



**Rockhampton Office**  
232 Bolsover St, Rockhampton  
**Gracemere Office**  
1 Ranger St, Gracemere  
**Mount Morgan Office**  
32 Hall St, Mount Morgan

## Decision Notice Approval (amended)

*Planning Act Form 2 (version 1.0 effective 3 July 2017) made under Section 282 of the Planning Act 2016 for a decision notice (approval) under s81 Planning Act 2016*

Application number:	D/183-2013	Contact:	Amy Johnson
Notice Date:	17 October 2017	Contact Number:	1300 22 55 77

### APPLICANT DETAILS

Name:	DJ & ME O'Rourke Pty Ltd A.C.N. 112 540 833	
Postal address: C/- GSPC		
Phone no:	Mobile no:	Email:

I acknowledge receipt of the above application on 12 September 2017 and confirm the following:

### DEVELOPMENT APPROVAL

**Development Permit for a Material Change of Use for an Accommodation Building, Indoor Entertainment and Food Premises**

### PROPERTY DESCRIPTION

Street address:	9 Russell Street, Gracemere
Real property description:	Lot 410 on P4031, Parish of Gracemere

### OWNER DETAILS

Name:	DJ & ME O'Rourke Pty Ltd Tte
Postal address:	

**Dear DJ & ME O'Rourke Pty Ltd A.C.N. 112 540 833**

I advise that, on **16 October 2017**

the above development application was:

approved in full with conditions\* (refer to the conditions contained in **Attachment 1**)

\*Note: The conditions show which conditions have been imposed by the assessment manager and which conditions have been imposed by a referral agency.

### CHANGES TO CONDITIONS

The conditions which have been changed or cancelled are as follows:

1) Item 7	changed	13 October 2017
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## 1. DETAILS OF THE APPROVAL

	Development Permit	Preliminary Approval
Development assessable under the planning scheme, a temporary local planning instrument, a master plan or a preliminary approval which includes a variation approval	<input checked="" type="checkbox"/>	<input type="checkbox"/>

## 2. CONDITIONS

This approval is subject to the conditions in Attachment 1.

## 3. FURTHER DEVELOPMENT PERMITS REQUIRED

Please be advised that the following development permits are required to be obtained before the development can be carried out:

Type of development permit required	Subject of the required development permit
Operational Works	<i>Road Works</i> <i>Access and Parking Works</i> <i>Sewerage Works</i> <i>Water Works</i> <i>Stormwater Works</i>
Building Works	
Plumbing and Drainage Works	

## 4. SUBMISSIONS

Properly made submissions were made in relation to the application.

There was 1 properly made submissions received from the following submitter(s);

Name of principal submitter	Residential or business address	Electronic address (if provided)
1. R A & L A Wilson	PO Box 1605, Rockhampton QLD 4700	

## 5. REFERRAL AGENCIES

NIL

The following Referral Agencies were activated by this application.

## 6. THE APPROVED PLANS

**The approved development must be completed and maintained generally in accordance with the approved drawings and documents:**

Plan/Document Name	Plan Number	Dated
Ground and Site Plan	BT 130308-SD3 Rev C	13 June 2013
First Floor Plan	BT 130308-SD4 Rev B	1 May 2013
Elevations 1, 2, 3, 4	Beat Architects (no reference)	Undated
Elevations 5, 6, 7, 8	Beat Architects (no reference)	Undated
Site Based Stormwater Management Plan	K2464-0003	28 May 2013

## 7. CURRENCY PERIOD FOR THE APPROVAL (S.85)

The relevant period of this approval lapses on 17 September 2021.

## 8. STATEMENT OF REASONS

Description of the development	Material Change of Use for an Accommodation Building, Indoor Entertainment and Food Premises
Assessment Benchmarks	The proposed development was assessed against the following assessment benchmarks: <ul style="list-style-type: none"><li>• Town Zone Code</li></ul>
Reasons for decision	<ul style="list-style-type: none"><li>(1) Assessment of the development against the relevant zone purpose, planning scheme codes and planning scheme policies demonstrates that the proposed development will not cause significant adverse impacts on the surrounding natural environment, built environment and infrastructure, community facilities, or local character and amenity.</li><li>(2) The proposed use does not compromise the strategic framework in the <i>Fitzroy Shire Planning Scheme 2005</i>.</li><li>(3) The proposed development does not compromise the relevant State Planning Policy.</li><li>(4) The proposal for a Material Change of Use for an Accommodation Building, Indoor Entertainment and Food Premises does not compromise the character and amenity of the surrounding area.</li></ul>

## 9. RIGHTS OF APPEAL

The rights of an applicant to appeal to a tribunal or the Planning and Environment Court against a decision about a development application are set out in chapter 6, part 1 of the *Planning Act 2016*. For particular applications, there may also be a right to make an application for a declaration by a tribunal (see chapter 6, part 2 of the *Planning Act 2016*).

### Appeal by an applicant

An applicant for a development application may appeal to the Planning and Environment Court against the following:

- the refusal of all or part of the development application
- a provision of the development approval
- the decision to give a preliminary approval when a development permit was applied for
- a deemed refusal of the development application.

An applicant may also have a right to appeal to the Development tribunal. For more information, see schedule 1 of the *Planning Act 2016*.

### Appeal by a submitter

A submitter for a development application may appeal to the Planning and Environment Court against:

- any part of the development application for the development approval that required impact assessment
- a variation request.

The timeframes for starting an appeal in the Planning and Environment Court are set out in section 229 of the *Planning Act 2016*.

**Attachment 2** is an extract from the *Planning Act 2016* that sets down the applicant's appeal rights and the appeal rights of a submitter.

## 10. WHEN THE DEVELOPMENT APPROVAL TAKES EFFECT

This development approval takes effect:

- From the time the decision notice is given – if there is no submitter and the applicant does not appeal the decision to the court.

Or

- When the submitter's appeal period ends – if there is a submitter and the applicant does not appeal the decision to the court.

Or

- Subject to the decision of the court, when the appeal is finally decided – if an appeal is made to the court.

This approval will lapse unless substantially commenced within the above stated relevant periods (refer to sections 85 of *Planning Act 2016* for further details).

#### **11. ORIGINAL DECISION ASSESSMENT MANAGER**

Name: <b>Erin McCabe</b>	Date: 17 September 2013
<b><u>ACTING OPERATIONS MANAGER</u></b>	
<b><u>DEVELOPMENT ASSESSMENT</u></b>	

#### **12. ASSESSMENT MANAGER**

Name: <b>Tarnya Fitzgibbon</b>	Signature:	Date: 17 October 2017
<b><u>COORDINATOR</u></b>		
<b><u>DEVELOPMENT ASSESSMENT</u></b>		

#### **Attachment 1 – Conditions of the approval**

**Part 1 – Conditions imposed by the assessment manager** [Note: where a condition is imposed about infrastructure under Chapter 4 of the *Planning Act 2016*, the relevant provision of the Act under which this condition was imposed must be specified.]

#### **Attachment 2—Extract on appeal rights**

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## Attachment 1 – Part 1

### Rockhampton Regional Council Conditions

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PLANNING ACT 2016

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#### 1.0 ADMINISTRATION

- 1.1 The Developer is responsible for ensuring compliance with this approval and the Conditions of the approval by an employee, agent, contractor or invitee of the Developer.
- 1.2 Where these Conditions refer to "Council" in relation to requiring Council to approve or to be satisfied as to any matter, or conferring on the Council a function, power or discretion, that role of the Council may be fulfilled in whole or in part by a delegate appointed for that purpose by the Council.
- 1.3 All conditions of this approval must be undertaken and completed to the satisfaction of Council, at no cost to Council.
- 1.4 All conditions, works, or requirements of this approval must be undertaken and completed prior to the commencement of the use, unless otherwise stated.
- 1.5 Where applicable, infrastructure requirements of this approval must be contributed to the relevant authorities, at no cost to Council prior to the commencement of the use, unless otherwise stated.
- 1.6 The following further Development Permits must be obtained prior to the commencement of any works associated with its purposes:

- 1.6.1 Operational Works:

- (i) Road Works;
  - (ii) Access and Parking Works;
  - (iii) Water Works;
  - (iv) Sewerage Works; and
  - (v) Stormwater Works.

- 1.6.2 Plumbing and Drainage Works; and

- 1.6.3 Building Works.

- 1.7 All Development Permits for Operational Works and Plumbing and Drainage Works must be obtained prior to the issue of a Development Permit for Building Works.
- 1.8 Unless otherwise stated, all works must be designed, constructed and maintained in accordance with the relevant Council policies, guidelines and standards.
- 1.9 All engineering drawings/specifications, design and construction works must comply with the requirements of the relevant *Australian Standards* and must be approved, supervised and certified by a Registered Professional Engineer of Queensland.

#### 2.0 APPROVED PLANS AND DOCUMENTS

- 2.1 The approved development must be completed and maintained generally in accordance with the approved plans and documents, except where amended by the conditions of this permit:

Plan/Document Name	Plan Number	Dated
Ground and Site Plan	BT 130308-SD3 Rev C	13 June 2013

<b>Plan/Document Name</b>	<b>Plan Number</b>	<b>Dated</b>
First Floor Plan	BT 130308-SD4 Rev B	1 May 2013
Elevations 1, 2, 3, 4	Beat Architects (no reference)	Undated
Elevations 5, 6, 7, 8	Beat Architects (no reference)	Undated
Site Based Stormwater Management Plan	K2464-0003	28 May 2013

- 2.2 Where there is any conflict between the conditions of this approval and the details shown on the approved plans and documents, the conditions of approval must prevail.
- 2.3 Where conditions require the above plans or documents to be amended, the revised document(s) must be submitted for approval by Council prior to the submission of a Development Application for Operational Works.

### **3.0 ROAD WORKS**

- 3.1 A Development Permit for Operational Works (road works) must be obtained prior to the commencement of any road works on the site.
- 3.2 All works must be designed and constructed in accordance with the approved plans (refer to condition 2.1), *Capricorn Municipal Development Guidelines*, relevant *Australian Standards* and the provisions of a Development Permit for Operational Works (road works).
- 3.3 A concrete pathway, with a minimum width of 1.2 metres, must be constructed on the southern side of Russell Street for the full frontage of the site.
- 3.4 All pathways and access ramps must be designed and constructed in accordance with *Australian Standard AS1428 "Design for Access and Mobility"*. All pathways located within a road reserve or public use land must be provided with public space lighting in accordance with *Australian Standard AS1158 "Lighting for Roads and Public Spaces"*.
- 3.5 All pathways must incorporate kerb ramps at all road crossing points.
- 3.6 Traffic signs and pavement markings must be provided in accordance with the *Manual of Uniform Traffic Control Devices – Queensland*. Where necessary, existing traffic signs and pavement markings must be modified in accordance with the *Manual of Uniform Traffic Control Devices – Queensland*.

### **4.0 ACCESS AND PARKING WORKS**

- 4.1 A Development Permit for Operational Works (access works) must be obtained prior to the commencement of any access works on the site.
- 4.2 All works must be designed and constructed in accordance with the approved plans (refer to condition 2.1), *Capricorn Municipal Development Guidelines*, *Australian Standard AS2890 "Parking Facilities"* and the provisions of a Development Permit for Operational Works (access works).
- 4.3 A minimum of thirty-three (33) parking spaces must be provided on-site for the accommodation building and twenty-five (25) parking spaces must be provided on-site for the Indoor Entertainment and Restaurant.
- 4.4 All redundant vehicle crossings must be removed and replaced with Council's standard kerb and channel.
- 4.5 All vehicle operations associated with the development must be directed by suitable directional, informative, regulatory or warning signs in accordance with *Australian Standard AS1742.1 "Manual of Uniform Traffic Control Devices"* and *Australian Standard AS2890.1 "Parking Facilities – Off-street Car Parking"*.

## **5.0 SEWERAGE WORKS**

- 5.1 A Development Permit for Operational Works (sewerage works) must be obtained prior to the commencement of any sewerage works on the site.
- 5.2 All works must be designed and constructed in accordance with the approved plans (refer to condition 2.1), *Capricorn Municipal Development Guidelines, Water Supply (Safety and Reliability) Act, Plumbing and Drainage Act* and the provisions of a Development Permit for Operational Works (sewerage works).
- 5.3 The development must be connected to Council's reticulated sewerage network.
- 5.4 A 150 millimetre diameter non-trunk gravity sewer main must be constructed under Barry Street to discharge at the existing sewerage network located on the western side of Barry Street. This sewer main must be terminated via a lamp hole within the subject allotment.
- 5.5 The existing sewerage connection point(s) must be disconnected. A new sewerage connection point must be provided for the development from the proposed lamp hole.
- 5.6 The finished sewerage access chamber(s) surface must be at a sufficient level to avoid ponding of stormwater above the top of the chamber. A heavy duty trafficable lid must be provided in the trafficable area.
- 5.7 Sewerage connections located within the trafficable areas must be raised or lowered to suit the finished surface levels and provided with trafficable lids.

## **6.0 WATER WORKS**

- 6.1 A Development Permit for Operational Works (water works) must be obtained prior to the commencement of any water works on the site.
- 6.2 All works must be designed and constructed in accordance with the approved plans (refer to condition 2.1), *Capricorn Municipal Development Guidelines, Water Supply (Safety and Reliability) Act, the Plumbing and Drainage Act* and the provisions of a Development Permit for Operational Works (water works).
- 6.3 The development must be connected to Council's reticulated water network.
- 6.4 The existing water connection point(s) must be disconnected. A new water connection point must be provided for the development from existing infrastructure located within Russell Street.
- 6.5 Adequate domestic and fire fighting protection must be provided to the proposed development. The domestic and fire fighting protection must be certified by a hydraulic consultant.
- 6.6 Individual tenancy or sole occupancy units must be provided with sub metering in accordance with the *Queensland Plumbing and Wastewater Code* and Council's Sub Metering Policy.
- 6.7 Water meter boxes and connections located within trafficable areas must be raised or lowered to suit the finished surface level and provided with trafficable lids.

## **7.0 PLUMBING AND DRAINAGE WORKS**

- 7.1 All internal plumbing and sanitary drainage works must be in accordance with regulated work under the Plumbing and Drainage Act.
- 7.2 Sewerage trade waste permits must be obtained for the discharge of any non-domestic waste into Council's sewerage reticulation. Arrester traps must be provided where commercial or non-domestic waste water, including any discharge from waste storage washdown areas, is proposed to be discharged into the system.

## **8.0 STORMWATER WORKS**

- 8.1 A Development Permit for Operational Works (stormwater works) must be obtained prior to the commencement of any stormwater works on the site.

- 8.2 All stormwater drainage works must be designed and constructed in accordance with the approved plans (refer to condition 2.1), *Queensland Urban Drainage Manual*, *Capricorn Municipal Development Guidelines*, sound engineering practice and the provisions of a Development Permit for Operational Works (stormwater works).
- 8.3 All stormwater must drain to a demonstrated lawful point of discharge and must not adversely affect adjoining land or infrastructure by way of blocking, altering or diverting existing stormwater runoff patterns or have the potential to cause damage to other infrastructure.
- 8.4 Any application for a Development Permit for Operational Works (stormwater works) must include an assessment of how the development meets the water quality objectives of the *State Planning Policy 4/10 – Healthy Waters*.
- 8.5 The development must not increase peak stormwater runoff for a selected range of storm events up to and including the one in one hundred year storm event (100 year Average Recurrence Interval) for the post development condition.
- 8.6 Easements must be provided over all land assessed to be within the one in one hundred year rainfall event (100 year Average Recurrence Interval) inundation area.
- 9.0 **ROOF AND ALLOTMENT DRAINAGE WORKS**
- 9.1 All roof and allotment drainage must be in accordance with the requirements of the *Queensland Urban Drainage Manual* and the *Capricorn Municipal Development Guidelines*.
- 9.2 All roof and allotment drainage must be discharged such that it does not restrict, impair or change the natural flow of runoff water or cause a nuisance to adjoining properties or infrastructure.
- 10.0 **SITE WORKS**
- 10.1 All earthworks must be undertaken in accordance with *Australian Standard AS3798 “Guidelines on Earthworks for Commercial and Residential Developments”*.
- 10.2 Site works must be constructed such that they do not, at any time, in any way restrict, impair or change the natural flow of runoff water, or cause a nuisance or worsening to adjoining properties or infrastructure.
- 10.3 Any vegetation cleared or removed must be:
- (i) mulched on-site and utilised on-site for landscaping purposes, in accordance with the landscaping plan approved by Council; or
  - (ii) removed for disposal at a location approved by Council;
- within sixty (60) days of clearing. Any vegetation removed must not be burnt.
- 10.4 All site works must be undertaken to ensure that there is:
- 10.4.1 no increase in upstream or downstream flood levels for all levels of immunity up to Q100;
  - 10.4.2 no increase in velocity profiles, for which no remedy exists to prevent erosion and/or scouring. In the event that modelling shows non-compliance with the above, works must be undertaken within the system to satisfy the above criteria for development; and
  - 10.4.3 a lawful point of discharge to which the developed flows from the land drain. Easements will be required over any other land to accommodate the flows.
- 11.0 **BUILDING WORKS**
- 11.1 All structures must maintain a clearance of two (2) metres to any sewerage infrastructure, including connection points, in accordance with Council's Building Over / Adjacent to Local government Sewer Infrastructure Policy.

- 11.2 A Development Permit for Building Works (demolition) must be obtained for the removal of any structure.
- 11.3 All external elements, such as air conditioners, must be adequately screened from public view, to Council's satisfaction. Noise from any external elements, such as air conditioners, must not exceed 5dB(A) (decibels) above the background ambient noise level, measured at the boundaries of the subject site.
- 11.4 The pool and spa pumps and associated equipment must be screened so as not to be visible from outside the subject site. Noise from the pool pump and associated filters must not exceed 5dB(A) (decibels) above the background ambient noise level, measured at the boundaries of the subject site.
- 11.5 Any lighting devices associated with the development, such as sensory lighting, must be positioned on the site and shielded so as not to cause glare or other nuisance to nearby residents and motorists. Night lighting must be designed, constructed and operated in accordance with *Australian Standard AS4282 "Control of the obtrusive effects of outdoor lighting"*.
- 11.6 External privacy screening must be applied to the windows of the accommodation building component where they abut the south-eastern boundary to prevent overlooking into the private open space of the adjoining dwellings.
- 11.7 All windows facing the adjoining residential properties must be properly glazed or screened to not intrude on the privacy of residents.
- 11.8 The site must be fenced along the north-east and south-east boundaries with a solid fence. The fence must be constructed of materials and finishes that are aesthetically pleasing and commensurate with the surrounding area.

#### **12.0 LANDSCAPING WORKS**

- 12.1 All landscaping must be constructed and/or established, in accordance with the approved plans (refer to condition 2.1).
- 12.2 Large trees must not be planted within one (1) metre of the centreline of any sewerage infrastructure. Small shrubs and groundcover are acceptable.
- 12.3 Landscaping, or any part thereof, upon reaching full maturity, must not:
  - (i) obstruct sight visibility zones as defined in the *Austroads 'Guide to Traffic Engineering Practice'* series of publications;
  - (ii) adversely affect any road lighting or public space lighting; or
  - (iii) adversely affect any Council infrastructure, or public utility plant.

- 12.4 The landscaped areas must be subject to an ongoing maintenance and replanting programme (if necessary).

#### **13.0 ELECTRICITY AND TELECOMMUNICATIONS**

- 13.1 Underground electricity and telecommunication connections must be provided to the proposed development to the standards of the relevant authorities.
- 13.2 Evidence must be provided of a certificate of supply with the relevant service providers to provide each lot with live electricity and telecommunication connections, in accordance with the requirements of the relevant authorities prior to the commencement of the use.

#### **14.0 ASSET MANAGEMENT**

- 14.1 Any alteration necessary to electricity, telephone, water mains, sewerage mains, and/or public utility installations resulting from the development or in connection with the development, must be at full cost to the Developer.
- 14.2 Any damage to existing kerb and channel, pathway or roadway (including removal of concrete slurry from public land, pathway, roads, kerb and channel and stormwater gullies

and drainage lines) which may occur during any works carried out in association with the approved development must be repaired. This must include the reinstatement of the existing traffic signs and pavement markings which may have been removed.

14.3 'As constructed' information pertaining to assets to be handed over to Council and those which may have an impact on Council's existing and future assets must be provided prior to the commencement of the use. This information must be provided in accordance with the Manual for Submission of Digital As Constructed Information.

#### 15.0 ENVIRONMENTAL

15.1 Any application for a Development Permit for Operational Works must be accompanied by an Erosion and Sediment Control Plan which addresses, but is not limited to, the following:

- (i) objectives;
- (ii) site location / topography;
- (iii) vegetation;
- (iv) site drainage;
- (v) soils;
- (vi) erosion susceptibility;
- (vii) erosion risk;
- (viii) concept;
- (ix) design; and
- (x) implementation, for the construction and post construction phases of work.

15.2 The Environmental Management Plan approved as part of a Development Permit for Operational Works must be part of the contract documentation for the development works.

15.3 The Erosion Control and Stormwater Control Management Plan must be implemented and maintained on-site for the duration of the works, and until all exposed soil areas are permanently stabilised (for example, turfed, hydromulched, concreted, landscaped). The prepared Erosion Control and Stormwater Control Management Plan must be available on-site for inspection by Council Officers during those works.

#### 16.0 OPERATING PROCEDURES

16.1 All construction materials, waste, waste skips, machinery and contractors' vehicles must be located and stored or parked within the site. No storage of materials, parking of construction machinery or contractors' vehicles will be permitted in Russell Street or Barry Street.

16.2 All waste storage areas must be:

- 16.2.1 in accordance with *Environmental Protection (Waste Management) Regulations*;
- 16.2.2 of sufficient size to accommodate all commercial type bins plus clearances around the bins for manoeuvring and cleaning;
- 16.2.3 provide with a suitable hose-cock (with backflow prevention) and wash-down area which must be drained to the sewer and fitted with an approved stormwater diversion valve arrangement;
- 16.2.4 surrounded by fencing that obstructs from view the contents of the bin compound from any public place; and
- 16.2.5 kept in a clean, tidy condition.

16.3 No waste material (for example: pallets, cardboard) is to be stored external to the waste storage areas.

16.4 The development must not be serviced by waste vehicles between 1800 and 0600 hours.

- 16.5 Prior to the issue of any further Development Permits required by this approval, an Acoustic Assessment must be submitted for Council's endorsement. The Acoustic Assessment must take into account the noise impacts from the development on adjoining sites and make recommendations in relation to mitigation measures to achieve compliance with acoustic quality objectives specified in the most recent edition of the *Environmental Protection (Noise) Policy* and noise monitoring is conducted in accordance with the most recent edition of Department of Environment and Heritage Protection Noise Measurement Manual. All recommendations for noise mitigation must be implemented and maintained to council's satisfaction, prior to the commencement of the use.

## ADVISORY NOTES

**NOTE 1. Aboriginal Cultural Heritage**

It is advised that under *Section 23 of the Aboriginal Cultural Heritage Act*, a person who carries out an activity must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal Cultural Heritage (the "cultural heritage duty of care"). Maximum penalties for breaching the duty of care are listed in the Aboriginal Cultural Heritage legislation. The information on Aboriginal Cultural Heritage is available on the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs website: [www.datsima.qld.gov.au](http://www.datsima.qld.gov.au)

**NOTE 2. Asbestos Removal**

Any demolition and/or removal works involving asbestos materials must be undertaken in accordance with the requirements of the *Workplace Health and Safety* legislation and *Public Health Act 2005*.

**NOTE 3. General Environmental Duty**

General environmental duty under the *Environmental Protection Act* prohibits unlawful environmental nuisance caused by noise, aerosols, particles dust, ash, fumes, light, odour or smoke beyond the boundaries of the property during all stages of the development including earthworks, construction and operation.

**NOTE 4. General Safety Of Public During Construction**

The *Workplace Health and Safety Act* and *Manual of Uniform Traffic Control Devices* must be complied with in carrying out any construction works, and to ensure safe traffic control and safe public access in respect of works being constructed on a road.

**NOTE 5. Licensable Activities**

Should an activity licensable by Rockhampton Regional Council be proposed for the premises, Council's Environment and Public Health Unit should be consulted to determine whether any approvals are required. Such activities may include food premise uses, storage of flammable and combustible liquid and environmentally relevant activities. Approval for such activities is required before 'fitout' and operation.

**NOTE 6. Adopted Infrastructure Charges Notice**

This application is subject to infrastructure contributions in accordance with Council policies. The contributions are presented on an Adopted Infrastructure Charges Notice.

## Attachment 2 - Appeal Rights

PLANNING ACT 2016

The following is an extract from the *Planning Act 2016* (Chapter 6)

### ***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&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.

(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 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) 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 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, 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 rules of the P&E Court.

# Appeal Rights

PLANNING ACT 2016

## Schedule 1

### Appeals section 229

#### 1 Appeal rights and parties to appeals

- (1) Table 1 states the matters that may be appealed to—(a) the P&E court; or (b) a tribunal.
- (2) However, table 1 applies to a tribunal only if the matter involves—
  - (a) the refusal, or deemed refusal of a development application, for—
    - (i) a material change of use for a classified building; or
      - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
    - (b) a provision of a development approval for—
      - (i) a material change of use for a classified building; or
  - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
    - (c) if a development permit was applied for—the decision to give a preliminary approval for—
      - (i) a material change of use for a classified building; or
        - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
  - (d) a development condition if—
    - (i) the development approval is only for a material change of use that involves the use of a building classified under the Building Code as a class 2 building; and
      - (ii) the building is, or is proposed to be, not more than 3 storeys; and
        - (iii) the proposed development is for not more than 60 sole-occupancy units; or
  - (e) a decision for, or a deemed refusal of, an extension application for a development approval that is only for a material change of use of a classified building; or
  - (f) a decision for, or a deemed refusal of, a change application for a development approval that is only for a material change of use of a classified building; or
  - (g) a matter under this Act, to the extent the matter relates to—
    - (i) the Building Act, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission; or
      - (ii) the Plumbing and Drainage Act, part 4 or 5; or
  - (h) a decision to give an enforcement notice in relation to a matter under paragraphs (a) to (g); or
  - (i) a decision to give an infrastructure charges notice; or
  - (j) the refusal, or deemed refusal, of a conversion application; or
  - (k) a matter that, under another Act, may be appealed to the tribunal; or
  - (l) a matter prescribed by regulation.
- (3) Also, table 1 does not apply to a tribunal if the matter involves—
  - (a) for a matter in subsection (2)(a) to (d)—
    - (i) a development approval for which the development application required impact assessment; and
    - (ii) a development approval in relation to which the assessment manager received a properly made submission for the development application; or
  - (b) a provision of a development approval about the identification or inclusion, under a variation approval, of a matter for the development.
- (4) Table 2 states the matters that may be appealed only to the P&E Court.
- (5) Table 3 states the matters that may be appealed only to the tribunal.
- (6) In each table—
  - (a) column 1 states the appellant in the appeal; and
  - (b) column 2 states the respondent in the appeal; and
  - (c) column 3 states the co-respondent (if any) in the appeal; and
  - (d) column 4 states the co-respondents by election (if any) in the appeal.
- (7) If the chief executive receives a notice of appeal under section 230(3)(f), the chief executive may elect to be a co-respondent in the appeal.

**Table 1**  
**Appeals to the P&E Court and, for certain matters, to a tribunal**

Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant	The assessment manager	If the appeal is about a concurrence agency's referral response—the	1 A concurrence agency that is not a co-respondent 2 If a chosen Assessment manager is the respondent—

**Table 1**  
**Appeals to the P&E Court and, for certain matters, to a tribunal**

		concurrence agency	the prescribed assessment manager 3 Any eligible advice agency for the application 4 Any eligible submitter for the application
<p><b>2. Change applications</b>  An appeal may be made against—  (a) a responsible entity's decision for a change application, other than a decision made by the P&amp;E court; or  (b) a deemed refusal of a change application.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 The applicant 2 If the responsible entity is the assessment manager—an affected entity that gave a pre-request notice or response notice	The responsible entity	If an affected entity starts the appeal—the applicant	1 A concurrence agency for the development application 2 If a chosen assessment manager is the respondent—the prescribed assessment manager 3 A private certifier for the development application 4 Any eligible advice agency for the change application 5 Any eligible submitter for the change application
<p><b>3. Extension applications</b>  An appeal may be made against—  (a) the assessment manager's decision about an extension application; or  (b) a deemed refusal of an extension application.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 1 The applicant 2 For a matter other than a deemed refusal of an extension application – a concurrence agency, other than the chief executive, for the application	The assessment manager	If a concurrence agency starts the appeal – the applicant	If a chosen assessment manager is the respondent – the prescribed assessment manager
<p><b>4. Infrastructure charges notices</b>  An appeal may be made against an infrastructure charges notice on 1 or more of the following grounds</p> <p>a) The notice involved an error relating to –  (i) The application of the relevant adopted charge; or</p> <p>Examples of errors in applying an adopted charge –</p> <ul style="list-style-type: none"> <li>• The incorrect application of gross floor area for a non-residential development</li> <li>• Applying an incorrect 'use category', under a regulation, to the development <ul style="list-style-type: none"> <li>(i) The working out of extra demands, for section 120; or</li> <li>(ii) An offset or refund; or</li> </ul> </li> </ul> <p>b) There was no decision about an offset or refund; or</p> <p>c) If the infrastructure charges notice states a refund will be given – the timing for giving the refund; or</p> <p>d) The amount of the charge is so unreasonable that no reasonable relevant local government could have imposed the amount.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent	Column 4 Co-respondent by election

<b>Table 1</b> <b>Appeals to the P&amp;E Court and, for certain matters, to a tribunal</b>			
		(if any)	(if any)
The person given the Infrastructure charges notice	The local government that gave the infrastructure charges notice	-	-
<b>5. Conversion applications</b> An appeal may be made against— (a) the refusal of a conversion application; or (b) a deemed refusal of a conversion application.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant	The local government to which the conversion application was made	-	-
<b>6. Enforcement notices</b> An appeal may be made against the decision to give an enforcement notice.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The person given the enforcement notice	The enforcement authority	-	If the enforcement authority is not the local government for the premises in relation to which the offence is alleged to have happened—the local government

<b>Table 2</b> <b>Appeals to the P&amp;E Court only</b>			
<b>1. Appeals from tribunal</b> An appeal may be made against a decision of a tribunal, other than a decision under section 252, on the ground of— (a) an error or mistake in law on the part of the tribunal; or (b) jurisdictional error.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A party to the proceedings for the decision	The other party to the proceedings for the decision	-	-
<b>2. Eligible submitter appeals</b> An appeal may be made against the decision to give a development approval, or an approval for a change application, to the extent that the decision relates to— (a) any part of the development application for the development approval that required impact assessment; or (b) a variation request.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 For a development application—an eligible submitter for the development application 2 For a change application—an eligible submitter for	1 For a development application—the assessment manager 2 For a change application—the responsible entity	1 The applicant 2 If the appeal is about a concurrence agency's referral response—the concurrence agency	Another eligible submitter for the application

**Table 2**  
**Appeals to the P&E Court only**

the change application			
3. Eligible submitter and eligible advice agency appeals			
<p>An appeal may be made against a provision of a development approval, or failure to include a provision in the development approval, to the extent the matter relates to—</p> <ul style="list-style-type: none"> <li>(a) any part of the development application or the change application, for the development approval, that required impact assessment; or</li> <li>(b) a variation request.</li> </ul>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 For a development application—an eligible submitter for the development application 2 For a change application—an eligible submitter for the change application 3 An eligible advice agency for the development application or change application	1 For a development application—the assessment manager 2 For a change application—the responsible entity	1 The applicant 2 If the appeal is about a concurrence agency's referral response—the concurrence agency	Another eligible submitter for the application
4. Compensation claims			
<p>An appeal may be made against—</p> <ul style="list-style-type: none"> <li>(a) a decision under section 32 about a compensation claim; or</li> <li>(b) a decision under section 265 about a claim for compensation; or</li> <li>(c) a deemed refusal of a claim under paragraph (a) or (b).</li> </ul>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person dissatisfied with the decision	The local government to which the claim was made	-	-
5. Registered premises			
<p>An appeal may be made against a decision of the Minister under chapter 7, part 4.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 A person given a decision notice about the decision 2 If the decision is to register premises or renew the registration of premises—an owner or occupier of premises in the affected area for the registered premises who is dissatisfied with the decision	The Minister	-	If an owner or occupier starts the appeal – the owner of the registered premises

**Table 2**  
**Appeals to the P&E Court only**

**6. Local laws**

An appeal may be made against a decision of a local government, or conditions applied, under a local law about—

- (a) the use of premises, other than a use that is the natural and ordinary consequence of prohibited development; or
- (b) the erection of a building or other structure.

Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who— (a) applied for the decision; and (b) is dissatisfied with the decision or conditions.	The local government	-	-

**Table 3**  
**Appeals to the tribunal only**

**1. Building advisory agency appeals**

An appeal may be made against giving a development approval for building work to the extent the building work required code assessment against the building assessment provisions.

Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A building advisory agency for the development application related to the approval	The assessment manager	The applicant	1 A concurrence agency for the development application related to the approval 2 A private certifier for the development application related to the approval

**3. Certain decisions under the Building Act and the Plumbing and Drainage Act**

An appeal may be made against a decision under—

- (a) the Building Act, other than a decision made by the Queensland Building and Construction Commission; or
- (b) the Plumbing and Drainage Act, part 4 or 5.

Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who received, or was entitled to receive, notice of the decision	The person who made the decision	-	-

**4. Local government failure to decide application under the Building Act**

An appeal may be made against a local government's failure to decide an application under the Building Act within the period required under that Act.

Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who was entitled to receive, notice of the decision	The local government to which the application was made	-	-