



# 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/76-2023	Contact:	Declan Cox
Notice Date:	4 October 2023	Contact Number:	07 4936 8099

## APPLICANT DETAILS

Name:	D M Webster and K L Webster		
Postal address:	C/- Gideon Town Planning PO BOX 450 ROCKHAMPTON QLD 4700		
Phone no:	07 4806 6959	Mobile no:	Email: info@gideontownplanning.com.au

I acknowledge receipt of the above application on 6 June 2023 and confirm the following:

## DEVELOPMENT APPROVAL

**Development Permit for a Material Change of Use for Utility Installation (Container Refund Facility)**

## PROPERTY DESCRIPTION

Street address:	78 James Street, Mount Morgan
Real property description:	Lot 9 on RP600655

**Dear** D M Webster and K L Webster

I advise that, on 26 September 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Development assessable under the planning scheme, superseded planning scheme, a temporary local planning instrument, a master plan or a preliminary approval which includes a variation approval - Material change of use	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	

#### 4. SUBMISSIONS

There were 0 properly made submissions received in relation to the application.

#### 5. REFERRAL AGENCIES

The following Referral Agencies were activated by this application.

For an application involving	Name of agency	Role of Agency	Contact Details
<b>STATE TRANSPORT INFRASTRUCTURE (State Transport Corridors and Future State Transport Corridors)</b>			
<i>Schedule 10, Part 9, Division 4, Subdivision 2, Table 4 – Material change of use of premises near a State transport corridor or that is a future State transport corridor</i>			
Development application for a material change of use, other than an excluded material change of use, that is assessable development under a local categorising instrument, if all or part of the premises— (a) are within 25m of a State transport corridor; or (b) are a future State transport corridor; or (c) are— (i) adjacent to a road that intersects with a State-controlled road; and (ii) within 100m of the intersection	The chief executive of the department in which the <i>Planning Act 2016</i> is administered:  State Development, Infrastructure, Local Government and Planning (State Assessment and Referral Agency Department)	Concurrence	<u>In person:</u> Level 2, 209 Bolsover Street, Rockhampton City <u>Online lodgement using MyDAS2:</u> <a href="https://prod2.dev-assess.qld.gov.au/suite/">https://prod2.dev-assess.qld.gov.au/suite/</a> <u>Email:</u> <a href="mailto:RockhamptonSARA@dsdilgp.qld.gov.au">RockhamptonSARA@dsdilgp.qld.gov.au</a> <u>Postal:</u> PO Box 113 Rockhampton Qld 4700

#### 6. 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>
Proposed Site Plan	Design + Architecture	25 July 2023	SK-002	2
Operational Management Plan	Gideon Town Planning	-	-	-

#### 7. 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.

#### 8. STATEMENT OF REASONS

Description of the development
Material Change of Use for Utility Installation (Container Refund Facility)

Reasons for Decision		
<p>a) Assessment of the development against the Strategic Framework and the Low Density Residential Zone Code of <i>Rockhampton Region Planning Scheme 2015 (Version 2.2)</i> demonstrates that although there are conflicts with elements of the assessment benchmarks, on balance the proposed development will not cause significant adverse impacts on the surrounding natural environment, built environment, infrastructure, community facilities, or local character and amenity;</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"> <li>• Strategic Framework;</li> <li>• Low Density Residential Zone Code;</li> <li>• Access, Parking and Transport Code;</li> <li>• Landscape Code;</li> <li>• Stormwater Management Code;</li> <li>• Waste Management Code;</li> <li>• Water and Sewer Code;</li> <li>• Flood Hazard Overlay Code; and</li> <li>• Telecommunications Facilities and Utilities Code.</li> </ul>		
Compliance with assessment benchmarks		
<p>The development was assessed against all of the assessment benchmarks listed above and complies with all of these with the exception(s) listed below.</p>		
Assessment Benchmark		Reasons for the approval despite non-compliance with benchmark
Strategic Framework	<p>3.3.1 <i>Strategic outcomes</i></p> <p>3.3.1 (14) <i>Specific outcomes</i></p>	<p>The proposed development for a Utility Installation is located within the Low Density Residential Zone. The use has been demonstrated to support economic development in Mount Morgan region however, due to the location adjoining residential lots, the proposal does not comply with <i>Specific outcome 3.3.1 (14) of the strategic outcomes for settlement pattern</i>. This is because the proposal is for a land use that is not clearly contemplated for within a residential area. Despite this, regard to relevant matters is considered to outweigh any conflicts.</p>
	<p>3.3.8 <i>Element – Urban and new urban</i></p> <p>3.3.8.1 (8) <i>Specific outcomes</i></p>	<p>The proposed development for a Utility Installation is located within the Low Density Residential Zone. The proposal is considered to service the needs of the immediate local residential community of Mount Morgan, however the site location is adjoining to sensitive land uses being dwelling houses and is not consistent with the purpose of the Low Density Residential Zone.</p> <p>In consideration of the above, the proposal does not comply with <i>Specific outcome 3.3.8.1 (8) under the 3.3.8 Element – Urban and new urban, Settlement Patterns</i>. Despite this, regard to relevant matters is considered to outweigh any conflicts.</p>
Low Density Residential Zone	PO13	The proposed development does not comply with Acceptable Outcome (AO) 13.1 because part of the existing building used as part

Code		<p>of the development has a zero (0) metre setback to the road frontage in lieu of the three (3) metre setback required. The proposed containers for change collection point is within part of the existing building, which is currently used as a shop and dwelling unit.</p> <p>Whilst the proposal does not comply with the Acceptable Outcome, the proposed development does not introduce any new building work to the existing building. The form of the building, which has historically been used as a convenience store and dwelling unit, will remain unchanged. Further, the part of the existing building that will be used as the collection point for containers has been used for this purpose for approximately five (5) years.</p> <p>Given the age of the building, which in part establishes the existing streetscape and character for that portion of James Street, and the continuation of that part of the building for collecting containers, there are not considered to be any new impacts that would compromise streetscape character or compromise existing levels of amenity because a reduced setback for the wall.</p> <p>Therefore, the proposal is considered to comply with Performance Outcome (PO13) of the code.</p>
	PO16	<p>The proposed development does not comply with parts of PO16, which relates to in what scenarios non-residential development may occur in the Low Density Residential Zone. Specifically, the proposed development is not considered small scale and may compromise residential amenity given the nature of the use.</p> <p>Despite this, the proposed development is considered to comply with the balance of the outcomes sought by PO16 and the overall outcomes for the Code. Specifically:</p> <ul style="list-style-type: none"> <li>• The proposed development will continue to provide the sole facility in Mount Morgan for residents to return eligible recyclable containers. In this sense, given the catchment it is required to service, greater Mount Morgan is considered the '<i>local neighbourhood</i>'.</li> <li>• The proposed development will primarily utilise the existing built form on the site, including the historical shop and dwelling unit, and a shed to the rear of this. This existing built form is considered consistent with the surrounding built form and streetscape.</li> <li>• The use is considered to serve a 'convenience function', in that it removes the need for Mount Morgan residents to travel to Gracemere, the next closest Containers for Change facility.</li> <li>• The proposed development does not adjoin an existing centres zone and therefore does not result in its incremental expansion.</li> <li>• Has been conditioned to minimise impacts on local amenity. Conditions of approval have been included requiring visual screening from the adjoining sensitive receptors, and that all containers be stored indoors, except during collection. A condition of approval has also been included limiting how long the use may operate for after the development approval takes effect.</li> <li>• James Street is categorised as a Highway and the development application was assessed by technical officers in the Department of Transport and Main Roads (DTMR). DTMR, through the Department of State Development, Infrastructure, Local Government and Planning (DSDILGP)</li> </ul>

		<p>provided a response with conditions, therefore indicating the development is capable of operating without compromising the safety or efficiency of the road network.</p> <p>To the extent any conflicts are identified with the Zone Code or Strategic Framework, regard to relevant matters is considered to outweigh those conflicts.</p>
	PO24	<p>The proposal does not comply with AO24.1 as a minimum ten (10) percent (%) landscaping onsite has not been provided. No additional landscaping is proposed or conditioned as part of the development. The development will maintain the existing landscaping onsite from the shop and dwelling unit, which includes an established mature tree at the rear of the site.</p> <p>Despite this:</p> <ul style="list-style-type: none"> <li>• 1.8 metre high solid screen fence has been conditioned to be provided along both side boundaries to protect the amenity of adjoining residential uses.</li> <li>• A condition has been imposed requiring all containers, except for glass ones and those awaiting immediate collection, to be stored within an enclosed building.</li> <li>• A condition has been imposed restricting the period the use can operate for to five (5) years, therefore it is not considered reasonable to require the Applicant to establish landscaping during this period.</li> </ul> <p>On this basis, there will be no change to the streetscape, existing onsite environment or road frontage screening and the proposal is considered to comply with Performance Outcome (PO24).</p>
Telecommunications Facilities and Utilities Code	PO12	<p>The proposed development is visible and located less than 30 metres from a Highway, therefore does not comply with (AO12.1).</p> <p>Although the proposal is considered visible and does not comply with setback requirements, the proposal will only have enclosed metal bins located on a hardstand area and the remaining of the development will occur within existing and proposed enclosed buildings and structures onsite. The scale of the metal bins is conditioned and restricted onsite and therefore, the development is considered to not adversely impact any existing residential amenity or visual character of adjoining residential lots.</p> <p>In consideration of the above, the proposal is considered to comply with Performance Outcome (PO12).</p>

	PO14	<p>The proposal does not comply with AO14.1.1 as the development is located within fifteen (15) metres of common boundaries that adjoin sensitive land uses (dwelling houses) within a Low Density Residential Zone.</p> <p>The proposal is considered to comply with Performance Outcome (PO14) based on the following justifications of the proposal below.</p> <ul style="list-style-type: none"> <li>• 1.8 metre high solid fencing has been conditioned to be provided along both side boundaries to protect the amenity of adjoining residential uses.</li> <li>• A condition has been imposed requiring all containers, except for glass ones and those awaiting immediate collection, to be stored within an enclosed building.</li> <li>• The development is not considered to have additional impacts on light, noise, glare, overshadowing or visual obtrusiveness.</li> </ul> <p>A condition has been imposed restricting the period the use can operate for to five (5) years, therefore it is not considered reasonable to require the Applicant to establish landscaping during this period.</p>
<b>Relevant Matters</b>		
<p>The proposed development was assessed against the following relevant matters:</p> <p><b>Planning Need</b></p> <ul style="list-style-type: none"> <li>• The existing facility processes approximately 3.5 million containers each year, with the number of containers returned per capita for Mount Morgan residents greatly exceeding the State average. There is no other Containers for Change facility in Mount Morgan currently, with the closest facility in Gracemere.</li> <li>• The existing facility provides an important service to the community. Mount Morgan is a lower socio-economic area based on a number of key indicators (participation in the labour workforce and median weekly income), and some residents are reliant on the Containers for Change Scheme to supplement their income.</li> <li>• The <i>Rockhampton Region Planning Scheme 2015</i> (v2.2) does not clearly contemplate industry activities (such as a Containers for Change facility) in Mount Morgan presently. Therefore, there is limited appropriately zoned land where the facility could readily establish while meeting community needs.</li> <li>• A condition of approval has been imposed restricting the duration of the use to approximately five (5) years (being the duration of the Containers for Change scheme contract with the current operator), allowing the existing facility to continue to operate while allowing opportunity to investigate other more appropriate locations in Mount Morgan.</li> </ul>		
<b>Matters raised in submissions</b>		
<p>The proposal was the subject of public notification between 12 June 2023 and 3 June 2023, in accordance with the requirements of the <i>Planning Act 2016</i> and the Development Assessment Rules, and no submissions were received.</p>		
<b>Matters prescribed by regulation</b>		
<ul style="list-style-type: none"> <li>• The <i>Rockhampton Region Planning Scheme 2015</i> (version 2.2); 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*.

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: <b>Amanda O'Mara</b> <b><u>COORDINATOR</u></b> <b><u>DEVELOPMENT ASSESSMENT</u></b>	Signature: 	Date: 4 October 2023
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C/C State Development, Infrastructure, Local Government and Planning (State Assessment and Referral Agency Department) - RockhamptonSARA@dsdilgp.qld.gov.au

### **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.]

### **Part 2 – Conditions required by the referral agency response**

### **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, completed, and be accompanied by a Compliance with conditions notice 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 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 Building Work
- 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 All development conditions contained in this development approval about infrastructure under Chapter 4 of the *Planning Act 2016* should be read as being non-trunk infrastructure conditioned under section 145 of the *Planning Act 2016*, unless otherwise stated.

### 2.0 OPERATIONAL PERIOD

- 2.0 The approved development must cease by 1 November 2028. All containers must be removed from the site at the cessation of the use.

### 3.0 APPROVED PLANS AND DOCUMENTS

- 3.0 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>
Proposed Site Plan	Design + Architecture	25 July 2023	SK-002	2
Operational Management Plan	Gideon Town Planning	-	-	-



- 3.1 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.

#### 4.0 BUILDING WORKS

- 4.1 A temporary enclosed structure (e.g., a shipping container) must be erected over the existing hardstand area adjoining the existing shed structure along the northern side boundary as per the approved plans (refer to condition 2.1 and 11.3).
- 4.2 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:
- 4.2.1 designed and located so as not to cause a nuisance to neighbouring properties; and
  - 4.2.2 aesthetically screened from any road frontage or adjoining property.
- 4.3 Any fence to be erected along the western boundary and/or western side of the front boundary must not restrict, impair or change the overland flow (floodway) or cause an actionable nuisance to surrounding land or infrastructure.
- 4.4 A minimum 1.8 metre high solid screen fence must be erected along the common boundaries of the development site with Lots 8 and 10 on RP600655.

#### 5.0 ACCESS AND PARKING WORKS

- 5.0 All vehicle operations associated with the development must be directed by suitable directional, informative, regulatory or warning signs in accordance with *Australian Standard AS1742.1 "Manual of uniform traffic control devices"*.

#### 6.0 PLUMBING AND DRAINAGE WORKS

- 6.0 Adequate domestic and firefighting protection must be provided to the development and must be certified by a hydraulic engineer or other suitably qualified person.
- 6.1 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.

#### 7.0 ROOF AND ALLOTMENT DRAINAGE WORKS

- 7.0 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.

Note: Existing sheet flow regime within the site must be maintained at all times. No additional impervious areas and/or building/shed structures are permitted within the site.

#### 8.0 SITE WORKS

- 8.0 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.

#### 9.0 ASSET MANAGEMENT

- 9.0 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.
- 9.1 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 HEALTH

- 10.0 The hours of operations for the development site (Utility Installation) must be limited to:
- 10.0.1 9:00am to 3:00pm on Monday to Sunday; and
  - 10.0.2 with no operations on Public Holidays.

## 11.0 OPERATING PROCEDURES

- 11.0 Waste collection is to be a minimum of two (2) a week via a tautliner truck with a 16-ton capacity and forklift.
- 11.1 Metal bins for storage of glass waste is to be restricted to the existing hardstand area located south of the existing shed structure as per the approved plans (refer to condition 2.1).
- 11.2 A temporary shipping container with maximum dimensions of 2.44 metres x 6.06 metres is to be located on the existing hardstand area adjoining the shed structure along the northern side boundary as per the approved plans (refer to condition 2.1).
- 11.3 Operations on the development site must have no significant impact as determined by Council on the amenity of adjoining premises or the surrounding area due to the emission of light, noise, odour or dust.
- 11.4 When requested by Council, nuisance monitoring must be undertaken and recorded within three (3) months, to investigate any genuine complaint of nuisance as determined by Council caused by noise, light, odour or dust. An analysis of the monitoring data and a report, including nuisance mitigation measures, must be provided to Council within fourteen (14) days of the completion of the investigation. Council will require any noise mitigation measures identified in the assessment to be implemented within appropriate timeframes.
- 11.5 Where un-sealed surface treatments are utilised in access, parking and vehicle manoeuvring areas, contaminants such as oils or chemicals must not be released onto the surface treatment.
- 11.6 All surface treatments must be operated and maintained in a manner so that there is no significant impact as determined by Council on the amenity of adjoining premises or the surrounding area being caused due to the emission of dust or resulting in sediment laden water.
- Note:** If the amenity impacts cannot be mitigated, the area must be sealed to Council's satisfaction.
- 11.7 All waste storage areas must be:
- 11.7.1 kept in a clean and tidy condition; and
  - 11.7.2 maintained in accordance with *Environmental Protection Regulation 2019*.
- 11.8 No washing of plant equipment and vehicles is permitted on the development site unless an approved washdown bay is built to prevent contamination of land and the stormwater system.
- 11.9 All containers must be stored in an approved enclosed structure, except for those permitted by condition 11.2 or if waiting collection (on the same day).

## 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](http://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. Rating Category

Please note, a Material Change of Use approval may result in an adjustment to a property's rating category. Please contact Council's Rates Department should you require further information.

NOTE 6. 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.



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**Attachment 1 – Part 2**  
**Referral Agency Conditions – State**  
**Development, Infrastructure, Local**  
**Government and Planning (State**  
**Assessment and Referral Agency**  
**Department)** *Planning Act 2016*

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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</b> <b>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

<b>Table 1</b> <b>Appeals to the P&amp;E Court and, for certain matters, to a tribunal</b>			
<b>4. Infrastructure charges notices</b> An appeal may be made against an infrastructure charges notice on 1 or more of the following grounds a) The notice involved an error relating to – (i) The application of the relevant adopted charge; or Examples of errors in applying an adopted charge – <ul style="list-style-type: none"> <li>The incorrect application of gross floor area for a non-residential development</li> <li>Applying an incorrect ‘use category’, under a regulation, to the development <ul style="list-style-type: none"> <li>The working out of extra demands, for section 120; or</li> <li>An offset or refund; or</li> </ul> </li> </ul> b) The was no decision about an offset or refund; or c) If the infrastructure charges notice states a refund will be given – the timing for giving the refund; or d) The amount of the charge is so unreasonable that no reasonable relevant local government could have imposed the amount.			
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	-	-
<b>5. Conversion applications</b> An appeal may be made against— (a) the refusal of a conversion application; or (b) a deemed refusal of a conversion application.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant	The local government to which the conversion application was made	-	-
<b>6. Enforcement notices</b> An appeal may be made against the decision to give an enforcement notice.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The person given the enforcement notice	The enforcement authority	-	If the enforcement authority is not the local government for the premises in relation to which the offence is alleged to have happened—the local government

<b>Table 2</b> <b>Appeals to the P&amp;E Court only</b>			
<b>1. Appeals from tribunal</b> An appeal may be made against a decision of a tribunal, other than a decision under section 252, on the ground of— (a) an error or mistake in law on the part of the tribunal; or (b) jurisdictional error.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A party to the proceedings for the decision	The other party to the proceedings for the decision	-	-



**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**

<b>Table 2</b> <b>Appeals to the P&amp;E Court only</b>			
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
<b>6. Local laws</b> 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	-	-

<b>Table 3</b> <b>Appeals to the tribunal only</b>			
<b>1. Building advisory agency appeals</b> 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
<b>3. Certain decisions under the Building Act and the Plumbing and Drainage Act</b> 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	-	-
<b>4. Local government failure to decide application under the Building Act</b> 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	-	-