



18 June 2020

Planning Officer: Carl Ewin  
Direct Phone: 4086 4656  
Our Reference: MCU/20/0005  
Your Reference: C1128

Greek Orthodox Archdiocese of Australia Consolidated Trust  
C/- Victor G Feros Town Planning Consultants  
PO Box 1256  
CAIRNS QLD 4870

Dear Applicant/s

## **Decision Notice**

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

I refer to your application and advise that on 17 June 2020, Council decided to approve the application in full subject to conditions.

Details of the decision are as follows:

#### **APPLICATION DETAILS**

Application No: MCU/20/0005  
Street Address: 41-43 Byrnes Street, Mareeba  
Real Property Description: Lot 3 on RP865105  
Planning Scheme: Mareeba Shire Council Planning Scheme 2016

#### **DECISION DETAILS**

Type of Decision: Approval  
Type of Approval: Development Permit for Material Change of Use - Multiple Dwelling  
Date of Decision: 17 June 2020

#### **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 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.
  - 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 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.

### 3.6 Air Conditioner & Building Plant Screening

The applicant is required to install and maintain suitable screening to all air conditioning, lift motor rooms, plant and service facilities located at the top of or on the external face of the building. The screening structures must be constructed from materials that are consistent with materials used elsewhere on the facade of the building. There are to be no individual external unscreened air conditioning units attached to the exterior building facade.

### 3.7 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.

### 3.8 Letterbox

Each unit is to be provided with an individual letter box.

### 3.9 Clothes Drying Facilities

Clothes drying facilities are to be provided in accordance with Drawing No 2400 Sheet S1 of 3.

## 4. Infrastructure Services and Standards

### 4.1 Access

The proposed access crossover must be upgraded/constructed to a commercial access crossover standard (from the edge of Byrnes/Herberton Street pavement to the property boundary of the subject land) in accordance with the FNQROC Development Manual, to the satisfaction of Council's delegated officer.

Any redundant vehicle crossovers must be removed and kerb and channel and any footpaths reinstated, to the satisfaction of Council's delegated officer.

### 4.2 Stormwater Drainage/Water Quality

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

4.2.2 Prior to building works commencing the applicant must submit a Stormwater Management Plan and Report prepared and certified by a suitably qualified design engineer (RPEQ) that meets or exceeds the standards of design and construction set out in the Queensland Urban Drainage Manual (QUDM) and the FNQROC Development Manual to the satisfaction of Council's delegated officer.

4.2.3 The Stormwater Management Plan and Report must include provisions to intercept and control stormwater flows along driveways.

4.2.4 The applicant/developer must construct the stormwater drainage infrastructure in accordance with the approved Stormwater Management Plan and Report.

4.2.5 All stormwater drainage must be collected from site and discharged to an approved legal point of discharge.

4.2.6 In addition to the Stormwater Management Plan, and prior to building works commencing, the applicant/developer must submit an Oily Water Management Plan, prepared and certified by a suitably qualified design engineer (RPEQ). The Plan must demonstrate how contaminants such as oil and/or fuel will be removed and stored prior to stormwater being discharged from the site.

#### 4.3 Car Parking/Internal Driveways

The applicant/developer must ensure the development is provided with on-site car parking spaces in accordance with Drawing No. 2400 Sheet S1 of 3 (excluding the community residence car parking spaces), which are available solely for the parking of vehicles associated with the use of the premises. All car parking spaces and internal driveways must be concrete, bitumen or asphalt sealed and appropriately drained prior to the commencement of the use and to the satisfaction of Council's delegated officer.

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.

#### 4.4 Landscaping & Fencing

4.4.1 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 extent of landscaping on site should be generally consistent with that shown on the submitted plan/s.

4.4.2 All plant varieties must be generally in accordance with Schedule A of Planning Scheme Policy No. 9 (Landscaping Policy).

4.4.3 The landscaping of the site must be carried out in accordance with the endorsed landscaping plan, and irrigated, mulched and maintained for the life of the development to the satisfaction of Council's delegated officer.

4.4.4 Prior to the commencement of the use, the applicant/developer must erect a 1.8 metre high solid screen fence constructed of colorbond (of neutral colour) or other

suitable material approved by Council, along the entire length of the side and rear boundaries of Lot 3 on RP865105.

Where a building wall with a height of 1.8 metres or above is already established on part of the side or rear boundary, a screen fence will not be required for that same part of the side or rear boundary.

- 4.4.5 All fencing must be maintained in good order and safe repair for the life of the development, to the satisfaction of Council's delegated officer.

#### 4.5 Lighting

Where outdoor lighting is required the developer shall locate, design and install lighting to operate from dusk to dawn within all areas where the public will be given access, which prevents the potential for light spillage to cause nuisance to neighbours and must be provided in accordance with Australian Standard 1158.1 – Lighting for Roads and Public Spaces.

Illumination resulting from direct, reflected or other incidental light emanating from the subject land does not exceed 8 lux when measured at any point 1.5m outside the property boundary of the subject site. The lighting fixtures installed on site must meet appropriate lux levels as documented within Australian Standard 4282 – Control of the Obtrusive Effects of Outdoor Lighting.

#### 4.6 Water Supply

Where the existing reticulated water supply does not currently service the site or is not at an adequate capacity, the developer is required to extend or upgrade the reticulated water supply infrastructure to connect the site to Council's existing infrastructure at a point that has sufficient capacity to service the development in accordance with FNQROC Development Manual standards (as amended).

If a new or upgraded water service connection is required to service the development, it must be provided in accordance with FNQROC Development Manual standards (as amended) to the satisfaction of Council's delegated officer.

#### 4.7 Sewerage Connection

The developer must connect the proposed development to Council's reticulated sewerage system in accordance with FNQROC Development Manual standards (as amended) to the satisfaction of Council's delegated officer.

Where sewerage connections are not available to the site, or where existing connections are not satisfactory for the proposed development, the developer is required to extend or upgrade the reticulated sewerage infrastructure to connect the site to Council's existing infrastructure at a point that has sufficient capacity to service the development in accordance with FNQROC Development Manual standards (as amended).

**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—  (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	Schedule 10, Part 9, Division 4, Subdivision 2, Table 4	State Assessment & Referral Agency (SARA) Department of State Development, Manufacturing, Infrastructure & Planning PO Box 2358 Cairns QLD 4870  <a href="mailto:CairnsSARA@dsgmip.qld.gov.au">CairnsSARA@dsgmip.qld.gov.au</a>

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
2400 Sheet S1	Ground Floor & Site Plan	PD Designs	December 2019
2400 Sheet S2	First Floor Plan	PD Designs	December 2019
2400 Sheet S3	Elevations	PD Designs	December 2019
-	Fence Requirements Plan	-	4 June 2020

**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) Water Meters/Water Service Connection

Prior to the water service connection works commencing and the installation of the meters by Council, an application for a Plumbing Compliance Permit is required to be submitted with detailed hydraulic drawings. The cost of the required water connection and meter (capping of any existing meter may be required) will be determined based upon the approved hydraulic drawings at the time of lodgement of a Water Quotation Request.

(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) REFERRAL AGENCY CONDITIONS

Department of State Development, Manufacturing, Infrastructure and Planning conditions dated 1 May 2020.

**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



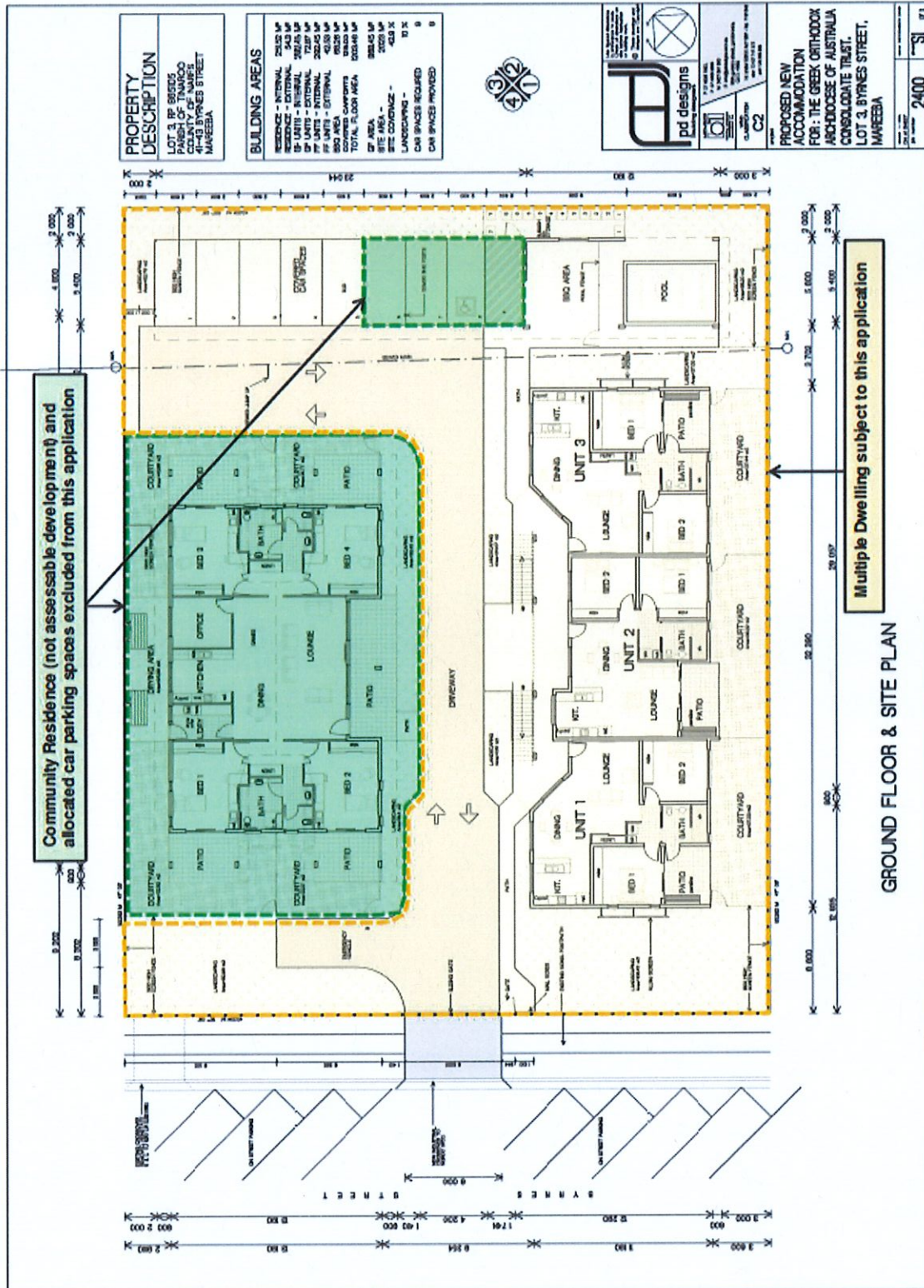
**BRIAN MILLARD**  
**SENIOR PLANNER**

Enc: Approved Plans/Documents  
Referral Agency Response  
Appeal Rights

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



Approved Plans/Documents



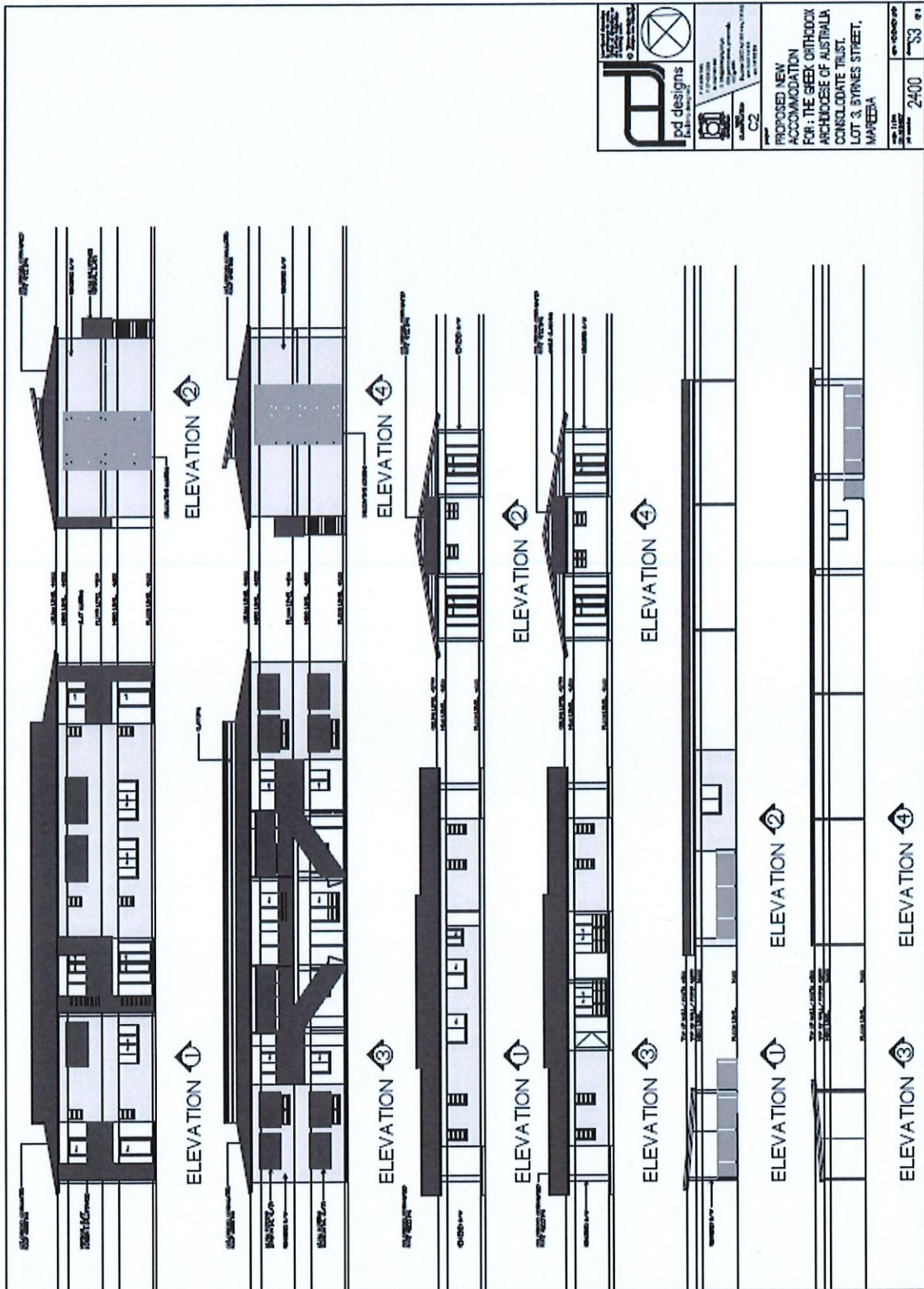
Community Residence (not assessable development) and allocated car parking spaces excluded from this application

Multiple Dwelling subject to this application

GROUND FLOOR & SITE PLAN

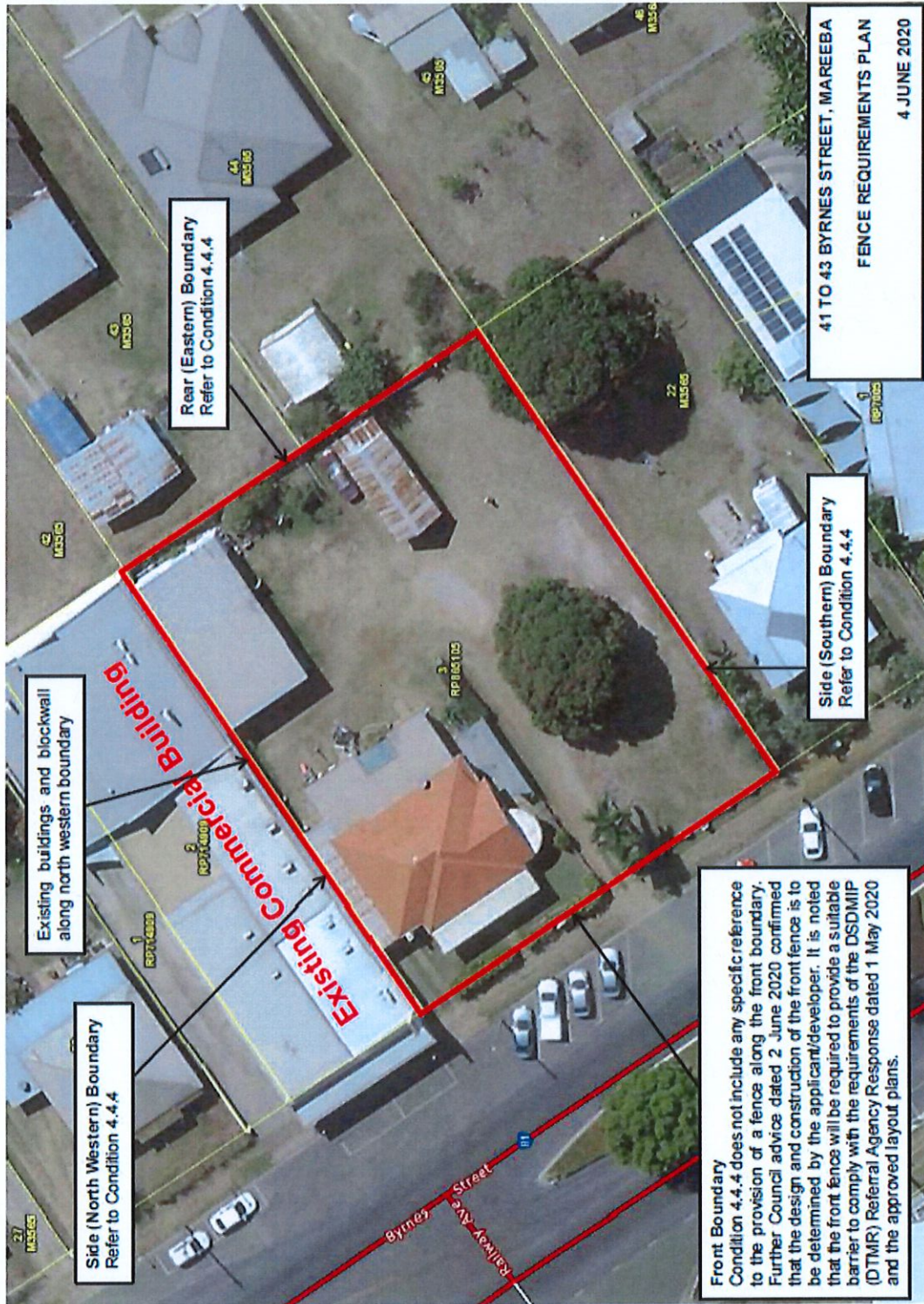
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## Referral Agency Response

RA6-N



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

SARA reference: 2004-16252 SRA  
Council reference: MCU/20/0005  
Applicant reference: C1128

1 May 2020

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—41-43 Byrnes Street, Mareeba – Material Change of Use – Multiple Dwelling**

(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 9 April 2020.

#### **Response**

Outcome:	Referral agency response – with conditions.
Date of response:	1 May 2020
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 - Multiple Dwelling
SARA role:	Referral Agency.	
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	

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

2004-16252 SRA

SARA reference: 2004-16252 SRA  
Assessment Manager: Mareeba Shire Council  
Street address: 41-43 Byrnes Street, Mareeba  
Real property description: Lot 3 on RP885105  
Applicant name: Greek Orthodox Archdiocese of Australia Consolidated Trust  
Applicant contact details: C/- Victor G Feros Town Planning Consultants  
PO Box 1258  
CAIRNS QLD 4870  
cairms@ferosplanning.com.au

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: TMR20-029817 (500-1460)
- Date: 23 April 2020

If you are seeking further information on the road access permit, please contact the Department of Transport and Main Roads 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 40373215 or via email CairnsSARA@dsdmip.qld.gov.au who will be pleased to assist.

Yours sincerely



Brett Nancarrow  
Manager (Planning)

cc Greek Orthodox Archdiocese of Australia Consolidated Trust, cairms@ferosplanning.com.au

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

2004-16252 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>		
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 (064 – 2.84km), prepared by Queensland Government Transport and Main Roads, dated 22/04/2020, Reference TMR20-29817 (500-1460), Issue A.</p> <p>(b) Road access works comprising of a sealed Commercial &amp; Industrial vehicle crossover must be provided at the road access location.</p> <p>(c) The road access works must be designed and constructed in accordance with Far North Queensland Regional Organisation of Councils (FNQROC) Standard Drawing S1015 - Access Crossovers, dated 23/10/17, Revision D.</p>	<p>(a) At all times.</p> <p>(b) and (c): Prior to the commencement of use.</p>
2.	<p>(a) The existing northern vehicular property access located between Lot 3 on RP865105 and Mareeba-Dimbulah Road (Byrnes Street) must be permanently closed and removed. 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> <p>(b) The kerb and channelling between the pavement edge and the property boundary must be reinstated in accordance with Far North Queensland Regional Council Organisation (FNQROC) Concrete Kerb and Channel, Standard Drawing S1000, dated 23/10/17, Issue F.</p>	Prior to the commencement of use.
3.	<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> <p>(i) Create any new discharge points for stormwater runoff onto the state-controlled road.</p> <p>(ii) Interfere with and/or cause damage to the existing stormwater drainage on the state-controlled road.</p> <p>(iii) Reduce the quality of stormwater discharge onto the state-controlled road.</p>	(a) & (b) At all times.

2004-16252 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) [v2.6]. If a word remains undefined it has its ordinary meaning.
2.	<p><b>Transport Noise Corridor</b></p> <p>Mandatory Part (MP) 4.4 of the Queensland Development Code (QDC) commenced on 1 September 2010 and applies to building work for the construction or renovation of a residential building in a designated <i>transport noise corridor</i>. MP4.4 seeks to ensure that the habitable rooms of Class 1, 2, 3 and 4 buildings located in a <i>transport noise corridor</i> are designed and constructed to reduce transport noise. <i>Transport noise corridor</i> means land designated under Chapter 8B of the <i>Building Act 1975</i> as a <i>transport noise corridor</i>. Information about <i>transport noise corridors</i> is available at state and local government offices.</p> <p>A free online search tool can be used to find out whether a property is located in a designated <i>transport noise corridor</i>. This tool is available at the State Planning Policy Interactive Mapping System website: <a href="https://spp.dsdip.esriaustraliaonline.com.au/geoviewer/map/planmaking">https://spp.dsdip.esriaustraliaonline.com.au/geoviewer/map/planmaking</a> and allows searches on a registered lot number and/or property address to determine whether and how the QDC applies to the land. Transport Noise Corridors are located under Information Purposes within Transport Infrastructure of the State Planning Policy (SPP) mapping system.</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>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.</p>



2004-16252 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 proposed development will be setback approximately 6 metres from the property boundary and approximately 17 metres from the carriageway of Byrnes Street (Mareeba-Dimbulah Road).
- The existing access located in the north of the lot will be removed and the existing access located centrally will be upgraded, to maintain the safety and operating conditions on the state-controlled road.
- Traffic generation from the proposed development will be minimal, and the access is located in an urban environment within a 50km/h speed zone.
- The internal driveway, including the access, will provide additional space if vehicle queuing occurs for vehicles entering and exiting the site.
- Stormwater and drainage flows will not impact the state-controlled road.
- The proposed development complies with the relevant provisions of State code 1: Development in a state-controlled road environment.

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 [2.6]), as published by the department
- The Development Assessment Rules
- SARA DA Mapping system
- State Planning Policy mapping system

2004-16292 SFA

**Attachment 4—Change representation provisions**

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(page left intentionally blank – attached separately)

2004-16252 SRA

**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 28.1; 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 88 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.

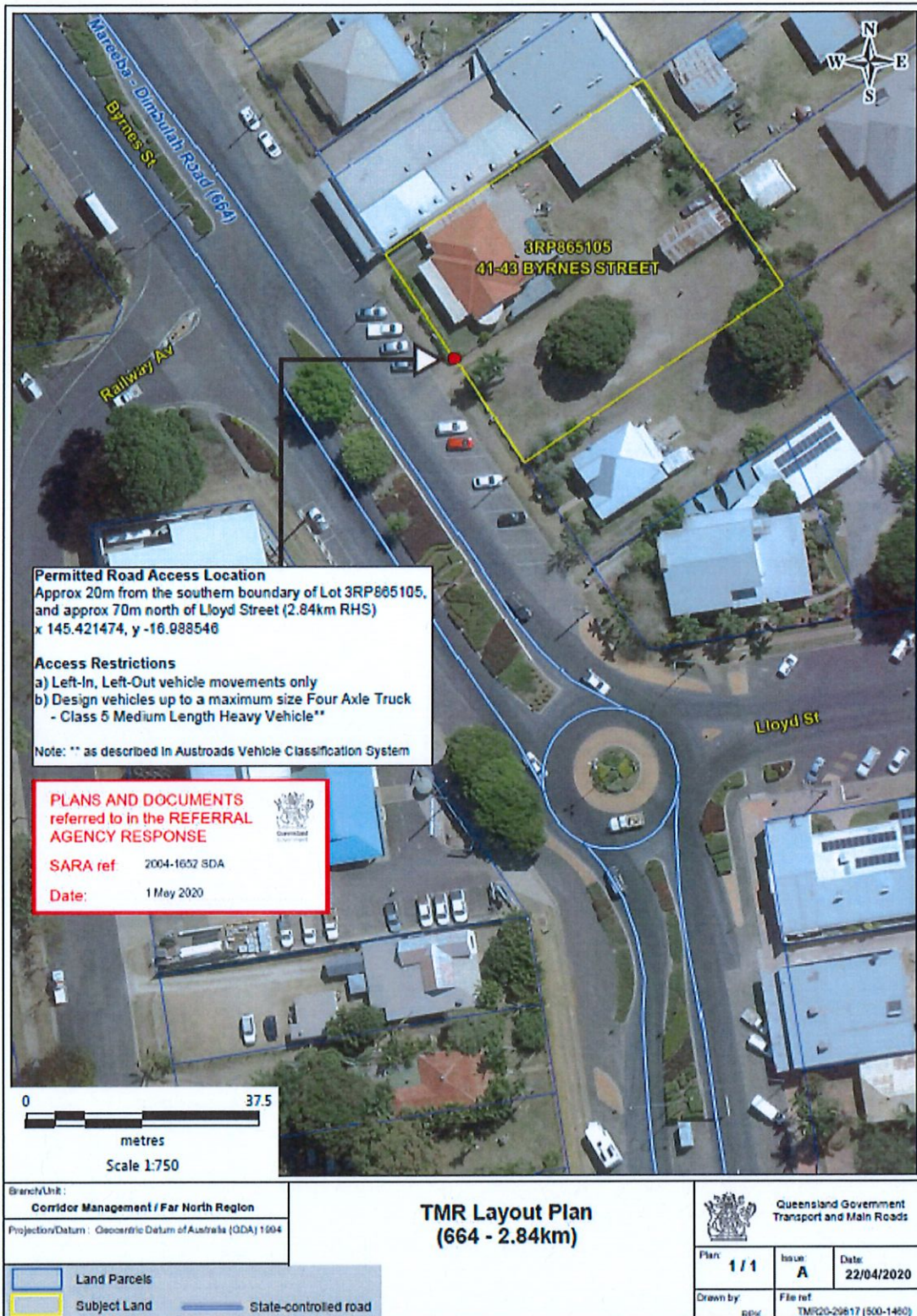
## **Part 7: Miscellaneous**

### **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.



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## 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.