12907 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) (Copies of the plans and specifications referenced below are found at Attachment 5)

No.	Conditions	Condition timing
<b>Material change of use</b>		
10.9.4.2.4.1 — State transport corridors and future state transport corridors - The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of 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.	<p>(a) Road access locations are to be located generally in accordance with TMR Layout Plan (664 – 37.27km) prepared by Queensland Government Transport and Main Roads, dated 20/09/2019, File Reference TMR19-28180 (500-1322), Issue A.</p> <p>(b) Road access works comprising of a sealed Basic right (BAR) turn treatment and a Rural basic left-turn treatment (BAL) must be provided at the road access location to proposed Lot B.</p> <p>(c) The road access works must be designed and constructed in accordance with Austroads Guide to Road Design, Part 4: Intersections and Crossing – General and Part 4A: Unsignalised and Signalised Intersections; specifically:</p> <ul style="list-style-type: none"> <li>• Figure A28 Basic right (BAR) turn treatment on a two-lane rural road; and</li> <li>• Figure 8.2 Rural basic left-turn treatment (BAL).</li> </ul>	<p>(a) At all times</p> <p>(b) and (c) Prior to the commencement of use and to be maintained at all times.</p>
2.	<p>(a) Stormwater management of the development must ensure no worsening or actionable nuisance to the state-controlled road.</p> <p>(b) Any works on the land must not:</p> <ul style="list-style-type: none"> <li>(i) create any new discharge points for stormwater runoff onto the state-controlled road;</li> <li>(ii) interfere with and/or cause damage to the existing stormwater drainage on the state-controlled road;</li> <li>(iii) surcharge any existing culvert or drain on the state-controlled road;</li> <li>(iv) reduce the quality of stormwater discharge onto the state-controlled road.</li> </ul>	<p>(a) and (b) At all times</p>

1908-12907 SRA

**Attachment 2—Advice to the applicant**

<b>General advice</b>	
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) [v2.5]. If a word remains undefined it has its ordinary meaning.
<b>Road Works Approval</b>	
2.	Under section 33 of the Transport Infrastructure Act 1994, written approval is required from the Department of Transport and Main Roads to carry out road works on a state-controlled road. Please contact the Department of Transport and Main Roads' 4045 7144 to make an application for road works approval. This approval must be obtained prior to commencing any works on the state-controlled road reserve. The approval process may require the approval of engineering designs of the proposed works, certified by a Registered Professional Engineer of Queensland (RPEQ). Please contact the Department of Transport and Main Roads' as soon as possible to ensure that gaining approval does not delay construction.

1908-12907 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 the State Development Provisions, version 2.5, State code 1: Development in a state-controlled road environment and has found that with conditions, the proposed development complies with the relevant performance outcomes.
- The proposed development is significantly set back from the state-controlled road (Mareeba Dimbulah Road) and unlikely to create a distraction to drivers, nor create a safety hazard.
- The location of the new access is considered appropriate and the Department of Transport and Main Roads has issued a Decision Notice – Permitted Road Access Location under s62(1) of the *Transport Infrastructure Act 1994*.
- To ensure the safe and efficient operation of the access, a condition has been included requiring access works to be undertaken.
- The development will result in a greater impervious area, but with conditions, increased stormwater runoff will be managed in an appropriate manner.
- The premises is not impacted by planned upgrades or future state transport corridors.

**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 [2.5]), as published by the department
- The Development Assessment Rules
- SARA DA Mapping system

1908-12907 SRA

#### **Attachment 4—Change representation provisions**

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1908-12907 SRA

### **Attachment 5—Approved plans and specifications**

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## ***Planning Act 2016 – Change representations provisions.***

### **Chapter 3 Development Assessment**

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#### **Division 2 Changing development approvals**

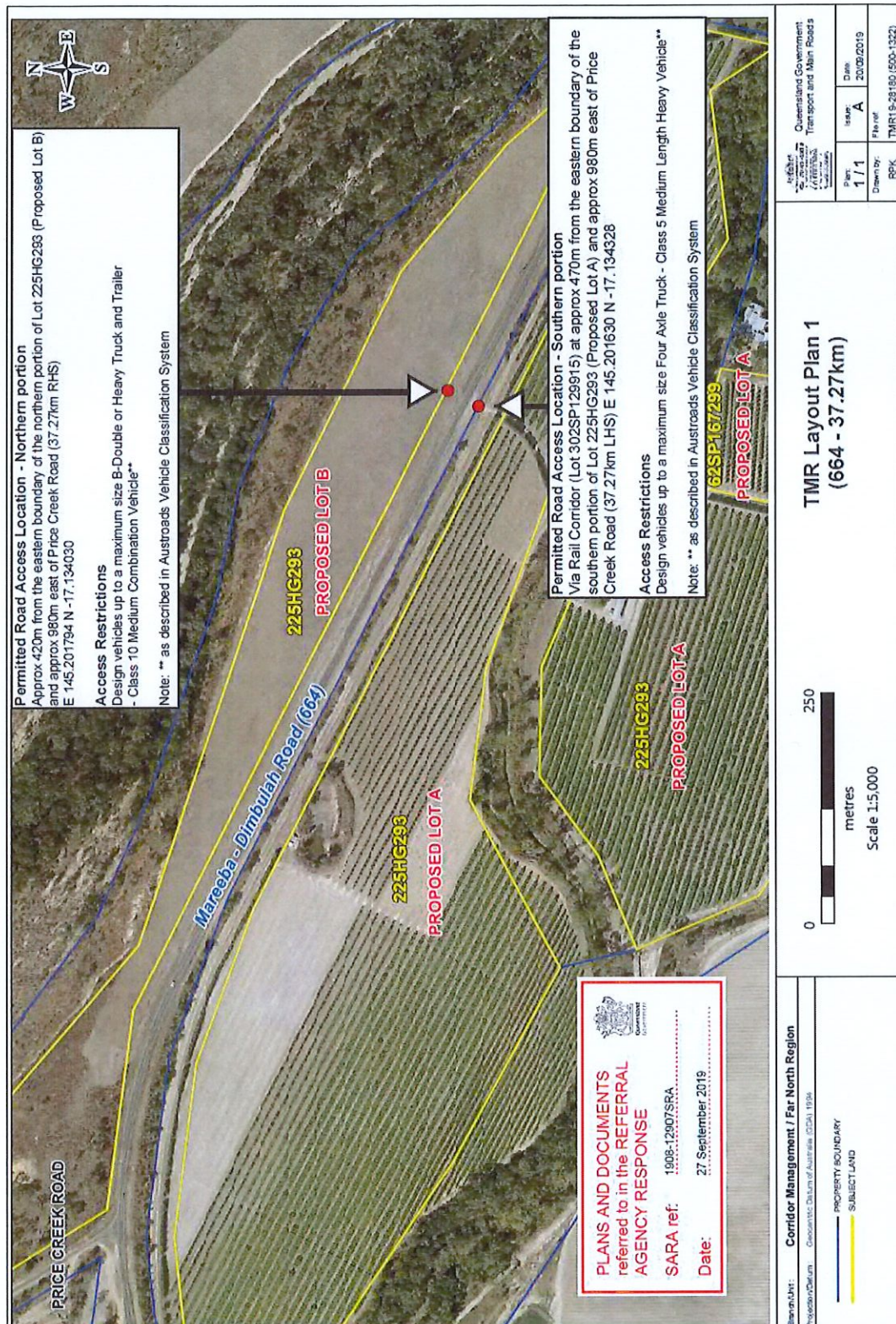
#### **Subdivision 1 Changes during appeal period**

##### **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.



## 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.