



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/91-2020	Contact:	Bevan Koelmeyer
Notice Date:	11 June 2021	Contact Number:	07 4936 8099

APPLICANT DETAILS

Name:	A. Clarke		
Postal address:	C/- Capricorn Survey Group (CQ) Pty Ltd		
Phone no:	Mobile no:	Email:	

I acknowledge receipt of the above application on 24 August 2020 and confirm the following:

DEVELOPMENT APPROVAL

Development Permit for a Material Change of Use for a Dwelling House (Building Envelope)

PROPERTY DESCRIPTION

Street address:	625 Montgomerie Street, Lakes Creek
Real property description:	Lots 4, 14 and 15 on RP603374

OWNER DETAILS

Name:	A R Clarke
Postal address:	
Dear A. Clarke	
I advise that, on 8 June 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
Development assessable under the planning scheme, superseded planning scheme, a temporary local planning instrument, a master plan or a preliminary approval which includes a variation approval - Material change of use	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"/>

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	Access Works
Building Works	
Plumbing and Drainage Works	

4. SUBMISSIONS

Properly made submissions were made in relation to the application.

There were two (2) properly made submissions received from the following submitter(s);

Name of principal submitter	Residential or business address	Electronic address (if provided)
1. M Conway	23 Dorly Street, Lakes Creek QLD 4701	Matthias.conway@hotmail.com
2. S Goff	27 Dorly Street, Lakes Creek QLD 4701	

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:

Drawing/report title	Prepared by	Date	Reference number	Revision/Version
Site Plan (Building Location Envelope)	Capricorn Survey Group	21 February 2020	6575-01-MCU	A
Proposed Access	Austin Grillmeier	5 July 2018	17-083 (Sheet 1)	B
Bushfire Hazard Assessment and Management Plan	Denley Environmental	15 December 2020	40931	-
Bushfire Hazard Assessment and Management Plan (Asset Protection Zones)	Denley Environmental	15 February 2021	-	-
Vegetation Survey and Assessment of Impacts	Denley Environmental	23 March 2014	40700	1

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 Dwelling House (Building Envelope)	
Reasons for Decision	<p>a) The proposed use does not compromise the strategic framework in the <i>Rockhampton Region Planning Scheme 2015</i> (version 2.1);</p> <p>b) The development is not anticipated to be detrimental to the existing operation or any potential future expansion of High Impact Industry land uses located in the surrounding area which are recognised as key, regionally significant, economic assets;</p> <p>c) 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> <p>d) 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.</p>	
Assessment Benchmarks	<p>The proposed development was assessed against the following assessment benchmarks:</p> <ul style="list-style-type: none"> • Strategic Framework; • Rural zone code; • Access, parking and transport code; • Landscape code; • Stormwater management code; • Waste management code; • Water and sewer code; • Airport environs overlay code; • Biodiversity areas overlay code; • Bushfire hazard overlay; • Special management area overlay; and • Steep land overlay 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
	Rural Zone Code (PO3)	<p>The development does not meet Acceptable Outcome 3.1(a), which recommends that a Dwelling House be setback a minimum of 20 metres from all property boundaries. Alternatively, the Dwelling House is proposed to be setback approximately eight (8) metres from the site's northern boundary.</p> <p>However, the subject site is not considered a typical rural lot given its small size and its location in between rural residential and environmental conservation land. A number of overlay constraints including steep slopes and bushfire hazard affects the subject site. Due to these constraints, the applicant has proposed to locate the Dwelling House in a relatively flat part of the site.</p>

		<p>Despite the dwelling's lesser setback to the northern boundary, there are no other residences located within 200 metres of its proposed location. In conjunction, it is not anticipated that a Dwelling House could be established within at least 50 metres of the subject dwelling. Additionally, there is a substantial amount of State protected vegetation located in between the building envelope and these external properties to the north which is expected to provide an effective visual buffer.</p>
	<p>Bushfire Hazard Overlay Code (PO1)</p>	<p>The development does not meet Acceptable Outcome 1.1.2 (b) or (c) which recommends the development includes a fire trail and the house's access driveway should not exceed a length of 60 metres from the street.</p> <p>However, the development will have access to a constructed, all-weather road. The unformed road reserve intersecting with Dorly Street will be constructed to a sealed standard, while the internal driveway will be constructed to a gravel standard. Both the internal driveway and private access will have a maximum slope gradient of 17 per cent and a maximum cross-fall of 10 degrees. The internal driveway will include four (4) turning circles for Queensland Fire and Emergency Services (QFES) to control an ongoing bushfire event and safely and efficiently, egress the site. Furthermore, the private access and internal driveway will both be 3.5 metres in width with a working area of three (3) metres on either side of the constructed access to remove all shrubs and fine fuels located within this area. Additionally, a vertical clearance of 4.8 metres will need to be established and maintained within the 3.5 metres wide constructed access.</p> <p>Therefore, the design and standard of the development's access route is anticipated to enable safe evacuation by residents during a bushfire event and facilitates the safe and efficient access and egress by emergency services vehicles.</p>
	<p>Special Management Area Overlay Code (PO1); and Strategic Framework</p>	<p>The development does not meet Acceptable Outcome 1.2, which recommends that the establishment of a new Dwelling House within the Special Management Area Overlay does not occur.</p> <p>This overlay is in place due to established High Impact Industry uses occurring in the surrounding area such as the Lakes Creek Meatworks operating as a cattle abattoir and Boral's asphalt manufacturing facility. As the subject development results in the further intensification of sensitive land uses within the Special Management Area, the development cannot comply with the overarching Performance Outcome.</p> <p>However, the Dwelling House will be located approximately 360 metres from Boral's asphalt manufacturing facility, approximately 720 metres from the Meatworks cattle holding yards and over one (1) kilometre from their processing facilities. The house's significant separation distance from these established High Impact Industry uses are anticipated to provide residents with an effective natural buffer. As a result, any air, light, noise or odour emissions that may be generated by the existing and future potential growth of these industrial uses, are not expected to unduly affect future residents of the Dwelling House. Therefore, the development is not anticipated to be detrimental to the continued protection of these industrial uses or impact upon the ability for these uses to expand and/or intensify their operations in the future.</p>

Matters raised in submissions	Issue	How matter was dealt with
	Slope stability, drainage, and erosion concerns	<p>The submitters highlighted concerns regarding the development's potential to detrimentally impact slope stability, drainage patterns and cause erosion as a result of removing vegetation to construct the access. The Dwelling House is to be located at the highest part of the site, which is relatively flat and will only require minimal earthworks and vegetation removal to facilitate the building. However, despite this, a geotechnical assessment was undertaken to investigate the aforementioned concerns.</p> <p>The geotechnical assessment noted that the risk of slope stability at the subject site is likely to be low and that any additional drainage runoff potentially generated, as a result of constructing the internal access, is anticipated to be minimal. One section of the internal access was recommended to include a catch drain, which will need to be suitably designed to ensure runoff is spread rather than concentrated, to prevent adverse impacts to downstream properties or to the stability of the natural ground. Furthermore to prevent erosion from occurring due to cut/fill works for the access, where the existing natural ground materials are unsuitable they will need to be removed and replaced with suitable material such as road base.</p>
	Bushfire hazard	<p>The submitters highlighted concerns with the location of the proposed house on top of the ridge, which may hinder the ability for Queensland Fire and Emergency Services (QFES) to conduct hazard reduction burns. However it is considered that the house's location on the ridge may in fact improve the ability of QFES to conduct fuel hazard reduction burns, if and when necessary. This is anticipated because the house will be provided with a suitably designed access for QFES vehicles to utilise. The house itself will be designed appropriately to mitigate the bushfire risk and will include a fuel reduction zone around the house to be kept clear of vegetation. Furthermore, given the house's position on top of the hill it is anticipated that future residents will be afforded with superior sightlines, which may help identify areas both internal and external of the site where QFES could undertake fuel hazard reduction burns.</p>
	Potential unlawful clearing of vegetation	<p>One of the submitters highlighted potential unlawful clearing of vegetation, which may have occurred in the general location of the Dwelling House. However, any vegetation clearing that may have already occurred in this location will become lawful subject to the approval of this development application.</p>
Matters prescribed by regulation	<ul style="list-style-type: none"> • The <i>Rockhampton Region Planning Scheme 2015</i> (version 2.1); and • The common material, being the material submitted with the application. 	

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: Amanda O'Mara <u>ACTING COORDINATOR</u> <u>DEVELOPMENT ASSESSMENT</u>	Signature:	Date: 11 June 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

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 Infrastructure requirements of this development approval must be contributed to the relevant authorities, where applicable, at no cost to Council, prior issue of the Certificate of Classification for the Building Works, unless otherwise stated.
- 1.4 The following further Development Permits must be obtained prior to the commencement of any works associated with their purposes:
 - 1.4.1 Operational Works:
 - (i) Access Works;
 - 1.4.2 Plumbing and Drainage Works; and
 - 1.4.3 Building Works.
- 1.5 All Development Permits for Plumbing and Drainage Works must be obtained prior to the issue of a Development Permit for Building Works.
- 1.6 All works must be designed, constructed and maintained in accordance with the relevant Council policies, guidelines and standards, unless otherwise stated.
- 1.7 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.
- 1.8 Lot 4, 14 and 15 on RP603374 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:

Drawing/report title	Prepared by	Date	Reference number	Revision/Version
Site Plan (Building Location Envelope)	Capricorn Survey Group	21 February 2020	6575-01-MCU	A
Proposed Access	Austin Grillmeier	5 July 2018	17-083 (Sheet 1)	B
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Vegetation Survey and Assessment of Impacts	Denley Environmental	23 March 2014	40700	1

- 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.
- 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 an application for a Development Permit for Building Works.
- 3.0 ACCESS WORKS
- 3.1 A Development Permit for Operational Works (access works) must be obtained prior to the commencement of any access works on the development site.
- 3.2 Where not otherwise altered by this Development Permit, the access to the proposed building envelope must be designed and constructed in accordance with Operational Works approval D/18-2018 and the *Capricorn Municipal Development Guidelines*.
- 3.3 All access works must be designed and constructed in accordance with the approved plans (refer to condition 2.1), *Capricorn Municipal Development Guidelines*, and the provisions of a Development Permit for Operational Works (access works).
- 3.4 A minimum 3.5 metres wide private access must be constructed from the intersection of the unformed road reserve with Dorly Street, until the southern boundary of Lot 14 on RP603374. This private access must be suitably sealed such as to not cause a dust nuisance to the neighbouring residence, for a minimum distance of sixty-five (65) metres from the front property boundary of Lot 1 on RP617125.
- 3.5 The private access located within the road reserve must be maintained by the owner of the subject site at no cost to Council.
- Note: A property note to this affect will be placed against the property to inform future owners.
- 3.6 All vehicles must ingress and egress the development in a forward gear.
- 3.7 The internal driveway must incorporate a minimum of four (4) turning circles, which have a minimum radius of eight (8) metres in accordance with the approved 'Access Plan' (refer to condition 2.1). One (1) of these turning circles must be located within fifty (50) metres of the Dwelling House.
- 3.8 In all sections, the constructed access must not include a slope gradient exceeding 17 percent.
- 3.9 The outlet of the catch drain adjacent to chainage '300' of the internal driveway as shown on the approved 'Proposed Access' plan (refer to condition 2.1), must be configured such that discharge is not concentrated at a single point and is suitably spread to ensure there are no adverse effects to downstream properties or to the stability of the natural ground located downstream of the outlet(s).

3.10 Where the natural materials gained from cutting operations are not suitable for use in construction for the internal driveway, the unsuitable material must be removed and replaced with a suitable construction material (e.g. road base).

4.0 PLUMBING AND DRAINAGE WORKS

4.1 All internal plumbing and drainage works must be designed and constructed in accordance with the *Capricorn Municipal Development Guidelines, Water Supply (Safety and Reliability) Act 2008, Plumbing and Drainage Act 2018*, and Council's Plumbing and Drainage Policies.

4.2 On-site domestic and fire-fighting water supply arrangements must be provided in accordance with Council requirements and the recommendations of the *Bushfire Hazard Assessment and Management Plan* (refer to condition 2.1), and must be certified by a hydraulic engineer or other suitably qualified person.

4.3 On-site sewerage treatment and disposal must be provided in accordance with the *Queensland Plumbing and Wastewater Code* and Council's Plumbing and Drainage Policies.

5.0 ROOF AND ALLOTMENT DRAINAGE WORKS

5.1 All roof and allotment drainage works must be designed and constructed in accordance with the *Queensland Urban Drainage Manual, Capricorn Municipal Development Guidelines*, and sound engineering practice.

5.2 All roof and allotment runoff from the development must be directed to a lawful point of discharge and must not restrict, impair or change the natural flow of runoff water or cause a nuisance to surrounding land or infrastructure.

6.0 SITE WORKS

6.1 All earthworks must be undertaken in accordance with *Australian Standard AS3798 "Guidelines on earthworks for commercial and residential developments"*.

6.2 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 surrounding land or infrastructure.

6.3 Any vegetation cleared or removed must be:

- (i) mulched on-site and utilised on-site for landscaping purposes to Council's satisfaction, or in accordance with the approved landscaping plan; or
- (ii) removed for disposal at a location approved by Council, within sixty (60) days of clearing. Any vegetation removed must not be burnt.

7.0 BUILDING WORKS

7.1 A Development Permit for Building Works must be obtained prior to the commencement of any building works on the site.

7.2 The Dwelling House must be constructed to a Bushfire Attack Level (BAL) of 19 construction standard in accordance with the *Bushfire Hazard Assessment and Management Plan* (refer to condition 2.1) and *Australian Standard 3959:2018 "Construction of buildings in bushfire-prone areas"*.

7.3 Structures must not be located within the on-site sewerage treatment and disposal area or conflict with the separation distances, in accordance with the *Queensland Plumbing and Wastewater Code*.

7.4 The Dwelling House must not exceed two (2) storeys or a height of ten (10) metres above the natural ground level.

8.0 ELECTRICITY

8.1 Electricity services must be provided to the development in accordance with the standards and requirements of the relevant service provider. Alternatively, an off-grid electrical supply system can be provided for the development with the maintenance, testing and repair of the system being the responsibility of the property owner, at no cost to Council. A Registered Professional Engineer of Queensland, electrical engineer, or other suitably qualified person must certify this off-grid system. This certification documentation must be submitted for the Development Permit for Building Works.

Note: A property note to this effect will be included to notify future landowners.

9.0 TELECOMMUNICATIONS

9.1 Telecommunications services must be provided to the development in accordance with the standards and requirements of the relevant service provider.

10.0 ASSET MANAGEMENT

10.1 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.

10.2 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.

11.0 ENVIRONMENTAL

11.1 An Erosion Control and Stormwater Control Management Plan prepared by a Registered Professional Engineer of Queensland in accordance with the *Capricorn Municipal Design Guidelines*, must be implemented, monitored and maintained for the duration of the development works, and until all exposed soil areas are permanently stabilised (for example, turfed, hydromulched, concreted, landscaped). The plan must be available on-site for inspection by Council Officers whilst all works are being carried out.

12.0 OPERATING PROCEDURES

12.1 The development must be undertaken in accordance with the recommendations in the approved *Bushfire Hazard Assessment and Management Plan* (refer to condition 2.1).

Note: A property note to this effect will be placed against the property to inform future owners.

12.2 An 'asset protection zone' surrounding the Dwelling House must be established in accordance with the approved Bushfire Hazard Assessment and Management Plan (refer to condition 2.1) to achieve a BAL of 19. This asset protection zone must be established and maintained by the property owner for the following distances and directions from the Dwelling House:

12.2.1 Southeast, southwest and northeast – 27.1 metres; and

12.2.2 Northwest – 15.2 metres.

No vegetation clearing is permitted to occur outside of the above extents, measured from the outermost projection of the future Dwelling House.

Note: A property note to this effect will be placed against the property to inform future owners.

12.3 The private access within the unformed road reserve and internal driveway (including turning circles) must be maintained generally in accordance with the approved Bushfire Hazard Assessment and Management Plan (refer to condition 2.1), and the following requirements:

- 12.3.1 Any flammable vegetation located within the constructed access must be removed; and
- 12.3.2 A three (3) metres wide working area must be established and maintained on either side of the constructed access. In accordance with the approved Bushfire Hazard Assessment and Management Plan (refer to condition 2.1), trees may be retained within this area only if dry shrubs and fine fuels are removed, and grasses are maintained at a height of no greater than 30 centimetres.
- 12.3.3 A minimum vertical clearance of 4.8 metres must be established and maintained by the property owner, for the entire width of the formed internal driveway and private access.

No vegetation clearing is permitted to occur outside of the above extents.

Note: A property note to this affect will be placed against the property to inform future owners.

- 12.4 Any vegetation cleared, removed or trimmed in association with the internal driveway or the private access within the unformed road reserve, must be disposed at a location approved by Council. Any vegetation material removed must not be burnt.
- 12.5 All construction materials, waste, waste skips, machinery and contractors' vehicles must be located and stored or parked within the development site. Storage of materials or parking of construction machinery or contractors' vehicles must not occur within Dorly Street, Montgomerie Street or Bassett Street.

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. 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 3. Infrastructure Charges Notice

Council has resolved not to issue an Infrastructure Charges Notice for this development because the new infrastructure charges arising from the development are equal to the credits applicable for the new development.

NOTE 4. Property Note (Private access within the unformed road reserve)

It is the property owner's responsibility, at no cost to Council, to maintain the private access constructed within the unformed road reserve intersecting with Dorly Street, refer to conditions 3.5 and 12.3.

NOTE 5. Property Note (Bushfire Hazard)

It is the property owner's responsibility to manage bushfire hazard vegetation, at no cost to Council, refer to conditions 12.1 through to 12.4.

NOTE 6. Property Note (Off-Grid Electrical Supply System)

It is the property owner's responsibility, at no cost to Council, to maintain, test and repair the approved off-grid electricity supply system, refer to condition 8.1.

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	-	-