



22 January 2020

Planning Officer: Carl Ewin  
Direct Phone: 4086 4656  
Our Reference: MCU/19/0017  
Your Reference: F19/17

Remo & Berniece Terranova  
C/- Freshwater Planning Pty Ltd  
17 Barron View Drive  
FRESHWATER QLD 4870

Dear Applicant/s

## **Decision Notice**

### ***Planning Act 2016***

I refer to your application and advise that on 21 January 2020 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/19/0017  
Street Address: 3595 Kennedy Highway, Mareeba  
Real Property Description: Lot 46 on NR6594  
Planning Scheme: Mareeba Shire Council Planning Scheme 2016

#### **DECISION DETAILS**

Type of Decision: Approval  
Type of Approval: Development Permit for Material Change of Use - Roadside Stall (Produce Store) and Tourist Attraction  
Date of Decision: 21 January 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, including but not necessarily limited to the subject of 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 each Stage of the use except where specified otherwise in these conditions of approval.

2.2 Prior to the commencement of each Stage of the 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 external 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.

## 3.3 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 or 1.8m high solid fence or building.

### 3.4 Hours of Operation

The operating hours shall be between 6:00am and 6:00pm each day.

## 4. Infrastructure Services and Standards

### 4.1 Stormwater Drainage/Water Quality

4.1.1 The applicant/developer must take all necessary steps to ensure a non-worsening effect on surrounding land as a consequence of the development.

4.1.2 All stormwater drainage concentrated by the development must be collected from site and discharged to an approved legal point of discharge.

### 4.2 Carparking/Internal Driveways

4.2.1 The applicant/developer must ensure that an adequate number of carparks are provided on-site to accommodate the demands of the roadside stall and tourist attraction.

At minimum, the following on site parking is to be provided:

- Roadside Stall - one (1) car parking space;
- Tourist Attraction - three (3) car parking spaces and one (1) bus parking space.

4.2.2 The designated car parking area and internal driveways servicing the development must be constructed to a minimum compacted gravel standard to a minimum depth of 100mm and be appropriately drained prior to the commencement of the use, and maintained for the life of the development, to the satisfaction of Council's delegated officer.

4.2.3 All internal driveways and carparks must be maintained to the above standard for the life of the development.

### 4.3 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 6, 2011 (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.

#### 4.4 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.

#### 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 Infrastructure, Local Government & Planning PO Box 2358 Cairns Qld 4870  <a href="mailto:CairnsSARA@dsgmip.qld.gov.au">CairnsSARA@dsgmip.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
-	Shed Map	Terranova Farming Co	-
-	Shed Map - Staging	Terranova Farming Co	-

**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) Food Premises

Premises proposed for the storage and preparation, handling, packing or service of food must comply with the requirements of the Food Act 2006.

(b) The change in the use of the building may also require a change in the classification of the building under the Building Act. You are advised to contact a Building Certifier to establish if a change in the classification of the building is required.

(c) 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.

(d) 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.

(e) 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).

(f) 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 24 December 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".

**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**

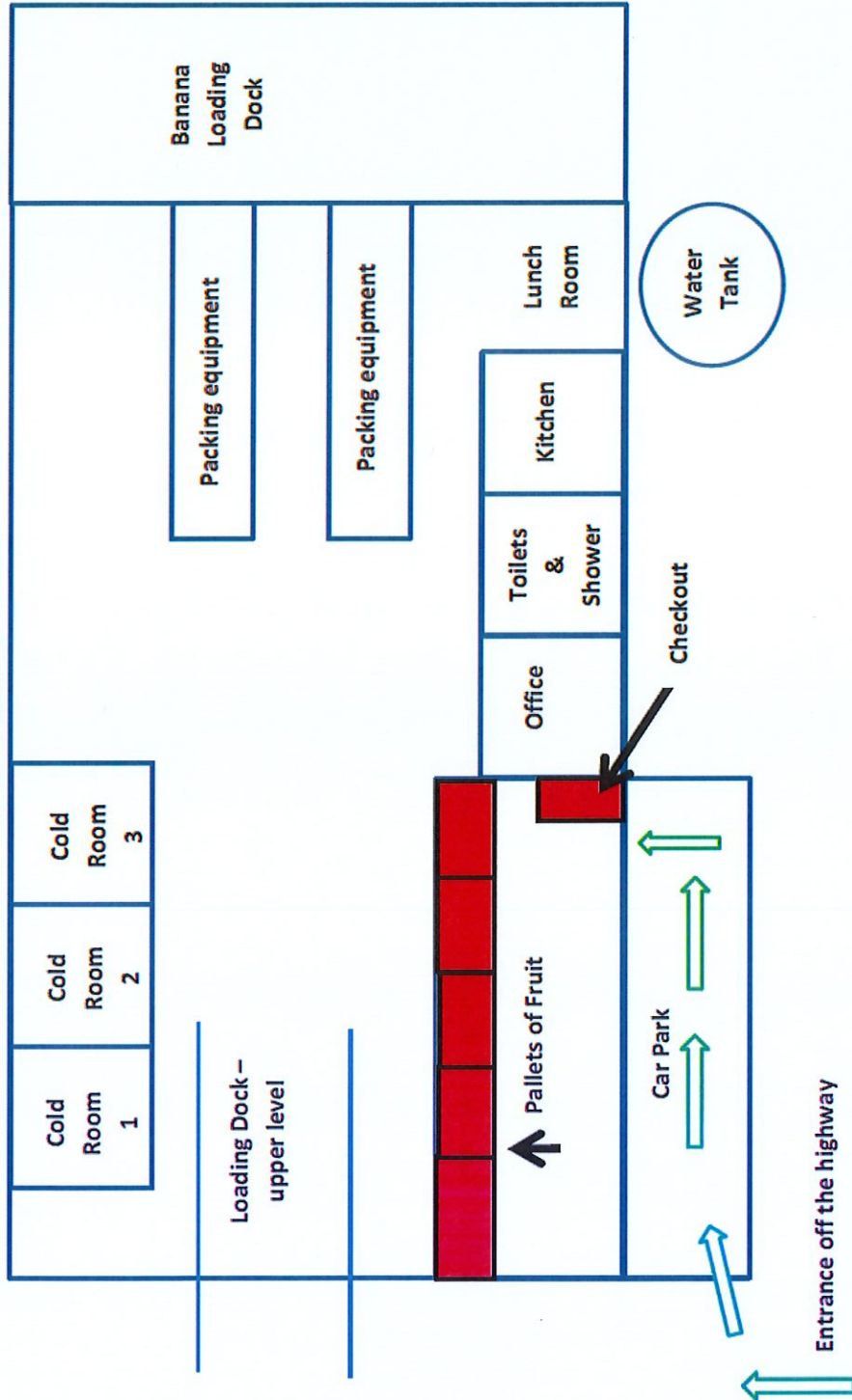
Enc: Approved Plans/Documents  
Referral Agency Response  
Appeal Rights

Copy: Department of State Development, Manufacturing, Infrastructure and Planning  
[CairnsSARA@dsmip.qld.gov.au](mailto:CairnsSARA@dsmip.qld.gov.au)

Approved Plans/Documents

**Terranova Farming Co.  
SHED MAP**

Packing Shed  
Martti Property  
3595 Kennedy Highway

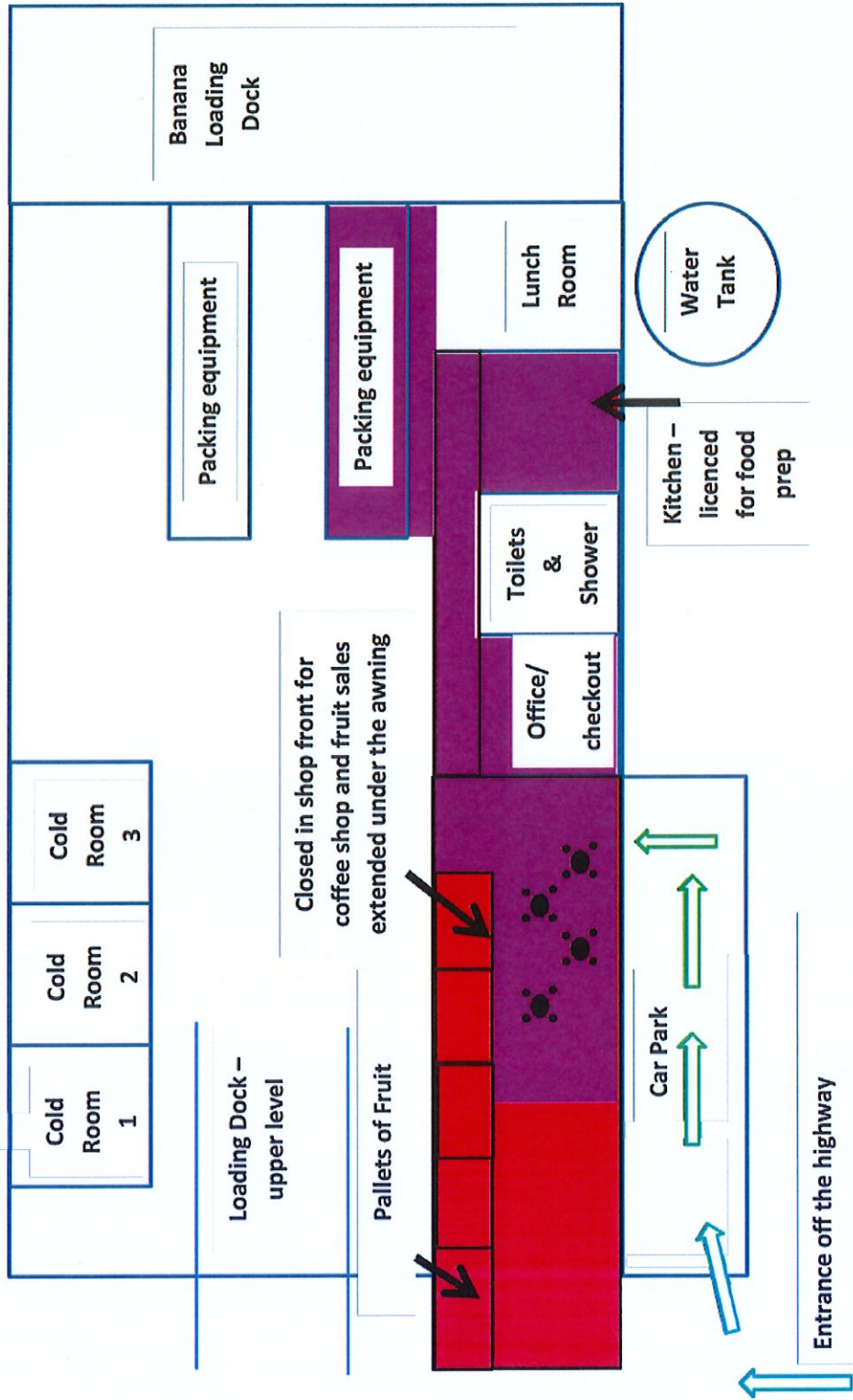


22/1/2020  
B. Will

# Terranova Farming Co. SHED MAP

- Stage 2 - Toursit Attraction
- Stage 1 - Roadside Produce Store

Packing Shed  
Marti Property  
3595 Kennedy Highway



22/1/2020  
S. Will



	<b>Referral Agency Response</b>
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RA6-N



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

SARA reference: 1911-14132 SRA  
Council reference: MCU/19/0017  
Applicant reference: F19/17

24 December 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—3595 Kennedy Highway, Mareeba –  
Material Change of Use – Roadside Stall (Produce Store) and  
Tourist Attraction**

(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 15 November 2019.

**Response**

Outcome:	Referral agency response – with conditions.
Date of response:	24 December 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 - Roadside Stall (Produce Store) and Tourist Attraction.
SARA role:	Referral Agency.	

1911-14132 SRA

SARA trigger: **Schedule 10, Part 9, Division 4, Subdivision 2, Table 4, Item 1 (Planning Regulation 2017) - Material change of use within 25m of a state-controlled road**

SARA reference: 1911-14132 SRA

Assessment Manager: Mareeba Shire Council

Street address: 3595 Kennedy Highway, Mareeba

Real property description: Lot 46 on NR6594

Applicant name: Remo & Berniece Terranova

Applicant contact details: C/- Freshwater Planning Pty Ltd  
17 Barron View Drive  
Freshwater QLD 4870  
freshwaterplanning@outlook.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: TMR19-028790 (500-1410)
- Date: 17 December 2019

If you are seeking further information on the road access permit, please contact the Department of Transport and Main Roads by email at ron.p.kaden@tmr.qld.gov.au or on (07) 4045 7151.

## 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 Anthony Westbury, Planning Officer, on 0740373215 or via email CairnsSARA@dsmip.qld.gov.au who will be pleased to assist.

Yours sincerely



Brett Nancarrow  
Manager (Planning)

cc Remo & Berniece Terranova C/- Freshwater Planning, freshwaterplanning@outlook.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

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**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>		
Schedule 10, Part 9, Division 4, Subdivision 2, Table 4, Item 1 – Material change of use of premises near a State transport corridor—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.	<p>(a) The road access location is to be located generally in accordance with TMR Layout Plan (32A – 35.71km) prepared by Queensland Government Transport and Main Roads, dated 17/12/2019, File Reference TMR19-28790 (500-1410), Issue A.</p> <p>(b) Road access works comprising of a sealed rural property access must be provided at the road access location.</p> <p>(c) The road access works must be designed and constructed in accordance with Austroads Guide to Road Design, Part 4: Intersections and Crossings – General, Figure 7.4 (rural property access specifically designed for articulated vehicles on a two-way road).</p>	<p>(a) At all times.</p> <p>(b) and (c): Prior to the commencement of use.</p>
2.	<p>(a) Road works comprising of amending the existing road line-marking to create a channelized right-turn with a short turn slot (CHR(S)) and auxiliary left-turn (AUL(S)) must be provided at access location.</p> <p>(b) The road works must be designed and constructed in accordance with the Department of Transport and Main Roads' <i>Traffic and Road Use Management Manual, Volume 3 – Signing and Pavement Marking, July 2019</i>.</p>	Prior to the commencement of use.

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**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.
2.	<p><b>Advertising Device</b></p> <p>Advice should be obtained from the Department of Transport and Main Roads (DTMR) if you intend to erect, alter or operate an advertising sign or another advertising device that would be visible from a state-controlled road, and beyond the boundaries of the state-controlled road, and reasonably likely to create a traffic hazard for the state-controlled road.</p> <p>Note: DTMR has powers under section 139 of the <i>Transport Operations (Road Use Management - Accreditation and Other Provisions) Regulation 2015</i> to require removal or modification of an advertising sign and/or for a device which is deemed that it creates a danger to traffic.</p>
3.	<p><b>Roads Works Approval</b></p> <p>In accordance with section 33 of the Transport Infrastructure Act 1994 (TIA), an applicant must obtain written approval from Department of Transport and Main Roads (DTMR) to carry out road works, including road access works on a state-controlled road. Please contact DTMR on 4045 7144 to make an application under section 33 of the <i>Transport Infrastructure Act 1994</i> to carry out road works. 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).</p> <p><b>The road works approval process takes time – please contact Transport and Main Roads as soon as possible to ensure that gaining approval does not delay construction.</b></p>

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**Attachment 3—Reasons for referral agency response**

(Given under section 56(7) of the *Planning Act 2016*)

- The department carried out an assessment of the development application against the State Development and Assessment Provisions (SDAP), State Code 1: Development in a state-controlled road environment and has found that, with conditions, the proposed development complies with the relevant assessment benchmarks as follows:
  - o The proposed development is contained within the footprint of the existing rural shed.
  - o The existing access location to the state-controlled road will be retained.
  - o Sealing and upgrading of the access will maintain the safety and operating conditions on the state-controlled road.
  - o Road line marking upgrades will ensure there is no worsening of operating conditions on the state-controlled road network.
  - o Stormwater and drainage flows will not impact 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 [2.5])*, as published by the department
- The Development Assessment Rules
- SARA DA Mapping system
- State Planning Policy mapping system

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**Attachment 4—Change representation provisions**

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(page left intentionally blank – attached separately)

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**Attachment 5—Approved plans and specifications**

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## Development Assessment Rules—Representations about a referral agency response

The following provisions are those set out in sections 28 and 30 of the Development Assessment Rules<sup>1</sup> regarding representations about a referral agency response

### Part 6: Changes to the application and referral agency responses

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#### 28 Concurrence agency changes its response or gives a late response

- 28.1. Despite part 2, a concurrence 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 concurrence 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 concurrence 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.<sup>2</sup>
- 28.3. A concurrence 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 concurrence agency proposes to change its referral agency response under section 28.2(a), the concurrence 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 concurrence agency has 10 days from the day of giving notice under paragraph (a), or a further period agreed between the applicant and the concurrence agency, to give an amended referral agency response to the assessment manager and a copy to the applicant.

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<sup>1</sup> Pursuant to Section 68 of the *Planning Act 2016*

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

## **Part 7: Miscellaneous**

### **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.<sup>3</sup>

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<sup>3</sup> 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 and 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.