

Our Ref: LM:DA/4667 AD2024/0000780

26 February 2024

Cook Shire Council
PO Box 3
COOKTOWN QLD 4895
E-mail: Kristin.keane@environmentpacific.com

Attention: Kristin Keane – Director Environment Pacific Pty Ltd (on behalf of Council)

Dear Ms Keane

Decision Notice - Approval

Given under section 63 of the *Planning Act 2016*

With reference Development Application (DA/4667), please find attached the relevant Decision Notice, which was approved by Cook Shire Council in full, subject to conditions.

Details of the decision are as follows:

Decision Details

Date of Decision: Council approved the Development Application by delegation on 23 February 2024.

Approval Details: **Approved in full** with conditions. These conditions are set out in Attachment 1 and are clearly identified to indicate whether the assessment manager or concurrence agency imposed them.

Variation Approval Details

Not Applicable

Application Details

Application Number: DA/4667

Approval Sought: Development Permit for Operational Work

Description of the Development: Civil works - road work, car parking, drainage and pathways

Category of Development: Assessable Development

Category of Assessment: Code Assessment

Planning Scheme: Cook Shire Council Planning Scheme 2017 v2.0

Location Details

Street Address: Adelaide Street COOKTOWN 4895

Real Property Description: Lot 2 C179109 and adjacent road reserve

Local Government Area: Cook Shire

Assessment Manager Conditions

This approval is subject to the conditions in Attachment 1.

Further Development Permits

Not Applicable.

Properly Made Submissions

Not applicable - no part of the application required public notification.

Referral Agencies

The referral agencies for the application are:

| Referral Agency | Referral Matter |
|---|--|
| State Assessment and Referral Agency (SARA) Far North Queensland Regional Office PO Box 2358 CAIRNS QLD 4870 Ph: 07 4037 3214 E-mail: CairnsSARA@dasilgp.qld.gov.au MyDAS2 online referrals: https://prod2.dev-assess.qld.gov.au/suite/ | Schedule 10, Part 17, Division3, Table1 Item 1 (<i>Planning Regulation 2017</i>) |

Other requirements under section 43 of the *Planning Regulation 2017*

Not Applicable.

Approved Plans and Specifications

Copies of the approved plans, specifications and/or drawings are enclosed in **Attachment 2**.

Currency Period for the Approval

(For any other part of the development approval) If the development does not start within **two (2) years**.

Lapsing of approval if development started but not completed

In accordance with section 88(1) of the *Planning Act 2016*, a development approval, other than a variation approval, for development lapses to the extent the development is not completed within any period or periods required under a development condition.

Rights of Appeal

You are entitled to appeal against this decision. A copy of the relevant appeal provisions from the *Planning Act 2016* are provided in Attachment 4 of this Decision Notice.

Other Details

Council relies on the accuracy of information included in the application documentation when assessing and deciding applications.

If you find an inaccuracy in any of the information provided above, have a query, or need to seek clarification about any of these details, please contact Cook Shire Council's Planning and Environment Department on 07 4082 0500 or E-mail: mail@cook.qld.gov.au.

Yours sincerely



Lisa Miller

Manager Planning and Environment
Cook Shire Council

cc: State Assessment and Referral Agency (SARA)
E-mail: CairnsSARA@dsdilgp.qld.gov.au

enc: **Attachment 1 (A)** – Conditions imposed by the assessment manager
Attachment 1 (B) – Conditions imposed by a concurrence agency (D24/2501)
Attachment 2 – Approved Plans (D24/7118)
Attachment 3 – Notice of Decision – Statement of Reasons (AD2024/0000810)
Attachment 4 - Extract of Appeal Provisions (Chapter 6 part 1 of the *Planning Act 2016*)

Attachment 1 (A) - Conditions imposed by the assessment manager (Cook Shire Council)

A. Assessment Manager (Council) Conditions

1. The development must be carried out generally in accordance with the following plans/specialist reporting submitted with the application, except for any variations required to comply with the conditions of this approval:

- Tide Levels – Drawing No. SKETCH1672-001 (Rev.B) – Trinity Engineering and Consulting – 14/07/2023.
- Stormwater Drainage Concept Plan – Drawing No. FIGURE 1672-8 (Rev. A)– Trinity Engineering and Consulting – 22/11/2023.

Timing: At all times

2. The Director of Infrastructure or a delegated officer must implement and maintain an Erosion and Sediment Control Plan on-site for the duration of the works, and until such time all exposed soil areas are permanently stabilised. The Erosion and Sediment Control Plan must be provided to contractors carrying out the works, and on-site for inspection by Council Officers prior to and during the works.

Timing: At all times during construction

1. The Director of Infrastructure must ensure a suitable Construction and Environmental Management Plan (CEMP) is in place for the works. The CEMP must be prepared by a suitably qualified professional and adequately demonstrate how:

- Traffic and parking generated during construction activities and works will be managed to minimise impacts on the surrounding area;
- Best practice waste management strategies during the construction phase; and
- Mitigate potential adverse impacts associated with dust, noise and lighting emissions, sediment and stormwater run-off.

Timing: The CEMP is to be approved by the Director of Infrastructure prior to the commencement of the works and complied with at all times during construction.

2. All works must be designed, constructed and maintained in accordance with the relevant Council policies, guidelines, and standards, and the FNQROC Development Manual. All works must be supervised and certified by a Registered Professional Engineer of Queensland (RPEQ).

Timing: At all times

B. Assessment Manager (Council) Advice

1. The currency period for this application is two (2) years. Should the approved use not commence within this time, the approval shall lapse.
2. The applicant/owner is to ensure compliance with the requirements of the *Aboriginal Cultural Heritage Act 2003* and in particular 'the duty of care' that it imposes on all landowners.
3. The *Queensland Heritage Act 1992* identifies that the archaeological cultural heritage artefact must not be interfered with. Any ground disturbance activities associated with the development should be monitored by a suitably qualified person.

C. Referral Agency Response

1. State Assessment Referral Agency response dated 24 January 2024 (D24/2501).

Attachment 1 (B) – Conditions imposed by a concurrence agency (D24/2501)



SARA reference: 2312-38263 SRA
 Council reference: DA/4667

24 January 2024

Chief Executive Officer
 Cook Shire Council
 PO Box 3
 COOKTOWN QLD 4895
 mail@cook.qld.gov.au

Attention: Lisa Miller

Dear Sir/Madam

SARA referral agency response—Civil Works (road, car parking, drainage and pathway) at Adelaide Street, Cooktown

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

The development application described below was confirmed as properly referred by the State Assessment and Referral Agency (SARA) on 20 December 2023.

Response

| | |
|-------------------|--|
| Outcome: | Referral agency response – with conditions |
| Date of response: | 24 January 2024 |
| 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 | Operational work for civil works (road, car parking, drainage and pathway) |
| SARA role: | Referral agency | |
| SARA trigger: | Schedule 10, Part 17, Division 3, Table 1 (Planning Regulation 2017) – Operation work in a coastal management district | |

SARA reference: 2312-38263 SRA
 Assessment manager: Cook Shire Council
 Street address: Adelaide Street, Cooktown
 Real property description: Lot 2 on C179109, and adjacent road reserve
 Applicant name: Cook Shire Council
 Applicant contact details: C/- Environment Pacific Pty Ltd
 PO Box 724
 EDGE HILL QLD 4870
 kristin.keane@environmentpacific.com

Human Rights Act 2019 considerations: Section 58 of the *Human Rights Act 2019* specifies required conduct for public entities when acting or making a decision. Sections 15 – 37 of the *Human Rights Act 2019* identifies the human rights a public entity must consider in making a decision.
 This decision does not limit the above identified human rights.

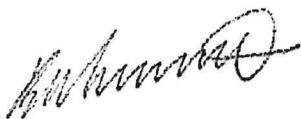
Representations

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@dildgp.qld.gov.au who will be pleased to assist.

Yours sincerely



Brett Nancarrow
 Manager (Planning)

cc Cook Shire Council, kristin.keane@environmentpacific.com

enc Attachment 1 - Referral agency conditions
 Attachment 2 - Advice to the applicant
 Attachment 3 - Reasons for referral agency response
 Attachment 4 - Representations about a referral agency response
 Attachment 5 - Documents referenced in conditions

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 |
|--|--|---|
| Operational work | | |
| Schedule 10, Part 17, Division 3, Table 5, Item 1 – Operational work in a coastal management district —The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of the Department of Environment, Science and Innovation 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. | The works must be carried out generally in accordance with the following plans: (a) TIDE LEVELS, prepared by Trinity Engineering and Consulting, dated 14 June 2023, Drawing No. SKETCH 1672-001, revision B. (b) STORMWATER DRAINAGE CONCEPT PLAN, prepared by Trinity Engineering and Consulting, dated 22 November 2023, Drawing No. FIGURE 1672-8, revision A. | For the duration of works. |
| 2. | For the works, only use clean materials which are free from prescribed water contaminants. | For the duration of works. |
| 3. | Development must prevent the release of sediment to tidal waters by installing and maintaining erosion and sediment control measures in accordance with the <i>Best Practice Erosion and Sediment Control (BPESC) guidelines for Australia (International Erosion Control Association)</i> . | For the duration of works. |
| 4. | Submit "As Constructed drawings" to palm@des.qld.gov.au or mail to: Department of Environment, Science and Innovation Permit and License Management GPO Box 2454 Brisbane Qld 4001 | Within 20 business days of the completion of the works. |

Attachment 2—Advice to the applicant

| General advice | |
|----------------|---|
| 1. | Terms and phrases used in this document are defined in the <i>Planning Act 2016</i> its regulation or the State Development Assessment Provisions (SDAP) v3.0. If a word remains undefined it has its ordinary meaning. |

Attachment 3—Reasons for referral agency response

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

The reasons for the SARA decision are:

The proposed development, with conditions, complies with the relevant provisions of State code 8: Coastal development and tidal works in that:

- The proposed works will maintain coastal processes and do not increase the risk of adverse impacts on people or property from coastal erosion.
- The proposed works maintain the protective functions of landforms and vegetation within the coastal erosion prone area.
- The environmental values of adjacent tidal waters will be maintained.
- Adverse impacts to Matters of State Environmental Significance (MSES), being the adjacent wildlife habitat and regulated vegetation, are avoided.

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 3.0)
- the Development Assessment Rules
- SARA DA Mapping system
- State Planning Policy mapping system
- *Human Rights Act 2019*

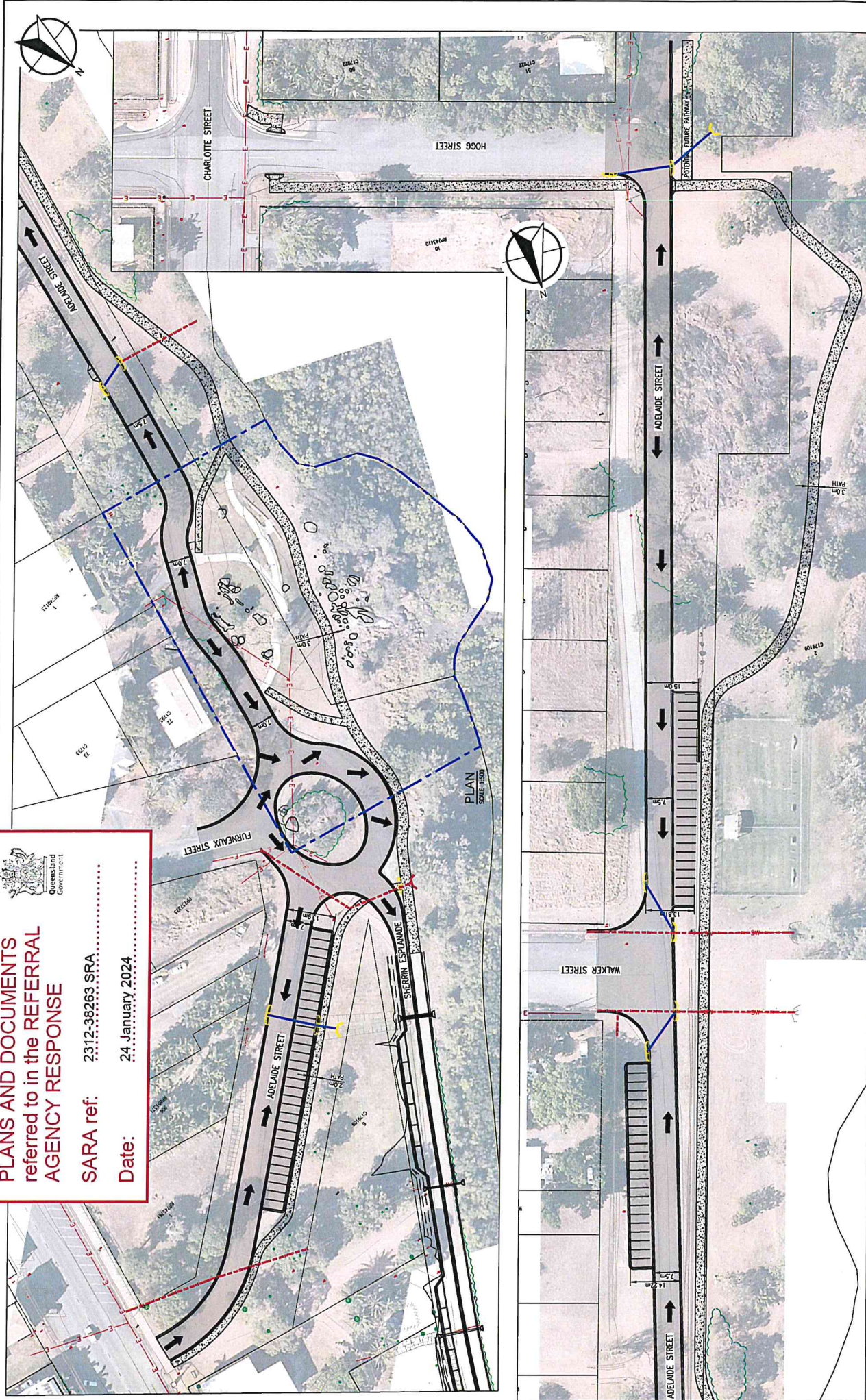
Attachment 5—Documents referenced in conditions

(page left intentionally blank – attached separately)

PLANS AND DOCUMENTS referred to in the REFERRAL AGENCY RESPONSE

SARA ref: 2312-38263 SRA

Date: 24 January 2024



Attachment 4— Representations about a referral agency response

(page left intentionally blank – attached separately)

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 Rules¹ regarding representations about a referral agency response

Part 6: Changes to the application and referral agency responses

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.²
- 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.

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

² 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.³

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

Attachment 2 – Approved Plans (D24/7118)

COOK SHIRE COUNCIL

**DIGITALLY STAMPED
APPROVED PLAN**

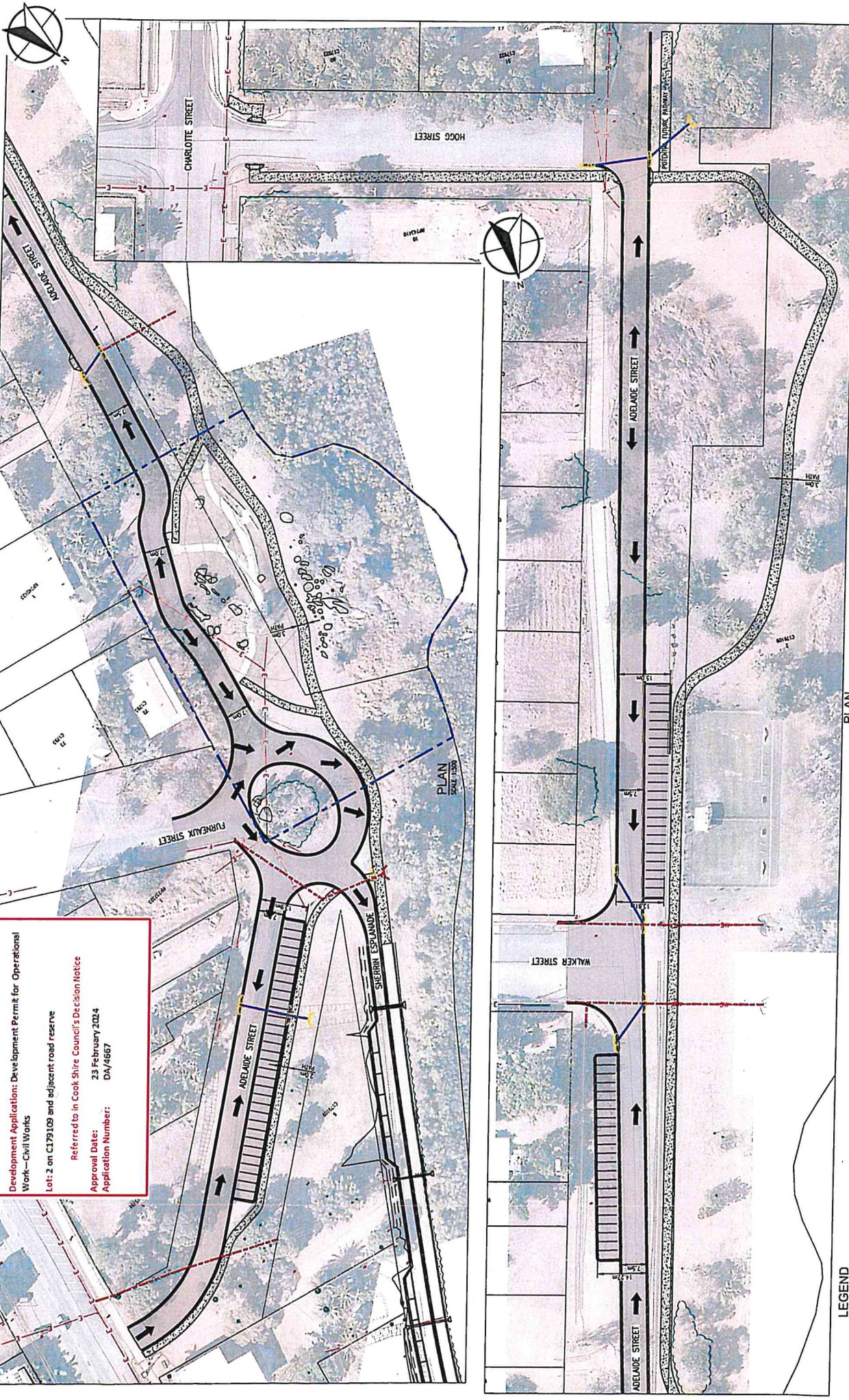
Development Application: Development Permit for Operational Work - Civil Works

Lot: 2 on C179109 and adjacent road reserve

Referred to in Cook Shire Council's Decision Notice

Approval Date: 23 February 2024

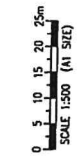
Application Number: DA/4667



LEGEND

- RECONSTRUCTION ROAD RESERVE BOUNDARY
- EXISTING DRAINAGE
- PROPOSED DRAINAGE
- PROPOSED ROAD MEET PIT
- FLOW PATH

PLAN SCALE 1:500



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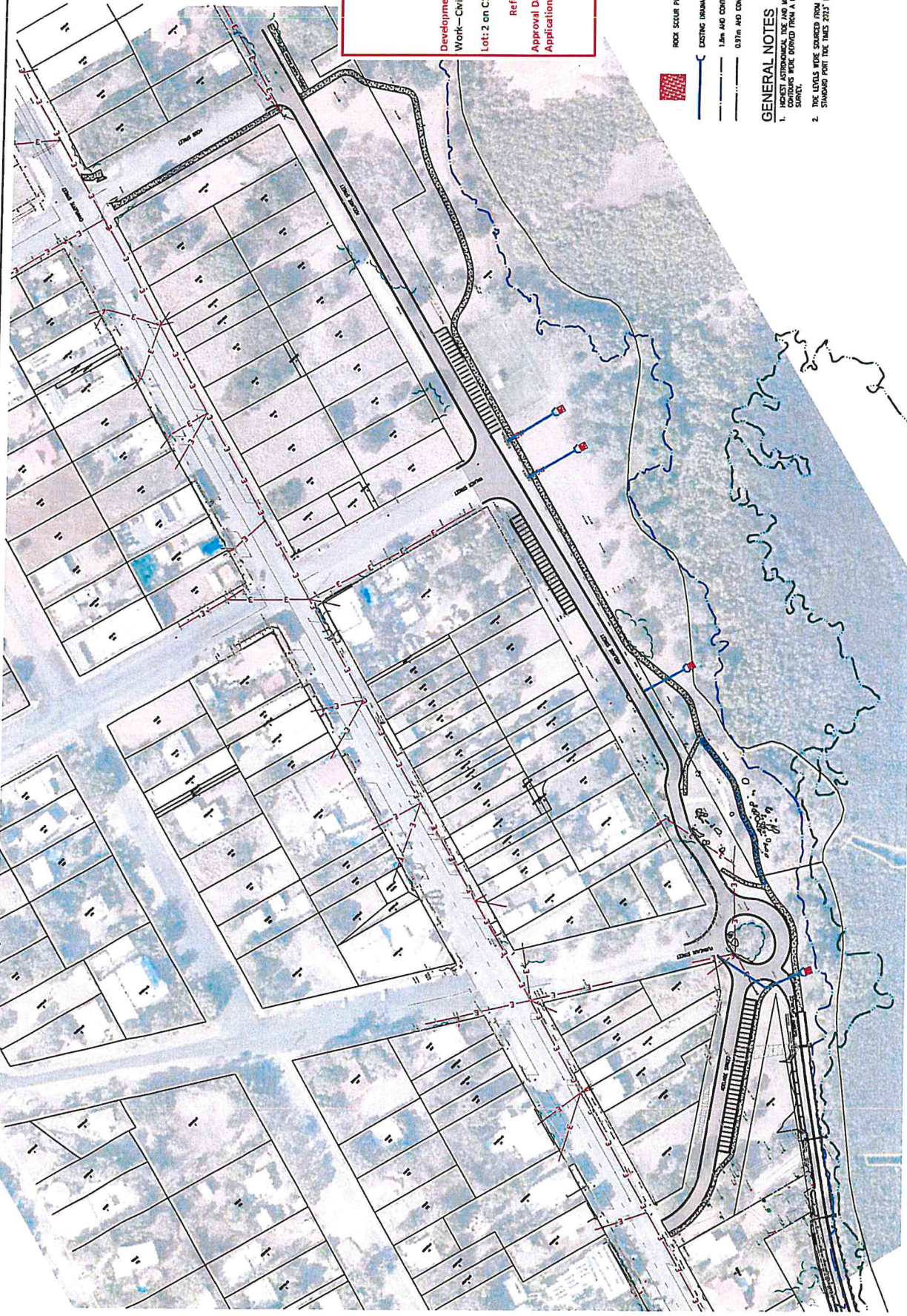
COOK SHIRE COUNCIL
ADELAIDE STREET UPGRADE
STORMWATER DRAINAGE CONCEPT PLAN

PRELIMINARY ONLY



COOK SHIRE COUNCIL
DIGITALLY STAMPED
APPROVED PLAN

Development Application: Development Permit for Operational Work - Civil Works
Lot: 2 on C179109 and adjacent road reserve
Referred to in Cook Shire Council's Decision Notice
Approval Date: 23 February 2024
Application Number: DA/4667



ROAD SCOUR PROTECTION

- EXISTING INMANCE PIPE AND OUTLET TO BE REPLACED
- 1.5m AND CONTOUR (HIGHEST ASTROGNICAL TID) 0.7m AND CONTOUR (LOW HIGH WATER SPRINGS)

GENERAL NOTES

1. HIGHEST ASTROGNICAL TIDE LINE FROM HIGH WATER SURVEY CONTAINS WIDE BORDED FROM A COMBINATION OF LEAD AND SURVEY.
2. TIDE LEVELS WERE SOURCED FROM TANGERLAND TIDE TABLES STANDARD PORT TIDE TABLES 2023 BY DWA.

PLAN
SCALE 1:1000



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Client: **COOK SHIRE COUNCIL**
 Project: **SHERRIN ESPLANADE STAGE 2**
 Title: **TIDE LEVELS**

PRELIMINARY ONLY

| | | | |
|-----------------|-----------------|----------|-------------------|
| Scale (A1 Size) | Scale (A3 Size) | Date | Revision |
| 1672 | 1:1000 | 14/07/23 | SKETCH 1672-001 B |

Attachment 3 – Notice of Decision – Statement of Reasons (AD2024/0000810)

NOTICE ABOUT DECISION – STATEMENT OF REASONS

This Notice is prepared in accordance with s63(5) and s83(9) of the Planning Act 2016 to provide information about a decision that has been made in relation to a development application. The purpose of the Notice is to enable a public understanding of the reasons for the planning decision, specifically having regard to:

- the relevant parts of the Planning Scheme and Assessment Benchmarks against which the application was assessed; and*
- any other information, documents or other material Council was either required to, or able to, consider in its assessment.*

All terms used in this Notice have the meanings given them in the Planning Act 2016 or otherwise their ordinary meaning.

APPLICATION DETAILS

| | |
|---------------------------------|--|
| Application No: | DA/4667 |
| Applicant: | Cook Shire Council c/- Environment Pacific Pty Ltd |
| Proposal: | Development Permit for Operational Works |
| Description of the Development: | Operational Works – road works, drainage and pathway |
| Street Address: | Adelaide Street, Cooktown |
| Real Property Description: | Lot 2 on C179109 and adjacent road reserve |
| Planning Scheme: | Cook Shire Council Planning Scheme 2017 v2.0 |
| Land Zoning: | Lot 2 – Recreation and Open Space |
| Assessment Type: | Code Assessment |

DECISION DETAILS

| | |
|-------------------|--|
| Type of Decision: | Approval with Conditions |
| Type of Approval: | Operational Works – road works, drainage and pathway |
| Date of Decision: | 23 February 2024 |

ASSESSMENT BENCHMARKS

The following Assessment Benchmarks applied to the development from the following Categorising Instruments:

| Assessment Benchmarks | Comment |
|---|---|
| <i>Planning Regulation 2017</i> (Schedule 9) | Schedule 9 is not applicable as the application is not for building work under the Building Act. |
| <i>Planning Regulation 2017</i> (Schedule 10) | The application triggered a referral to SARA under Schedule 10, Part 17, Division 3, Table 1, Item 1– for work in a coastal management district. (interfering with quarry material, as defined under the <i>Coastal Protection and Management Act 1995</i> , on State coastal land above high-water mark). |
| Regional Plan | Section 2.2 of the Planning Scheme identifies that the Cape York Regional Plan has been adequately reflected in the Planning Scheme. A separate assessment against the Regional Plan is not required. |
| State Planning Policy (SPP), Part E | Section 2.1 of the Planning Scheme identifies that the superseded version of the <i>State Planning Policy</i> is integrated in the Planning Scheme. The Planning Scheme does not reflect the current SPP (July 2017) Assessment Benchmark mapping for Natural Hazards Risk and Resilience – Bushfire Prone Areas, Erosion Prone Areas and Storm Tide Inundation areas. An assessment against the State Planning Policy is addressed in the following section of this report. |
| Temporary State Planning Policy | There are no Temporary State Planning Policies. |

Local Categorising Instrument (Cook Shire Council Planning Scheme 2017):

Not applicable

Local Categorising Instrument (Variation Approval)

Not Applicable

Local Categorising Instrument (Temporary Local Planning Instrument)

Not Applicable



PUBLIC NOTIFICATION

Not Applicable

REASONS FOR THE DECISION

The application is **approved** on the following grounds:

- a. An assessment was made against the applicable assessment benchmarks and the proposed development demonstrated compliance.
- b. The proposed works seek to formalize and upgrade existing transport and drainage infrastructure and will have no adverse impact on the environmental values or amenity of the locality.

REASONS FOR APPROVAL DESPITE NON-COMPLIANCE WITH ASSESSMENT BENCHMARKS

Not Applicable

ADDITIONAL RELEVANT MATTERS FOR IMPACT ASSESSMENT

Not Applicable

OTHER MATTERS PRESCRIBED BY THE PLANNING REGULATION 2017

Not Applicable

OTHER DETAILS

If you wish to obtain more information about Council's decision, including a copy of Council's Decision Notice and any conditions or plans relating to the development, please refer to Council's webpage.

Attachment 4 - Extract of Appeal Provisions (Chapter 6 part 1 of the *Planning Act 2016*)

Chapter 6 Dispute resolution

Part 1

Appeal rights

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states—
- (a) matters that may be appealed to—
 - (i) either a tribunal or the P&F 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.
- (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 an appeal relating to the *Plumbing and Drainage Act 2018*—
 - (i) for an appeal against an enforcement notice given because of a belief mentioned in the *Plumbing and Drainage Act 2018*, section 143(2)(a)(i), (b) or (c)—5 business days after the day the notice is given; or
 - (ii) for an appeal against a decision of a local government or an inspector to give an action notice under the *Plumbing and Drainage Act 2018*—5 business days after the notice is given; or
 - (iii) for an appeal against a failure to make a decision about an application or other matter under the *Plumbing and Drainage Act 2018*—at anytime after the period within which the application or matter was required to be decided ends; or
 - (iv) otherwise—20 business days after the day the notice is given; or
- (g) 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.

- (e) each person who may elect to be a co-respondent for the appeal other than an eligible submitter for a development application or change application the subject of the appeal; 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 is 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 to an appeal by filing a notice of election in the approved form—
- (a) if a copy of the notice of appeal is given to the person—within 10 business days after the copy is given to the person; or
 - (b) otherwise—within 15 business days after the notice of appeal is lodged with the registrar of the tribunal or the P&E Court.
- (7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department's website for this purpose.

231 Non-appealable decisions and matters

- (1) Subject to this chapter, section 316(2), 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.

- (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 I.GIP; 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, section 1, table 1, item 1—each principal submitter for the application whose submission has not been withdrawn; and
 - (d) for an appeal about a change application under schedule 1, section 1, table 1, item 2—each principal submitter for the application whose submission has not been withdrawn; and

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