



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/49-2023	Contact:	Aidan Murray
Notice Date:	22 June 2023	Contact Number:	07 4936 8099

APPLICANT DETAILS

Name:	Morrison CQ Agencies		
Postal address:	1/32 Knight Street PARK AVENUE QLD 4701		
Phone no:	Mobile no:	0419 785 407	Email: troy@mcqagencies.com.au

I acknowledge receipt of the above application on 14 April 2023 and confirm the following:

DEVELOPMENT APPROVAL

Development Permit for a Material Change of Use for a Warehouse (extension)

PROPERTY DESCRIPTION

Street address:	34 Knight Street, Park Avenue
Real property description:	Lot 13 on R26274

Dear Morrison CQ Agencies

I advise that, on 14 June 2023 the above development application was:

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

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

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Development assessable under the planning scheme, superseded planning scheme, a temporary local planning instrument, a master plan or a preliminary approval which includes a variation approval - Material change of use	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
Building Works	<i>Demolition Works (if required)</i> <i>Building Works</i>
Plumbing and Drainage Works	

4. REFERRAL AGENCIES

NIL

5. THE APPROVED PLANS

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

<u>Plan / Document Name</u>	<u>Prepared by</u>	<u>Date</u>	<u>Reference No.</u>	<u>Version / Issue</u>
Site Plan	Plan a Building	13 May 2023	23.05 / 1 of 1	-
Floor Plan	Plan a Building	14 April 2023	23.05 / 2 of 5	-
Elevation D and Elevation A	Plan a Building	14 April 2023	23.05 / 3 of 5	-
Bubbel Pit Section (Rubble Pit)	Plan a Building	14 April 2023	23.05 / 5 of 5	-

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

In accordance with section 85(1)(a)(ii) of the *Planning Act 2016*, the development approval lapses if the first change of use does not happen within six (6) years after the approval starts to have effect, if not stated otherwise in the conditions of approval attached.

7. STATEMENT OF REASONS

Description of the development	Material Change of Use for a Warehouse (extension)
Reasons for Decision	<p>a) 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>b) 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 development was assessed against the following assessment benchmarks:</p> <ul style="list-style-type: none"> • Low Impact Industry Zone Code; and • Works Code.
Compliance with assessment	The development was assessed against all of the assessment benchmarks listed above and complies with all of these with the exceptions listed below.

benchmarks	
Assessment Benchmark	Reasons for the approval despite non-compliance with benchmark
<p>Low Impact Industry Zone Code</p> <p>PO7</p>	<p>The development does not comply with Acceptable Outcome (AO) 7.1, which prescribes that landscaping is provided along all road frontages (except where fronting a state controlled road) of the site for a minimum width of two (2) metres.</p> <p>No street frontage landscaping was provided as part of the original development of the site. The existing building fronts the street with limited room that would support landscaping within the road frontage. Furthermore, the proposed warehouse shed extension is located at the rear of the property and will have minimal impact on the amenity of the streetscape. The proposed development is consistent with the scale and bulk of industrial development along Knight Street and does not detract from or negatively impact the streetscape. The proposal is therefore considered to be consistent with the intent of Performance Outcome (PO) 7.</p>
<p>Works Code</p> <p>PO5</p>	<p>The development does not comply with Acceptable Outcome 5.1 (specifically AO5.1.1) which prescribes that on-site car parking is provided at a rate of one (1) space per 100 square metres or part thereof of gross floor area (GFA). The proposal is to establish 157.5m² GFA of Warehouse storage space therefore a minimum of two (2) car parking spaces would be required based on this rate.</p> <p>No on-site parking spaces were provided as part of the original development. However, one (1) parking space is proposed to be located in front of the bin storage area as a result of the extension. On-street parking is available within the road reserve with no additional spaces proposed.</p> <p>Despite the shortfall of one (1) parking space the purpose of the proposed shed is for the storage of cleaning equipment and materials. It is not envisaged that the proposed extension will generate significant parking demand compared to the existing development. The addition of one (1) parking space on-site will result in an improvement to the current parking situation and will not adversely impact on the safety or capacity of the road network or local amenity. The development therefore complies with Performance Outcome (PO) 5 and is considered reasonable for the site.</p>
<p>Works Code</p> <p>PO8</p>	<p>The development does not comply with Acceptable Outcome (AO) 8.1 (specifically AO8.1.1) which prescribes that shade trees, with a minimum height of two (2) metres, be provided within car parking areas at the rate of one (1) tree per three (3) car parks.</p> <p>Furthermore, Performance Outcome (PO) 8 requires that Landscaping is provided to soften the visual impact of car parking areas and to provide shading. As the proposal does not include any provision for shade trees, the development therefore conflicts with the performance outcome. However, the provision of shade trees for a single on-site carpark is not considered practical in this instance due to the layout of existing and proposed structures on the site. The single proposed carpark is located towards the rear of the site, partially screened from street view, for employee use only and would not be used by customers or visitors to the site. The car park would also benefit from partial shade as a result of the proposed shed extension.</p> <p>On balance, the proposed development does not detract from the visual</p>

	amenity of the site, streetscape and surrounding locality and is therefore considered consistent with the purpose and overall outcomes of the Works Code.
Works Code PO15	<p>The proposed shed extension does not comply with Acceptable Outcome (AO) 15.2, which prescribes that roof and surface water is conveyed to the kerb and channel, which would be Knight Street road reserve for the subject site, or an inter-allotment drainage system which is not feasible or practical for the site.</p> <p>No new impervious or hardstand area is proposed as part of the new development and no changes are proposed to the existing drainage regime. The proposed roof area will generate 10 litres per second runoff during a modelled Q20-equivalent rain event. The new shed is located adjacent to the rear boundary away from Knight Street and an alternative (rubble pit drain at the rear of the site) solution has been sought to manage the roof water drainage.</p> <p>Furthermore, the capacity of stormwater drainage infrastructure in Knight Street is limited and the extra runoff generated by the shed extension would result in a detrimental impact to stormwater drainage if directed to the road reserve. Performance Outcome (PO) 15 states that development must not result in adverse flood effects to the site or adjoining properties. The Queensland Urban Drainage Manual (QUDM) also allows alternative lawful discharge as long as the stormwater discharge does not damage third-party property.</p> <p>The proposed rubble pit dissipates the roof water runoff in a manner that allows it to disperse as natural sheet flow across the ground surface. Council has determined that the discharge arrangements to sheet flow via the rubble pit will result in no detrimental impact to adjoining properties subject to minor alterations. Council has conditioned that the rubble pit must be extended to the northern boundary and the downpipe must be extended and directly face downward into the pit. The alternative drainage arrangement is considered to achieve Performance Outcome (PO) 15.</p>
Matters prescribed by regulation	<ul style="list-style-type: none"> • The <i>Rockhampton Region Planning Scheme 2015</i> (version 2.2); and • The common material, being the material submitted with the application.

8. 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*.

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.

9. 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.

10. ASSESSMENT MANAGER

Name: Amanda O'Mara <u>COORDINATOR</u> <u>DEVELOPMENT ASSESSMENT</u>	Signature: 	Date: 22 June 2023
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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 owner, the owner's successors in title, and any occupier of the premises 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 The following further Development Permits must be obtained prior to the commencement of any works associated with their purposes:
- 1.5.1 Plumbing and Drainage Works (if required); and
 - 1.5.2 Building Works:
 - (i) Demolition Works (if required); and
 - (ii) Building Works.
- 1.6 All Development Permits for Plumbing and Drainage Works (if required) must be obtained prior to the issue of a Development Permit for Building Works.
- 1.7 All works must be designed, constructed and maintained in accordance with the relevant Council policies, guidelines and standards, unless otherwise stated.
- 1.8 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.

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:

<u>Plan / Document Name</u>	<u>Prepared by</u>	<u>Date</u>	<u>Reference No.</u>	<u>Version/ Issue</u>
Site Plan	Plan a Building	13 May 2023	23.05 / 1 of 1	-
Floor Plan	Plan a Building	14 April 2023	23.05 / 2 of 5	-
Elevation D and Elevation A	Plan a Building	14 April 2023	23.05 / 3 of 5	-
Bubbel Pit Section	Plan a Building	14 April 2023	23.05 / 5 of 5	-

(Rubble Pit)				
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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 PARKING WORKS

3.1 All parking works must be designed and constructed in accordance with the approved plans (refer to condition 2.1), *Capricorn Municipal Development Guidelines, Australian Standard AS2890 "Parking facilities"*.

3.2 All parking and vehicle manoeuvring areas must be concrete paved or sealed.

3.3 All vehicles must ingress and egress the development in a forward gear.

3.4 A minimum of one (1) parking space must be provided on-site.

3.5 Parking spaces must be line-marked in accordance with the approved Site Plan (refer to condition 2.1) and in accordance with the *Australian Standard AS2890 "Parking facilities"*.

4.0 PLUMBING AND DRAINAGE WORKS

4.1 All internal plumbing and drainage works must be designed and constructed in accordance with the approved plans (refer to condition 2.1), *Capricorn Municipal Development Guidelines, Water Supply (Safety and Reliability) Act 2008, Plumbing and Drainage Act 2018* and Council's Plumbing and Drainage Policies.

4.2 The development must be connected to Council's reticulated sewerage and water networks.

4.3 The existing sewerage and water connection point(s) must be retained, and upgraded if necessary, to service the development.

4.4 Sewer connections and water meter boxes located within trafficable areas must be raised or lowered to suit the finished surface levels and must be provided with heavy duty trafficable lids.

4.5 Alteration, disconnection or relocation of internal plumbing and sanitary drainage works associated with the existing building must be in accordance with regulated work under the *Plumbing and Drainage Act* 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 approved plans (refer to condition 2.1), *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.

5.3 The proposed rubble pit must be extended up to the northern boundary.

5.4 The proposed downpipe must be extended into the rubble pit and must face towards the floor of the rubble pit.

5.5 The proposed rubble pit must be filled with stones with a minimum diameter of 50 millimetres.

Note: Rubble pit must be designed such that it must be dry after the rain event.

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.

7.0 BUILDING WORKS

7.1 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"*.

- 7.2 Impervious paved waste storage area/s must be provided in accordance with the approved plans (refer to condition 2.1) and the *Environmental Protection Regulation 2019* and must be:
- 7.2.1 aesthetically screened from any road frontage or adjoining property;
 - 7.2.2 of a sufficient size to accommodate commercial type bins that will be serviced by a commercial contractor plus clearances around the bins for manoeuvring and cleaning;
 - 7.2.3 provided with a suitable hosecock and hoses at the refuse container area, and washdown must be drained to the sewer in accordance with the Sewerage Trade Waste provisions and the *Plumbing and Drainage Act 2018*.

Note: As an alternative to a washdown facility, a fully contained commercial bin cleaning service is acceptable provided no wastewater is discharged from the site to the sewer.

8.0 ASSET MANAGEMENT

- 8.1 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.
- 8.2 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.

9.0 ENVIRONMENTAL

- 9.1 The 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:
- 9.1.1 implemented, monitored and maintained for the duration of the works, and until all exposed soil areas are permanently stabilised (for example, turfed, hydromulched, concreted, landscaped); and
 - 9.1.2 available on-site for inspection by Council Officers whilst all works are being carried out.

10.0 ENVIRONMENTAL HEALTH

- 10.1 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 or dust.
- 10.2 Stormwater must be prevented from entering contaminated work areas. Any stormwater which may enter into a contaminated area must not be drained to the stormwater drainage system.
- 10.3 No contaminants are permitted to be released to land or water, including soil, silt, oils, detergents, etcetera. Any wash-down areas used for the maintenance or cleaning of equipment (including vehicles) must be appropriately bunded and drained to the sewer network in accordance with a trade waste permit.
- 10.4 All chemicals and/or environmentally hazardous liquids must be contained within a covered, bunded storage area that has a volume of at least that of the largest container in the bund plus twenty-five percent (25%) of the total storage capacity.
- 10.5 Any spillage of environmentally hazardous liquids or other materials must be cleaned up as quickly as practicable. Any spillage of waste and/or contaminants must not be hosed or swept to any stormwater drainage system, roadside gutter or waters.

11.0 OPERATING PROCEDURES

- 11.1 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 Knight Street.
- 11.2 All waste storage areas must be:
- 11.2.1 kept in a clean and tidy condition; and
 - 11.2.2 maintained in accordance with *Environmental Protection Regulation 2019*.

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 Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships website www.dsdsatsip.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.

NOTE 5. Building Works

A Development Permit for Building Works assessable under the Building Assessment Provisions must be obtained prior to the commencement of any building works on the site (including removal and/or demolition works).

NOTE 6. Infrastructure Charges Notice

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

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— <ol style="list-style-type: none"> (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

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.

Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 For a development application—an eligible submitter for the development application 2 For a change application—an eligible submitter for the change application	1 For a development application—the assessment manager 2 For a change application—the responsible entity	1 The applicant 2 If the appeal is about a concurrence agency's referral response—the concurrence agency	Another eligible submitter for the application

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.

Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 For a development application—an eligible submitter for the development application 2 For a change application—an eligible submitter for the change application 3 An eligible advice agency for the development application or change application	1 For a development application—the assessment manager 2 For a change application—the responsible entity	1 The applicant 2 If the appeal is about a concurrence agency's referral response—the concurrence agency	Another eligible submitter for the application

4. Compensation claims

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).

Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person dissatisfied with the decision	The local government to which the claim was made	-	-

5. Registered premises

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	-	-
4. Local government failure to decide application under the Building Act An appeal may be made against a local government's failure to decide an application under the Building Act within the period required under that Act.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who was entitled to receive, notice of the decision	The local government to which the application was made	-	-