



# 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/50-2020	Contact:	Amanda O'Mara
Notice Date:	15 December 2020	Contact Number:	1300 22 55 77

## APPLICANT DETAILS

Name:	D. & J. Milner		
Postal address:	C/- Capricorn Survey Group (CQ) Pty Ltd PO BOX 1391 ROCKHAMPTON QLD 4700		
Phone no:	(07) 4927 5199	Mobile no:	0407 581 850
Email:	<a href="mailto:reception@csgcq.com.au">reception@csgcq.com.au</a>		

I acknowledge receipt of the above application on 26 May 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:	123 Von Allmen Road, Pink Lily
Real property description:	Lot 8 on RP617844, Parish of Karkol

## OWNER DETAILS

Name:	D L Milner and J A Milner
Postal address:	123 Von Allmen Road, PINK LILY QLD 4702
<b>Dear D. &amp; J. Milner</b>	
I advise that, on 11 December 2020 the above development application was:	
<input checked="" type="checkbox"/> approved in full with conditions* (refer to the conditions contained in <b>Attachment 1</b> )	
*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Development assessable under the planning scheme, superseded planning scheme, a temporary local planning instrument, a master plan or a preliminary approval which includes a variation approval - Material change of use	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 Site Works
Plumbing and Drainage Works	
Building Works	Building Works

4. SUBMISSIONS NIL

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	Rev
Material Change of Use for Dwelling House	Capricorn Survey Group	21 May 2020	7680-01-MCU	B
Proposed Infrastructure Areas	Ecosure	27 August 2020	PR5647	-

## 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

<b>Description of the development</b>	The proposed development is for a Material Change of Use for a Dwelling House (building envelope)
<b>Reasons for Decision</b>	<p>a) The proposed development is not an intensification of residential in a flood hazard area as it is effectively the relocation of a Dwelling House as a result of the owner's nearby house site being resumed by the Department of Transport and Main Roads for a new transport corridor for the Rockhampton Ring Road project.</p> <p>b) The proposed development does not adversely impact on the rural character of the locality.</p> <p>c) The proposed development will not impact current management of the wetland area and the effective conservation of the area can be maintained.</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 the assessment benchmarks.</p>
<b>Assessment Benchmarks</b>	<p>The proposed development was assessed against the following assessment benchmarks:</p> <ul style="list-style-type: none"><li>• Rural Zone Code;</li><li>• Flood Hazard Overlay Code;</li></ul>

	<ul style="list-style-type: none"> <li>• Steep Land Overlay Code;</li> <li>• Biodiversity Areas Overlay;</li> <li>• Access, Parking And Transport Code;</li> <li>• Filling and Excavation Code;</li> <li>• Landscape Code;</li> <li>• Stormwater Management Code;</li> <li>• Water and Sewer Code; and</li> <li>• Strategic Framework.</li> </ul>	
<p><b>Non-compliance with assessment benchmarks</b></p>	<p>The development was assessed against all of the assessment benchmarks listed above and is unable to wholly comply.</p>	
	<p><b>Assessment Benchmark</b></p>	
	<p>Rural Zone Code</p>	<p>PO33</p> <p>The proposed development for a Dwelling House within an extreme and high hazard flood area will create an unacceptable risk to life and property.</p>
	<p>Flood Hazard Overlay Code</p>	<p>8.2.8.2(2)(a)</p> <p>The proposed development for a Dwelling House within an extreme and high hazard flood area will be impacted in a flood event and will not have trafficable access, therefore creating an unacceptable risk to personal safety.</p> <p>Part 8.2.8.2(2)(d)</p> <p>The proposed development for a Dwelling House is further intensification of residential within the Fitzroy River flood areas H3-H6 (high and extreme areas).</p> <p>PO4</p> <p>The proposal does not comply with A04.1.1 which states that development does not involve new building or structures. The proposal for a Dwelling House therefore creates further intensification of the site and will increase the risk to people and property.</p> <p>PO12</p> <p>The proposal does not comply with A012.1 which states trafficable access to and from the development should comply with the Capricorn Municipal Development Guidelines. The proposed Dwelling House will not have safe and trafficable access to local evacuation centres and evacuation services. Edminstone Road has a low level of flood immunity and will not have safe and trafficable access in more frequent events such as the Q10 event.</p>

	Strategic Framework	<p>The proposed development will compromise the strategic framework in the <i>Rockhampton Region Planning Scheme 2015</i> because:</p> <p>(a) 3.3.1(20) – The proposed development does not respond adequately to natural hazards as the subject site is mapped as being affected by extreme and high hazard flooding.</p> <p>(b) Part 3.4.3.1(1) – The proposed development will increase the risk to people and property being located in the high and extreme flood hazard areas, therefore imposing unacceptable risks in a flood event.</p> <p>(c) Part 3.6.3.1(9) – The proposed development will not provide safe access during a flood event. The access road to the subject site has a low level of flood immunity and will not have safe and trafficable access in more frequent events such as the Q10 event.</p>
	Biodiversity Overlay Code	<p>PO7</p> <p>The proposal does not comply with A07.1 which states excavation and filling is not undertaken in wetlands. Excavation and filling is proposed for the building envelope for the Dwelling House and access. However, an Environmental Assessment demonstrated that due to the wetland area being cleared, in poor condition and with existing retaining walls, the proposed development can occur over the area without causing significant environmental harm, subject to conditions.</p>
	Filling and Excavation Code	<p>PO5</p> <p>The proposal does not comply with A05.3 which states excavation and filling is not located in a wetland. However, an Environmental Assessment demonstrated that due to the wetland area being cleared, in poor condition and with existing retaining walls, the proposed development can occur over the area without causing significant environmental harm, subject to conditions.</p>
<b>Matters prescribed by regulation</b>	<ul style="list-style-type: none"> <li>• The <i>Rockhampton Region Planning Scheme 2015</i>; and</li> <li>• The common material, being the material submitted with the application.</li> </ul>	

## 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*.

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: <b>Tarnya Fitzgibbon</b> <b>COORDINATOR</b> <b>DEVELOPMENT ASSESSMENT</b>	Signature: 	Date: 15 December 2020
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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**

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, completed, and be accompanied by a Compliance Certificate for any operational works required by this development approval:
- 1.3.1 to Council’s satisfaction;
  - 1.3.2 at no cost to Council; and
  - 1.3.3 prior to the issue of the Certificate of Classification for the Building Works, 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 issue of the Certificate of Classification for the Building Works, 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 Operational Works:
    - (i) Access Works;
    - (ii) Site Works.
  - 1.5.2 Plumbing and Drainage Works
  - 1.5.3 Building Works:
    - (i) Building Works.
- 1.6 All Development Permits for Operational Works and Plumbing and Drainage Works must be obtained prior to the issue of a Development Permit for Building Works.
- 1.7 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:

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Material Change of Use for Dwelling House	Capricorn Survey Group	21 May 2020	7680-01-MCU	B
Proposed Infrastructure Areas	Ecosure	27 August 2020	PR5647	-

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 Operational 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 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).

3.3 The existing access from Edmestone Road to the eastern property boundary of the subject lot must be upgraded to comply with the requirements of the *Capricorn Municipal Development Guidelines*.

3.4 The internal access to the building envelope must be constructed to the same height as the portion of Edmestone Road fronting the site.

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

### 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*, Council's Plumbing and Drainage Policies and the provisions of a Development Permit for Plumbing and Drainage Works.

4.2 Adequate domestic and fire fighting protection must be provided to the development, and must be certified by an hydraulic engineer or other suitably qualified person.

4.3 A Site Evaluation Report in accordance with the *Queensland Plumbing and Wastewater Code* for on-site sewerage must be submitted with the Plumbing and Drainage application for the dwelling. The Site Evaluation Report must take into account the slope of the development site, flood implication and its proximity to a water course.

4.4 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.

4.5 The on-site sewerage treatment and disposal area must not be located within the existing water course or conflict with the separation distance as detailed with the *Queensland Plumbing and Wastewater Code*.

4.6 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*.

## 5.0 SITE WORKS

- 5.1 A Development Permit for Operational Works (site works) must be obtained prior to the commencement of any site works on the development site.
- 5.2 Any application for a Development Permit for Operational Works (site works) must be accompanied by an earthworks plan that clearly identifies the following:
- 5.2.1 the location of cut and/or fill;
  - 5.2.2 the type of fill to be used and the manner in which it is to be compacted;
  - 5.2.3 the quantum of fill to be deposited or removed and finished cut and/or fill levels;
  - 5.2.4 details of any proposed access routes that are intended to be used to transport fill to or from the development site; and
  - 5.2.5 the maintenance of access roads to and from the development site so that they are free of all cut and/or fill material and cleaned as necessary.
- 5.3 All earthworks must be undertaken in accordance with *Australian Standard AS3798 "Guidelines on earthworks for commercial and residential developments"*.
- 5.4 Any application for a Development Permit for Operational Works (site works) must be accompanied by a preliminary site investigation into acid sulfate soils. If preliminary testing indicates that acid sulfate soils are present in the areas to be excavated or filled, a more detailed acid sulfate soil investigation must be completed, and an appropriate management plan submitted to Council as part of any application for a Development Permit for Operational Works (site works). The detailed investigation and associated management plan must be carried out in accordance with the *Queensland Acid Sulfate Soil Technical Manual* and *State Planning Policy 2017*.
- 5.5 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.
- 5.6 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.
- 5.7 All site works must be undertaken to ensure that there is:
- 5.7.1 no increase in upstream or downstream flood levels for all levels of immunity up to a one per cent (1%) Annual exceedance probability flood event;
  - 5.7.2 no increase in velocity profiles, for which no remedy exists to prevent erosion and/or scouring. In the event that modelling shows non-compliance with the above, works must be undertaken within the system to satisfy the above criteria for development; and
  - 5.7.3 a lawful point of discharge to which the approved works drain during construction phase.
- 5.8 Any application for a Development Permit for Operational Works (Site Works) must be accompanied by a Flood Statement / Risk Assessment prepared and certified by a Registered Professional Engineer of Queensland that as a minimum includes:
- 5.8.1 current natural surface level and any proposed adjustment to natural surface levels;
  - 5.8.2 relevant low hazard access route;
  - 5.8.3 flood depths, velocity and afflux generated due to development;



- 5.8.4 flood hazard and hydraulic classification;
- 5.8.5 potential impact of development on flood depth and velocity;
- 5.8.6 evacuation options and effective warning time;
- 5.8.7 source(s) of information;
- 5.8.8 details of the mitigation measures proposed to address any potential impacts.

## 6.0 BUILDING WORKS

- 6.1 A Development Permit for Building Works must be obtained prior to the commencement of any building works on the site.
- 6.2 The finished floor level for habitable areas must be a minimum of 500 millimetres above a one per cent (1%) Annual Exceedance Probability, flood inundation level
- 6.3 All non-habitable areas subjected to flood inundation during a one per cent (1%) Annual exceedance probability flood event, must be designed and constructed using suitable flood resilient materials.
- 6.4 All electrical and telecommunication services and utilities connected to the property, including electrical outlets, must be designed and installed at such a height that they are a minimum of 500 millimetres above a one per cent (1%) Annual exceedance probability flood level.
- 6.5 Any application for a Development Permit for Building Works must be accompanied by a detailed structural engineering report and a building certificate prepared by a suitably qualified Registered Professional Engineer of Queensland, which demonstrates that the building has been designed to withstand the forces created by floodwaters and debris loading.

## 7.0 ELECTRICITY

- 7.1 Electricity services must be provided in accordance with approved Operational Works Plans and the standards and requirements of the relevant service provider.

## 8.0 TELECOMMUNICATIONS

- 8.1 Telecommunications services must be provided to the development in accordance with the standards and requirements of the relevant service provider. Unless otherwise stipulated by telecommunications legislation at the time of installation, this includes all necessary pits and pipes, and conduits that provide a connection to the telecommunications network.

## 9.0 ASSET MANAGEMENT

- 9.1 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.
- 9.2 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.

## 10.0 ENVIRONMENTAL

- 10.1 Any application for a Development Permit for Operational Works must be accompanied by an Erosion and Sediment Control Plan that addresses, but is not limited to, the following:
  - (i) objectives;
  - (ii) site location and topography;
  - (iii) vegetation;

- (iv) site drainage;
- (v) soils;
- (vi) erosion susceptibility;
- (vii) erosion risk;
- (viii) concept;
- (ix) design; and
- (x) implementation,

for the construction and post-construction phases of work.

- 10.2 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 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.
- 10.3 Alteration to natural landforms, hydrology and drainage patterns do not significantly impact upon ecological values of the site including the wetland.
- 10.4 Any landscaping to the development will use only native plant species, preferably endemic to the Rockhampton Region.
- 10.5 The access track is required to follow the existing retaining wall on the north side of the site which is already disturbed from an ecological perspective.
- 10.6 Any clearing will require a fauna spotter catcher to perform a pre-clearance survey of the development site to ensure that no threatened species will be impacted, in particular the squatter pigeon which is listed as vulnerable under the *Nature Conservation Act 1992* and the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*.
- 10.7 All access infrastructure requires sediment and erosion control measures to be installed and implemented.
- 10.8 If degradation of native plant species or ecological communities occurs as a result of the development, the degraded areas are required to be rehabilitated using native plant species, preferably endemic to the Rockhampton Region.

#### 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 Edmestone Road.
- 11.2 A Contingency Plan must be submitted to Council prior to the issue of the Development Permit for Building Works. The plan must demonstrate that the subject development will not increase the flood debris loading of flood waters nor result in environmental harm. The Plan must also include details of how the residents of the dwelling will collect possessions, clear the site and vacate the property in a flood event. The principles of the Contingency Plan will be entered against Lot 8 on RP617844 as a property note.

NOTE: Council is not required to approve Contingency Plans. Council does not accept any liability for loss of or damage to property, or injury, or loss of life as a result of any person using or relying on the Contingency Plan or failing to use the Contingency Plan during a flood event.

- 11.3 It is the responsibility of the owner or occupier of the land from time to time to implement the Contingency Plan during a flood event or if there is a risk of flooding near the land.
- 11.4 A review and amendment of the 'Emergency Management and Recovery Plan' must be undertaken with any change in the owner or occupier of the land to demonstrate

appropriate evacuation routes and preparation procedures during a flood event or if there is a risk of flooding near the land.

## 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](http://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. 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 4. Property Note (Contingency Plan)

A complete copy of the Development Approval and any documents conditioned by this development approval (including the Contingency Plan or an updated Contingency Plan) must be given to the proposed purchaser when entering into a contract of sale or to the new registered proprietor upon any transfer of land for this lot.

### NOTE 5. Works in Road Reserve Permit

It is advised that a Works in Road Reserve Permit (including a fee for the vehicle crossover and compliant with Standard Capricorn Municipal Development Guidelines, Standard Drawings) may be accepted in place of the application for a Development Permit for Operational Works (access works).

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"> <li>(a) the refusal of all or part of the development application; or</li> <li>(b) the deemed refusal of the development application; or</li> <li>(c) a provision of the development approval; or</li> <li>(d) if a development permit was applied for—the decision to give a preliminary approval.</li> </ol>			
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

<b>Table 1 Appeals to the P&amp;E Court and, for certain matters, to a tribunal</b>			
		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
<b>2. Change applications</b> An appeal may be made against— (a) a responsible entity's decision for a change application, other than a decision made by the P&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
<b>3. Extension applications</b> An appeal may be made against— (a) the assessment manager's decision about an extension application; or (b) a deemed refusal of an extension application.			
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><b>4. Infrastructure charges notices</b> An appeal may be made against an infrastructure charges notice on 1 or more of the following grounds</p> <p>a) The notice involved an error relating to –</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"> <li>• The incorrect application of gross floor area for a non-residential development</li> <li>• Applying an incorrect ‘use category’, under a regulation, to the development</li> </ul> <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><b>5. Conversion applications</b> 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><b>6. Enforcement notices</b> 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><b>1. Appeals from tribunal</b> An appeal may be made against a decision of a tribunal, other than a decision under section 252, on the ground of—</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><b>2. Eligible submitter appeals</b> An appeal may be made against the decision to give a development approval, or an approval for a change application, to the extent that the decision relates to— (a) any part of the development application for the development approval that required impact assessment; or (b) a variation request.</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</p> <p>2 For a change application—an eligible submitter for the change application</p>	<p>1 For a development application—the assessment manager</p> <p>2 For a change application—the responsible entity</p>	<p>1 The applicant</p> <p>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><b>3. Eligible submitter and eligible advice agency appeals</b> 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</p> <p>2 For a change application—an eligible submitter for the change application</p> <p>3 An eligible advice agency for the development application or change application</p>	<p>1 For a development application—the assessment manager</p> <p>2 For a change application—the responsible entity</p>	<p>1 The applicant</p> <p>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><b>4. Compensation claims</b> 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><b>5. Registered premises</b></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)

<b>Table 3</b>			
<b>Appeals to the tribunal only</b>			
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	-	-