



Decision Notice Approval

Planning Act Form 1 (version 1.2 effective 7 February 2020) made under section 282 of the Planning Act 2016 for a decision notice (approval) under section 63(2) of the Planning Act 2016

Application number:	D/28-2021	Contact:	Bevan Koelmeyer
Notice Date:	30 July 2021	Contact Number:	07 4936 8099

APPLICANT DETAILS

Name:	Frenchville Sports Club		
Postal address:	C/- Reel Planning		
Phone no:	Mobile no:	Email:	

I acknowledge receipt of the above application on 10 March 2021 and confirm the following:

DEVELOPMENT APPROVAL

Development Permit for a Material Change of Use and Operational Works for a Club (extension to trading hours) and Operational Works for an Advertising Device (freestanding sign)
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PROPERTY DESCRIPTION

Street address:	268 Eldon Street, Berserker and 105 Clifton Street, Berserker
Real property description:	Lots 20 and 21 on SP270237

OWNERS DETAILS

Name:	The Frenchville Sports Club Limited
Postal address:	
Name:	Rockhampton Regional Council
Postal address:	
Dear Frenchville Sports Club	
I advise that, on 27 July 2021 the above development application was:	
<input checked="" type="checkbox"/> 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.	

1. DETAILS OF THE APPROVAL

The following approvals are given:

	Development Permit	Preliminary Approval
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Development assessable under the planning scheme, superseded planning scheme, a temporary local planning instrument, a master plan or a preliminary approval which includes a variation approval - Material change of use	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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2. CONDITIONS

This approval is subject to the conditions in Attachment 1.

3. FURTHER DEVELOPMENT PERMITS REQUIRED

Please be advised that the following development permit is required to be obtained before the development can be carried out:

Type of development permit required	Subject of the required development permit
Building Works	

4. SUBMISSIONS

Properly made submissions **were** /**were not** made in relation to the application.

There was one (1) properly made submission received from the following submitter;

Name of principal submitter	Residential or business address	Electronic address (if provided)
1. Jacqui and James Sheehan	256 Berserker Street, Berserker	jacqui_sheehan@hotmail.com sheehan_james@outlook.com

5. REFERRAL AGENCIES

NIL

6. THE APPROVED PLANS

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

Plan/Document Name	Prepared by	Date	Reference No.	Version /Issue
Proposed Site Plan (amended by Reel Planning to include location of advertising device)	Paynter Dixon	5 March 2021	SD 1.01	T1
Assembly	Bringing spaces to life	3 March 2021	-	A

7. CURRENCY PERIOD FOR THE APPROVAL (s.85 of the *Planning Act*)

The standard currency periods stated in section 85 of *Planning Act 2016* apply to each aspect of development in this approval, if not stated in the conditions of approval attached.

8. STATEMENT OF REASONS

Description of the development	The proposed development is for a Material Change of Use for a Club (extension to trading hours) and Operational Works for an Advertising Device (Freestanding Sign)
Reasons for Decision	<p>a) The Club's extended trading hours will not adversely impact on the amenity of the surrounding residential area;</p> <p>b) 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; and</p>

	c) On balance, the application should be approved because the circumstances favour Council exercising its discretion to approve the application even though the development does not comply with an aspect of the assessment benchmarks.	
Assessment Benchmarks	<p>The proposed development was assessed against the following assessment benchmarks:</p> <ul style="list-style-type: none"> • Strategic Framework; • Sport and Recreation Zone Code; • Acid Sulfate Soils Overlay Code; • Airport Environs Overlay Code; • Access, Parking And Transport Code; • Advertising Devices Code; • Filling and Excavation Code; • Landscape Code; • Stormwater Management Code; • Waste Management Code; and • Water and Sewer Code. 	
Compliance with assessment benchmarks	The development was assessed against all of the assessment benchmarks listed above and complies with all of these with the exceptions listed below.	
	Assessment Benchmark	Reasons for the approval despite non-compliance with benchmark
	Sport and Recreation Zone Code	<p><u>PO9</u></p> <p>The proposed development does not achieve Acceptable Outcome 9.1, as the proposed operating hours for the Frenchville Sports Club will extend beyond 22:00. The proposal seeks to extend the operating hours for both the bar and gaming areas, with these activities to be conducted wholly indoors within the existing club building.</p> <p>The entrance to the main club building is separated from nearby residences by the car park and adjoining roads, with the nearest residence approximately 50 metres from the entrance. Subsequently, there is limited opportunity for overlooking to nearby residences with residences to the west of the Club also screened by existing landscaping established along this property boundary.</p> <p>The extension to trading hours is not expected to generate any further noise or amenity impacts to the surrounding area. As the activities are conducted wholly indoors, the only noise source occurring from the use is anticipated to potentially come from patrons leaving the facility, which is not expected to create adverse noise impacts for surrounding residences. In this regard, it is also noted that the extended trading hours will allow patrons to have a longer period of time to gradually disperse from the premises, which may assist to reduce noise impacts from this source.</p> <p>As such, the proposed development is taken to comply with the Performance Outcome.</p>
Matters raised in submissions	Issue	How matter was dealt with
	The location of the proposed Advertising Device	The submission identified concerns with the location of the proposed advertising device “in” a residential zone, and its location on Berserker Street. However, the subject site is designated in the Sport and Recreation Zone and a Freestanding Sign. This type of sign is consistent within this zone designation where the sign is demonstrated

		<p>to not compromise the visual amenity or the safety of the transport network.</p> <p>While the surrounding area is predominantly designated in the Low Density Residential Zone, the positioning of the sign is not expected to cause an adverse impact to nearby residences. Council has included several conditions, which will mitigate any potential impacts such as maximum luminance restrictions and minimum dwell times per advertisement. Furthermore, the sign will be setback three (3) metres from the property boundaries, the base of the sign will be landscaped with plants and the sign will only have an advertising area of five (5) square metres. Additionally, the sign will only be used to advertise activities associated with the Club.</p> <p>The submission also states that Berserker Street was incorrectly identified as a 'Major Urban Collector' road. However, this is not consistent with Council's road hierarchy mapping. Additionally, the sign's position on the corner of Berserker and Clifton Streets is not expected to cause adverse impacts to traffic movements or pedestrians. Council has included specific conditions to ensure that any advertising does not mimic traffic signals, invite traffic to move contrary to any traffic control devices, or turn where there is fast moving traffic.</p>
	Brightness and hours of operation for the proposed Advertising Device	<p>The submission expressed concern with the brightness of the proposed advertising device and the potential impact this may cause for nearby residences.</p> <p>Council has included specific conditions which will restrict illuminance levels (refer to condition 11.1) to comply with the requirements outlined in the current planning scheme which is appropriate for signs within the Sport and Recreation Zone. This condition will ensure compliance is achieved with Acceptable Outcome 2.2 under the Advertising Devices Code relating to illuminated advertising devices. Furthermore, the planning scheme does not restrict operating hours for advertising devices.</p>
	The extended trading hours for the sale of liquor, potentially increasing crime and damage to surrounding residential properties	<p>The submission expressed concerns regarding the increased potential for crime with the proposed extended trading hours for the sale of liquor.</p> <p>The proposed use of the premises for a Club is consistent with the intent of the Sport and Recreation Zone. While the extended trading hours for the sale of liquor, does not comply with Acceptable Outcome 9.1 of the zone code, the activity will be conducted wholly indoors. Furthermore, the club will be required to undertake a liquor licensing application with the Office of Liquor and Gaming. As part of this application, a Community Impact Assessment will need to be provided for the implementation of various managerial and physical measures to manage potential safety issues such as public disorder, vandalism and public drunkenness. These safety measures may include: regular staff meetings, regular training, crowd controllers, ensuring an approved manager is available at all trading times, closed-circuit television is provided at all entrances and exits from the club, and sufficient lighting is provided at all entrances, exits and within the club's car-parking area.</p>
	Alleged non-compliance with public notification requirements of the DA rules	<p>Section 17.1 (b) of the DA Rules states that the applicant must give public notice of the application by "giving notice to adjoining owners of all lots adjoining the premises the subject of the application". An adjoining lot means a lot, which shares a common boundary with the premise. The only premise which shares a common boundary with the development site is Lot 1 on RP605444 located at 272 Eldon Street, Berserker. A letter notifying of the subject development application was sent to the owner of this lot.</p>
Matters prescribed by	<ul style="list-style-type: none"> The <i>Rockhampton Region Planning Scheme 2015</i> (version 2.1); and 	

regulation	<ul style="list-style-type: none"> The common material, being the material submitted with the application.
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9. APPEAL RIGHTS

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*. 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 an eligible submitter

An eligible submitter for a development application may appeal to the Planning and Environment Court against the decision to approve the application, to the extent the decision relates to:

- any part of the development application 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 out 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.

11. ASSESSMENT MANAGER

Name: Tarnya Fitzgibbon COORDINATOR DEVELOPMENT ASSESSMENT	Signature:	Date: 30 July 2021
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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



Attachment 1 – Part 1

Rockhampton Regional Council Conditions

Planning Act 2016

Part A - Material Change of Use for a Club (Extension to Trading Hours)

1.0 ADMINISTRATION

- 1.1 The Developer and their employee, agent, contractor or invitee is responsible for ensuring compliance with the conditions of this development approval.
- 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 may be fulfilled in whole or in part by a delegate appointed for that purpose by the Council.
- 1.3 All conditions, works, or requirements of this development approval must be undertaken and completed:
 - 1.3.1 to Council’s satisfaction;
 - 1.3.2 at no cost to Council; and
 - 1.3.3 prior to the commencement of the use, unless otherwise stated.
- 1.4 Infrastructure requirements of this development approval must be contributed to the relevant authorities, where applicable, at no cost to Council, prior to the commencement of the use, unless otherwise stated.
- 1.5 All works must be designed, constructed and maintained in accordance with the relevant Council policies, guidelines and standards, unless otherwise stated.
- 1.6 All engineering drawings/specifications, design and construction works must be in accordance with the requirements of the relevant *Australian Standards* and must be approved, supervised and certified by a Registered Professional Engineer of Queensland.
- 1.7 Lot 2 on RP605044 and Lot 21 on SP270237 must be amalgamated and registered as one lot prior to the commencement of the use.

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 any condition of this development approval:

Plan/Document Name	Prepared by	Date	Reference No.	Version/ Issue
Proposed Site Plan (amended by Reel Planning to include location of advertising device)	Paynter Dixon	5 March 2021	SD 1.01	T1

- 2.2 Where there is any conflict between the conditions of this development approval and the details shown on the approved plans and documents, the conditions of this development approval must prevail.

3.0 ASSET MANAGEMENT

- 3.1 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 undertaken and completed at no cost to Council.

3.2 Any damage to existing stormwater, water supply and sewerage infrastructure, kerb and channel, pathway or roadway (including removal of concrete slurry from public land and Council infrastructure), that occurs while any works are being carried out in association with this development approval must be repaired at full cost to the developer. This includes the reinstatement of any existing traffic signs or pavement markings that may have been removed or damaged.

4.0 ENVIRONMENTAL HEALTH

4.1 Any lighting devices associated with the development, such as sensory lighting, must be positioned on the development 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"*.

4.2 Noise emitted from the activity must not cause an environmental nuisance.

4.3 When requested by Council, noise monitoring must be undertaken and recorded within three (3) months, to investigate any genuine complaint of nuisance caused by noise. The monitoring data, an analysis of the data and a report, including noise mitigation measures, must be provided to Council within fourteen (14) days of the completion of the investigation. Council may require any noise mitigation measures identified in the assessment to be implemented within appropriate timeframes. Noise measurements must be compared with the acoustic quality objectives specified in the most recent edition of the *Environmental Protection (Noise) Policy 2019*.

4.4 Operations on the site must have no significant impact on the amenity of adjoining premises or the surrounding area due to the emission of light, noise, odour or dust.

5.0 OPERATING PROCEDURES

5.1 The hours of operation for the bar area (including the sale of liquor) must be limited to 1000 to 0200, from Monday to Sunday including Public Holidays.

5.2 The hours of operation for the gaming room area must be limited to 1000 to 0400, from Monday to Sunday including Public Holidays.

ADVISORY NOTES

NOTE 1. Aboriginal Cultural Heritage

It is advised that under section 23 of the *Aboriginal Cultural Heritage Act 2003*, 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 Partnerships website: www.datsip.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 *Work Health and Safety Act 2011* and *Public Health Act 2005*.

NOTE 3. General Environmental Duty

General environmental duty under the *Environmental Protection Act 1994* prohibits unlawful environmental nuisance caused by noise, aerosols, particles, dust, ash, fumes, light, odour or smoke beyond the boundaries of the development site during all stages of the development including earthworks, construction and operation.

NOTE 4. General Safety Of Public During Construction

The *Work Health and Safety Act 2011* 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.

Part B - Operational Works for an Advertising Device (Freestanding Sign)

6.0 ADMINISTRATION

- 6.1 The Developer is responsible for ensuring compliance with the Conditions of the approval by an employee, agent, contractor or invitee of the Developer.
- 6.2 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.
- 6.3 All conditions of this approval must be undertaken and completed to the satisfaction of Council, at no cost to Council.
- 6.4 The following further development permits are required prior to the commencement of any works on the site:
- 6.4.1 Building Works.
- 6.5 Unless otherwise stated, all works must be designed, constructed and maintained in accordance with the relevant Council policies, guidelines and standards.
- 6.6 The existing advertising device (freestanding sign) must be removed, as shown on the approved plans (refer to condition 7.1).

7.0 APPROVED PLANS AND DOCUMENTS

- 7.1 The approved advertising device must be completed and maintained generally in accordance with the approved drawings and documents, except where amended by the conditions of this permit.

Plan/Document Name	Prepared by	Date	Reference No.	Version/ Issue
Proposed Site Plan (amended by Reel Planning to include location of advertising device)	Paynter Dixon	5 March 2021	SD 1.01	T1
Assembly	Bringing spaces to life	3 March 2021	-	A

- 7.2 A set of the above approved plans are returned to you as the Consultant. The Consultant is to supply one (1) Approved set to the contractor to be retained on site at all times during construction.
- 7.3 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.
- 7.4 Where conditions require the above plans or documents to be amended, the revised document(s) must be submitted for endorsement by Council prior to the submission of a Development Application for Building Works.
- 7.5 Any proposed minor changes to the approved stamped plans during the works will be generally considered minor amendments and require Council’s approval. The stamped amended plans and a covering letter will be forwarded to the applicant.
- 7.6 The sign-face area must not exceed five (5) square metres in size, in accordance with the approved plans (refer to condition 7.1).

8.0 OPERATING PROCEDURES

- 8.1 All advertising devices must only display or advertise a matter associated with the primary purpose for which the premises are used, or the purpose stated in this approval.
- 8.2 All text and images displayed on the approved advertising device:
 - 8.2.1 must be static;
 - 8.2.2 must not imitate a traffic control device, move contrary to any traffic control device or include traffic instructions (for example 'stop'); and
 - 8.2.3 must not involve moving parts or flashing lights.
- 8.3 Any lighting devices associated with the advertising device, such as sensory lighting, must be positioned on the site and shielded so as not to cause glare or other nuisance to nearby residents or motorists. Night lighting must be designed, constructed and operated in accordance with '*Australian Standard AS4282 – Control of the obtrusive effects of outdoor lighting*' and '*Civil Aviation Safety Authority (CASA) Guidelines: Lighting in the vicinity of aerodromes: Advice to lighting designers*'.

9.0 DIGITAL SCREEN DISPLAY FEATURES

- 9.1 The digital display screen must incorporate an automatic error detection system which will turn off the screen display or display a blank screen should the screen malfunction.
- 9.2 The display screen must incorporate a minimum of two (2) automated ambient light sensors capable of supporting a minimum of five (5) levels of stepped dimming to ensure display screen luminance can adjust automatically in response to surrounding ambient light conditions from dark of night to fully sunlit conditions.
- 9.3 The display screen must provide for on-site control, operation, configuration and diagnosis of the screen display.
- 9.4 Messages must remain static for a minimum dwell time of eight (8) seconds, and are not to scroll across the screen or incorporate flashing, blinking, revolving, pulsating, high contrast or rotating effects animation.
- 9.5 Each change of advertisement is to be completed instantaneously (i.e. within 0.5 of a second).

10.0 DIGITAL SCREEN ADVERTISEMENTS AND MOVEMENT

- 10.1 The display screen must not be split to display multiple advertisements on the one (1) display screen.
- 10.2 Advertisements must not display text, photographs or symbols depicting, mimicking or that could be reasonably interpreted as a traffic control device.
- 10.3 Advertisements must not invite traffic to move contrary to any traffic control device, or turn where there is fast moving traffic.
- 10.4 Advertisements must only promote a single, self-contained advertising message that is clear, succinct, and legible. The use of text components in a sequential manner, whereby text refers to or is reliant on previous or successive screen displays in order to convey an advertising message is not permitted.

Note: An advertising message refers to the main point the advertisement is attempting to convey to its target audience. This condition seeks to ensure that vehicle drivers in particular are not required to spend an excessive amount of time reading and interpreting advertisements.

- 10.5 Changeover animation effects such as 'fade', 'zoom', or 'fly-in' between advertisements must not be used.
- 10.6 A blank black, white, or any coloured screen must not be displayed between advertisements.
- 10.7 Advertisements that incorporate moving visual images, such as videos or animations must not be displayed.

10.8 Advertising devices must not be capable of playing audio nor be synchronised with any outdoor sound system utilised for advertising purposes.

11.0 LUMINANCE

11.1 Luminance levels of the advertising device must not exceed the applicable levels listed in Table 1 below.

Table 1: Luminance levels for Advertising Devices

(Source: OMA)

Maximum luminance for lighting conditions (Zone 3)	
Full Sun on Sign face	Maximum Output
Day Time (full light conditions)	6000-7000 cd/m ²
Day time (dawn, dusk and inclement weather)	600 cd/m ²
Night Time	300 cd/m ²

Note: Zone 3 - low levels of off street ambient lighting, i.e. most residential areas, rural areas.

12.0 ASSET MANAGEMENT

12.1 Any damage to, or alterations necessary, to electricity, telephone, water mains, sewerage mains, stormwater drains, and/or public utility installations resulting from the development or in connection with the development, must be undertaken immediately, at no cost to Council, and completed within the following timeframes:

12.1.1 where damage causes a hazard to pedestrian/traffic safety or interrupts a community service, immediately; or

12.1.2 as soon as reasonably possible as agreed with Council.

13.0 ADVERTISING DEVICE CONSTRUCTION AND MAINTENANCE

13.1 The area surrounding the base of the sign must be landscaped with plants, which have a mature height of 1.2 metres above ground level. This landscaping area must be subject to an ongoing watering, maintenance and replanting programme.

13.2 Council reserves the right for uninterrupted access to the site at all times during construction.

13.3 All Construction work and other associated activities are permitted only between 0630 hours and 1800 hours Monday to Saturday. No work is permitted on Sundays or public holidays. All requirements of the *Environmental Protection Act 1994* and the *Environmental Protection Regulation 2019* must be observed at all times.

13.4 All construction materials, waste, waste skips, machinery and contractors' vehicles must be located and stored or parked within the site.

13.5 Any proposed works within the vicinity (or zone of influence) of existing Council infrastructure will not adversely affect the integrity of the infrastructure. Any restoration works required on existing Council infrastructure as a result of proposed works will be at the developer's expense.

13.6 The sign must be designed and certified by a Registered Professional Engineer of Queensland and constructed in accordance with the requirements of the Queensland Development Code and the Building Code of Australia.

13.7 All conduits, wiring, switches or other control apparatus installed on an Advertising Device must be concealed from general view, with control apparatus secured in a manner to prevent unauthorised entry and display setting tampering.

13.8 All electrical services and systems must comply with *Australian and New Zealand Standard AS/NZS 3000:2007* – "Electrical Installations".

- 13.9 All advertising devices must be maintained at all times on the premises by the owner of the premises to the same standard as it was when it was installed, and
be maintained in a safe, clean, condition that does not adversely impact the visual amenity
- 13.10 The Advertising Device must not operate between 10:00PM and 6:00AM at any time.

ADVISORY NOTES

NOTE 5. Aboriginal Cultural Heritage Act, 2003

It is advised that under Section 23 of the *Aboriginal Cultural Heritage Act 2003*, 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 Partnerships website: www.datsip.qld.gov.au

NOTE 6. Asbestos Removal

Any demolition and/or removal works involving asbestos materials must be undertaken in accordance with the requirements of the *Work Health and Safety Act 2011* and the *Public Health Act 2005*.

NOTE 7. General Environmental Duty

General environmental duty under the *Environmental Protection Act 1994* prohibits unlawful environmental nuisance caused by noise, aerosols, particles, dust, ash, fumes, light, odour or smoke beyond the boundaries of the development site during all stages of the development including earthworks, construction and operation.

NOTE 8. General Safety Of Public During Construction

The *Work Health and Safety Act 2011* 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.

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.

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**

1. Development applications An appeal may be made against—			
(a) the refusal of all or part of the development application; or			
(b) the deemed refusal of the development application; or			
(c) a provision of the development approval; or			
(d) if a development permit was applied for—the decision to give a preliminary approval.			
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	1 A concurrence agency that is not a co-respondent

Table 1 Appeals to the P&E Court and, for certain matters, to a tribunal			
		agency's referral response—the concurrence agency	2 If a chosen Assessment manager is the respondent—the prescribed assessment manager 3 Any eligible advice agency for the application 4 Any eligible submitter for the application
2. Change applications An appeal may be made against— (a) a responsible entity's decision for a change application, other than a decision made by the P&E court; or (b) a deemed refusal of a change application.			
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
3. Extension applications 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.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
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

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

<p>4. Infrastructure charges notices 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 –</p> <p>(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"> • The incorrect application of gross floor area for a non-residential development • Applying an incorrect ‘use category’, under a regulation, to the development <p>(i) The working out of extra demands, for section 120; or</p> <p>(ii) An offset or refund; or</p> <p>b) The 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 (if any)	Column 4 Co-respondent by election (if any)
The person given the Infrastructure charges notice	The local government that gave the infrastructure charges notice	-	-
<p>5. Conversion applications An appeal may be made against—</p> <p>(a) the refusal of a conversion application; or</p> <p>(b) a deemed refusal of a conversion application.</p>			
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	-	-
<p>6. Enforcement notices An appeal may be made against the decision to give an enforcement notice.</p>			
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

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

<p>1. Appeals from tribunal An appeal may be made against a decision of a tribunal, other than a decision under section 252, on the ground of—</p> <p>(a) an error or mistake in law on the part of the tribunal; or</p> <p>(b) jurisdictional error.</p>			
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	-	-

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

<p>2. Eligible submitter appeals 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.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
<p>1 For a development application—an eligible submitter for the development application 2 For a change application—an eligible submitter for the change application</p>	<p>1 For a development application—the assessment manager 2 For a change application—the responsible entity</p>	<p>1 The applicant 2 If the appeal is about a concurrence agency's referral response—the concurrence agency</p>	<p>Another eligible submitter for the application</p>
<p>3. Eligible submitter and eligible advice agency appeals 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— (a) any part of the development application or the change application, for the development approval, that required impact assessment; or (b) a variation request.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
<p>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</p>	<p>1 For a development application—the assessment manager 2 For a change application—the responsible entity</p>	<p>1 The applicant 2 If the appeal is about a concurrence agency's referral response—the concurrence agency</p>	<p>Another eligible submitter for the application</p>
<p>4. Compensation claims An appeal may be made against— (a) a decision under section 32 about a compensation claim; or (b) a decision under section 265 about a claim for compensation; or (c) a deemed refusal of a claim under paragraph (a) or (b).</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
<p>A person dissatisfied with the decision</p>	<p>The local government to which the claim was made</p>	<p>-</p>	<p>-</p>
<p>5. Registered premises</p>			

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

An appeal may be made against a decision of the Minister under chapter 7, part 4.			
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
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)

**Table 3
Appeals to the tribunal only**

A person who received, or was entitled to receive, notice of the decision	The person who made the decision	-	-
<p>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.</p>			
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	-	-