



13 December 2018

Planning Officer: Carl Ewin  
Direct phone: (07) 4086 4656  
Our Ref: RAL/18/0027  
Your Ref: PR141152/OLD/SD/L77832

Facas Pty Ltd  
C/- RPS Australia East Pty Ltd (Owen Dalton)  
PO Box 1949  
CAIRNS QLD 4870

Dear Applicant/s

## **Decision Notice**

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

I refer to your application and advise that on 13 December 2018 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: RAL/18/0027  
Street Address: 3225 Mareeba - Dimbulah Road, Mutchilba  
Real Property Description: Lot 466 on HG547  
Lot 291 on SP129914 (for access purposes only)  
Planning Scheme: Mareeba Shire Council Planning Scheme 2016

#### **DECISION DETAILS**

Type of Decision: Approval  
Type of Approval: Development Permit for Reconfiguring a Lot - Subdivision (1 into 2 Lots)  
Date of Decision: 13 December 2018

#### **CURRENCY PERIOD OF APPROVAL**

The currency period for this development approval is four (4) 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 endorsement of the plan of survey, 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 or the additional payment condition within these conditions of approval.
  - 3.2 The applicant/developer is responsible for the cost of necessary alterations to existing public utility mains, services or installations required by works in relation to the proposed development or any works required by condition(s) of this approval.
  - 3.3 All payments or bonds required to be made to the Council pursuant to any condition of this approval must be made prior the endorsement of the plan of survey and at the rate applicable at the time of payment.
  - 3.4 The developer must relocate (in accordance with FNQROC standards) any services such as water, sewer, drainage, telecommunications and electricity that are not wholly located within the lots that are being created/serviced

where required by the relevant authority, unless approved by Council's delegated officer.

3.5 Where approved existing buildings and structures are to be retained, setbacks to any new property boundaries are to be in accordance with Planning Scheme requirements for the relevant structure and/or Queensland Development Code. A plan demonstrating compliance of any existing buildings or structures that are in close proximity to any new property boundary must be submitted prior to endorsement of the plan of survey.

3.6 All works must be designed, constructed and carried out in accordance with FNQROC Development Manual requirements and to the satisfaction of Council's delegated officer.

3.7 Rural Addressing

The applicant must pay the relevant fee per lot for provision of rural addressing at the rate identified in the Fees and Charges Schedule at the time of payment.

3.8 Charges

All outstanding rates, charges and expenses pertaining to the land are to be paid in full.

4. Infrastructure Services and Standards

4.1 Stormwater Drainage

The applicant must ensure a non-worsening effect on surrounding land as a consequence of the development and must take all reasonable and practicable measures to ensure discharge occurs in compliance with the Queensland Urban Drainage Manual (QUDM) and the FNQROC Development Manual.

**REFERRAL AGENCIES**

The referral agencies applicable to this application are:

Reconfiguring a Lot near a State transport corridor		
Development application for reconfiguring a lot that is assessable development under section 21, if—  (a) all or part of the premises are within 25m of a State transport corridor; and  (b) 1 or more of the following apply— (i) the total number of lots is	Schedule 10, Part 9, Division 4, Subdivision 2, Table 1	State Assessment & Referral Agency (SARA) Department of State Development, Manufacturing, Infrastructure and Planning PO Box 2358 Cairns Qld 4870  <a href="mailto:CairnsSARA@dsmip.qld.gov.au">CairnsSARA@dsmip.qld.gov.au</a>

increased; (ii) the total number of lots adjacent to the State transport corridor is increased; (iii) there is a new or changed access between the premises and the State transport corridor; (iv) an easement is created adjacent to a railway as defined under the Transport Infrastructure Act, Schedule 6; and  (c) the reconfiguration does not relate to government supported transport infrastructure		
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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
PR141152-1 A	Reconfiguration of a Lot - Plan of Lots 1 & 2	RPS	23/8/2018

**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) Endorsement Fees**

Council charges a fee for the endorsement of a Survey Plan, Community Management Statements, easement documents, and covenants. The fee is set out in Council’s Fees & Charges Schedule applicable for each respective financial year.

**(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) 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) REFERRAL AGENCY CONDITIONS

Department of State Development, Manufacturing, Infrastructure and Planning Referral Agency Response dated 12 December 2018.

**FURTHER DEVELOPMENT PERMITS REQUIRED**

Not Applicable.

**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



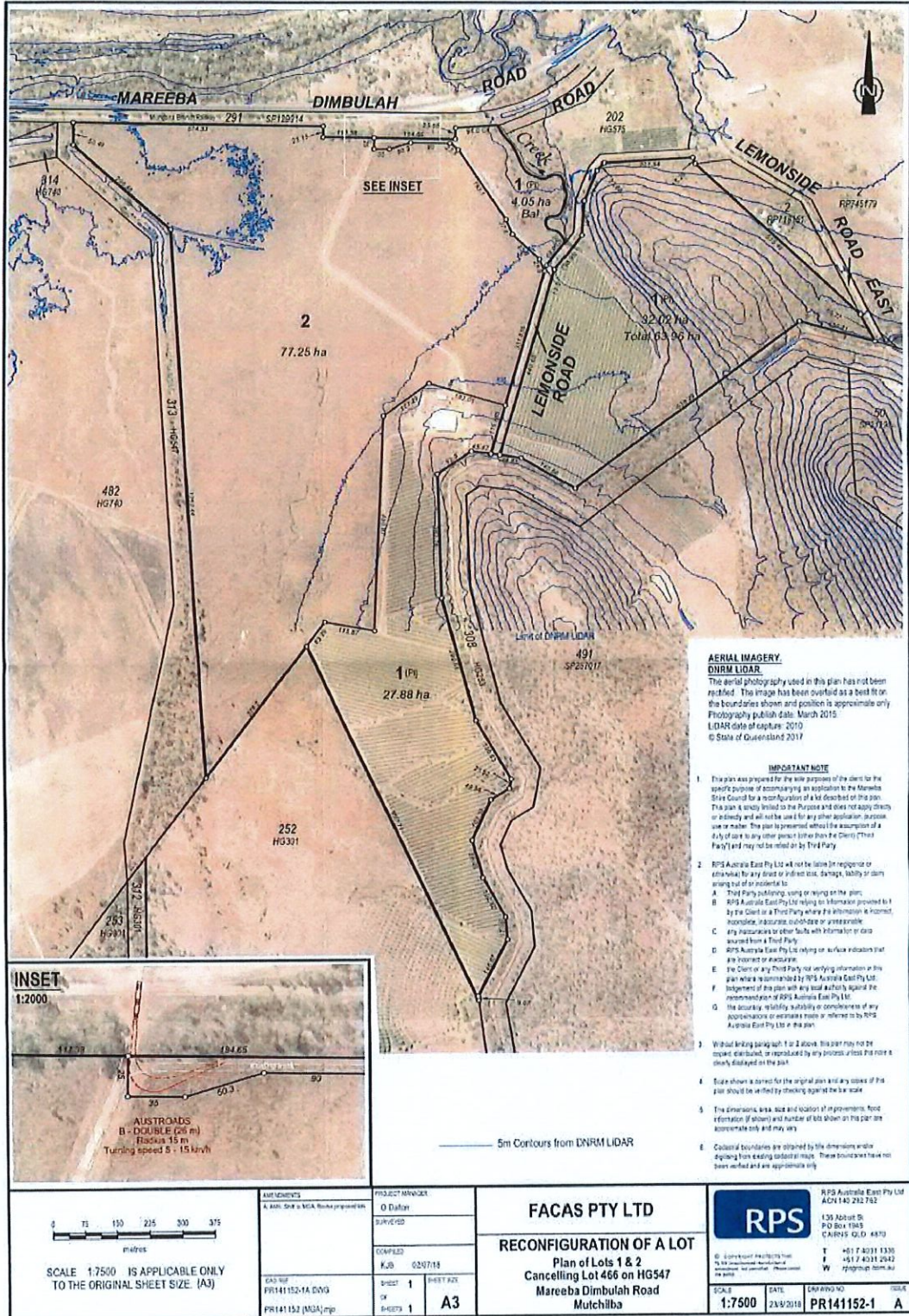
**BRIAN MILLARD**  
**SENIOR PLANNER**

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



13/12/2018  
B. [Signature]

## Referral Agency Response

RA6-N



Department of  
State Development,  
Manufacturing,  
Infrastructure and Planning

Our reference: 1809-7257 SRA  
Council reference: RAL/18/0027  
Applicant reference: PR141152

12 December 2018

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

Attention: Carl Ewin

Dear Sir/Madam

**Referral agency response—with conditions**  
(Given under section 56 of the *Planning Act 2016*)

The development application described below was properly referred to the Department of State Development, Manufacturing, Infrastructure and Planning on 21 September 2018.

**Applicant details**

Applicant name:	Facas Pty Ltd c/- RPS Australia Pty Ltd
Applicant contact details:	135 Abbott Street Cairns QLD 4870 Stacey.Devaney@rpsgroup.com.au

**Location details**

Street address:	Byrnes Street, Mutchilba and 3225 Mareeba Dimbulah Road, Mutchilba
Real property description:	Lot 291 on SP129914 and Lot 466 on HG547
Local government area:	Mareeba Shire Council

**Application details**

Development permit	Reconfiguration of a Lot (1 Lot into 2 Lots)
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**Referral triggers**

The development application was referred to the department under the following provisions of the

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



1809-7257 SRA

**Planning Regulation 2017:**

- 10.9.4.2.1.1 State transport corridors and future State transport corridors

**Conditions**

Under section 56(1)(b)(i) of the *Planning Act 2016* (the Act), the conditions set out in Attachment 1 must be attached to any development approval.

**Reasons for decision to impose conditions**

The department must provide reasons for the decision to impose conditions. These reasons are set out in Attachment 2.

**Advice to the applicant**

The department offers advice about the application to the applicant —see Attachment 3.

**Approved plans and specifications**

The department requires that the plans and specifications set out below and enclosed must be attached to any development approval.

Drawing/report title	Prepared by	Date	Reference no.	Version/issue
<b>Aspect of development: Reconfiguring a lot</b>				
TMR Layout Plan (664 – 32.35km)	Queensland Government – Transport and Main Roads	6/12/2018	TMR18-25575 (500-1294)	A

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

For further information please contact Joanne Manson, Principal Planning Officer, SARA Far North QLD on 40373228 or via email CairnsSARA@dsmip.qld.gov.au who will be pleased to assist.

Yours sincerely



Graeme Kenna  
Manager (Planning)

cc Facas Pty Ltd, c/- RPS Australia (East) Pty Ltd, Stacey.Devaney@rpsgroup.com.au

enc Attachment 1—Conditions to be imposed  
Attachment 2—Reasons for decision to impose conditions  
Attachment 3—Advice to the applicant  
Approved plans and specifications

1809-7257 SRA

## Attachment 1—Conditions to be imposed

No.	Conditions	Condition timing
<b>Reconfiguring a lot</b>		
<p><b>10.9.4.2.1.1 - State transport corridors and future State transport corridors</b> —The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of the <b>Department of Transport and Main Roads</b> 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 conditions:</p>		
1.	The road access location, is to be located generally in accordance with TMR Layout Plan (664 – 32.35km) prepared by Queensland Government Transport and Main Roads, dated 6/12/2018, File Reference TMR18-25575 (500-1294), Issue A.	At all times
2.	Any excavation, filling/backfilling/compaction, retaining structures, batters, stormwater management measures and other works involving ground disturbance must not encroach upon or de-stabilise the railway corridor, including all transport infrastructure or the land supporting this infrastructure, or cause similar adverse impacts	At all times
3.	<p>(a) Stormwater management of the development must ensure no worsening or actionable nuisance to the railway corridor.</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 railway corridor;</li> <li>ii. interfere with and/or cause damage to the existing stormwater drainage on the railway corridor;</li> <li>iii. surcharge any existing culvert or drain on the railway corridor;</li> <li>iv. reduce the quality of stormwater discharge onto the railway corridor</li> </ul>	(a) and (b) At all times
4.	Fencing sufficient to prevent unauthorised access by people, vehicles, projectiles, livestock or other animals must be provided along the site boundary with the railway corridor.	Prior to submitting the Plan of Survey to the Local Government for approval
5.	A valid Occupational Crossing Licence and Interface Agreement with the railway manager (Queensland Rail) must be retained for access over the Mareeba Mungana Railway (railway level crossing ID: 2353).	At all times

1809-7257 SRA

**Attachment 2—Reasons for decision to impose conditions**

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The reasons for this decision are:

- To ensure the road access location to the state-controlled road from the site does not compromise the safety and efficiency of the state-controlled road.
- To ensure the development and its construction does not cause adverse structural impacts on state-transport infrastructure.
- To ensure that the impacts of stormwater events associated with development are minimised and managed to avoid creating any adverse impacts on the state-transport corridor.
- To ensure that there is no unauthorised access onto the transport corridor and to protect impacts on the transport corridor.
- To ensure there is authorised access over the railway level crossing.

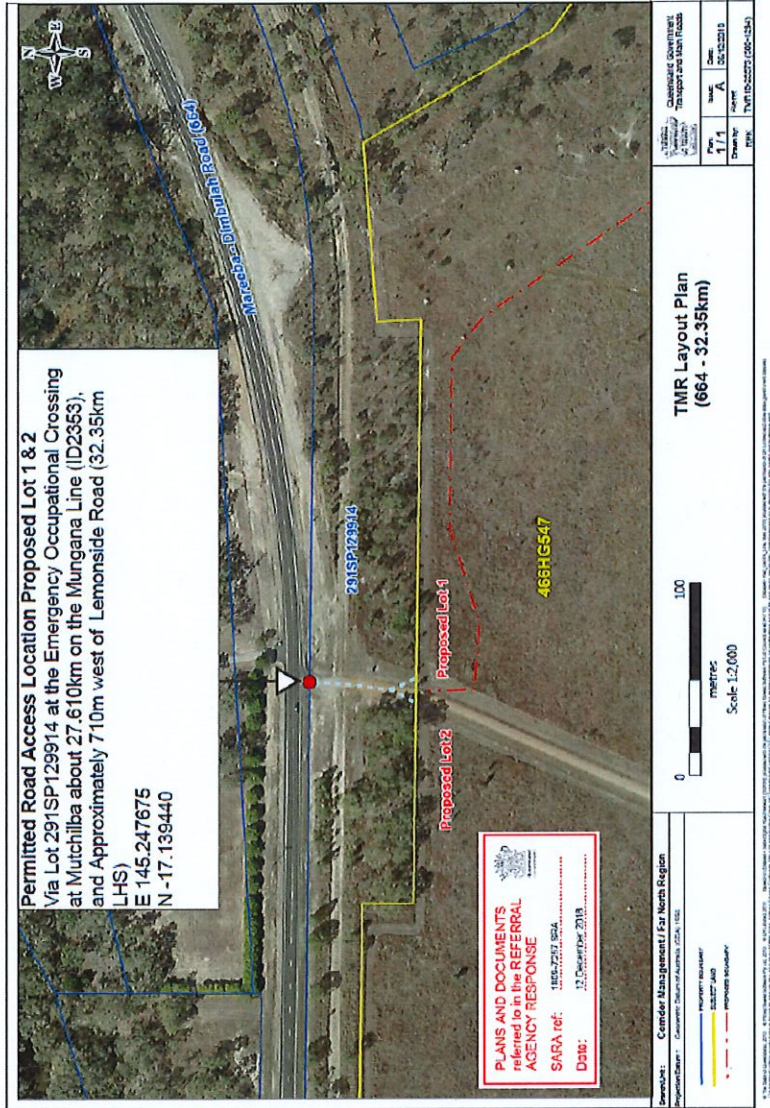
1809-7257 SRA

**Attachment 3—Advice to the applicant**

<b>General advice - Further development permits required</b>	
<b>Works on a railway</b>	
1.	<p>Pursuant to section 255 of the <i>Transport Infrastructure Act 1994</i>, the railway manager's written approval is required to carry out works in or on a railway corridor or otherwise interfere with the railway or its operations.</p> <p>In particular, the proposed development relies on emergency access via the railway corridor through private level crossing ID: 2353 on the Mareeba Mungana Railway. The executed Crossing Licence and Interface Agreement for the Management of Road/Rail Interface Risks between Queensland Rail Limited and Facas Pty Ltd is subject to certain conditions and validity restrictions. A valid Crossing Licence and Interface Agreement must exist at all times unless the crossing is permanently closed.</p> <p>This referral agency response does not constitute an approval under section 255 of the <i>Transport Infrastructure Act 1994</i>.</p> <p>Please contact Kate Rylands on telephone number (07) 3072 1229 or at <a href="mailto:developmentenquiries@qr.com.au">developmentenquiries@qr.com.au</a> in relation to this matter.</p>

RAGN

Approved plans and specifications





## 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.