



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/23-2023 | Contact: | Kathy McDonald |
| Notice Date: | 2 June 2023 | Contact Number: | 07 4936 8099 |

APPLICANT DETAILS

| | | | |
|-----------------|--|--------|--|
| Name: | Hastings Deering (Australia) Ltd | | |
| Postal address: | C/- Gideon Town Planning PO BOX 450 ROCKHAMPTON QLD 4700 | | |
| Phone no: | 07 4806 6959 | Email: | info@gideontownplanning.com.au |

I acknowledge receipt of the above application on 16 February 2023 and confirm the following:

DEVELOPMENT APPROVAL

Development Permit for Material Change of Use for Medium Impact Industry (Industrial Spray Painting Facility) and Preliminary Approval for Building Works Assessable against the Planning Scheme (Industrial Spray Painting Facility)

PROPERTY DESCRIPTION

| | |
|----------------------------|--|
| Street address: | 150 Port Curtis Road, Port Curtis |
| Real property description: | Lot 3 on LN1187, Parish of Rockhampton |

Dear Hastings Deering (Australia) Ltd

I advise that, on 25 May 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| Development assessable under the planning scheme, superseded planning scheme, a temporary local planning instrument, a master plan or a preliminary approval which includes a variation approval | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| - Building work assessable under the planning scheme | | |
| - Material change of use | | |

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 | |
| Plumbing and Drainage Works | |

4. SUBMISSIONS

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

5. REFERRAL AGENCIES

NIL

6. THE APPROVED PLANS

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

| Plan/Document Name | Prepared by | Date | Reference No. | Version/Issue |
|-------------------------|-------------------------------------|-------------------|---------------|---------------|
| Proposed Floor Plan | dezignelements building designers | 19 September 2022 | S-01 | - |
| Section A & 3D View | dezignelements building designers | 19 September 2022 | S-02 | - |
| Flood Hazard Assessment | Patcol Group (Consulting Engineers) | 13 February 2023 | 22-603 | - |

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

The development approval lapses at the end of the following periods:

- For any part of the development approval relating to a material change of use – if the 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; and
- For any other part of the development approval – if the development does not substantially start 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 Medium Impact Industry (Industrial Spray Painting Facility) and Preliminary Approval for Building Works Assessable against the Planning Scheme (Industrial Spray Painting Facility) |
| Reasons for Decision |
| <ol style="list-style-type: none">Assessment of the development against the relevant zone purpose, planning scheme codes and planning scheme policies demonstrates that the proposed development will not cause significant adverse impacts on the surrounding natural environment, built environment and infrastructure, community facilities, or local character and amenity; andOn balance, the application should be approved because the circumstances favour Council exercising its discretion to approve the application even though the development does not comply with an aspect of the assessment benchmarks. |
| Assessment Benchmarks |

The development was assessed against the following assessment benchmarks:

- Strategic Framework;
- Rural Zone Code;
- Flood Hazard Overlay Code;
- Airport Environs Overlay Code;
- Access, Parking And Transport Code;
- Landscape Code;
- Stormwater Management Code;
- Waste Management Code; and
- Water and Sewer Code.

Compliance with assessment benchmarks

The development was assessed against all of the assessment benchmarks listed above and complies with all of these with the exceptions listed below.

Assessment Benchmarks

- Rural Zone Purpose;
- Rural Zone Code - Performance Outcome 14; and
- Rural Zone Code - Performance Outcome 15

Reasons for the approval despite non-compliance with benchmark

Whilst the development is a non-rural use located within the Rural Zone, it is considered to comply with the following outcomes:

- (i) a need to be remote from urban uses as a result of their impacts; or
- (ii) they cannot be located in an urban area (for example, due to land area requirements).

Specifically, it is identified under the Settlement Pattern theme, 3.3.6 Element – Rural, under the *Rockhampton Region Planning Scheme 2015*, Specific Outcome (1) contemplates that Rural land has important economic, environmental and scenic values and provides for uses including primary production, **mining** and tourism.

Hastings Deering has historically been located on the subject site for over 54 years. They are an established large scale mining, construction and heavy transport operator and can be considered ancillary to mining which may be appropriately located within the Rural Zone and coexist with rural uses when adequately separated or buffered.

- The development is considered to be appropriately located within an existing historic industrial site. The subject site is not mapped as productive agricultural land and the development will not restrict the ongoing safe and efficient use of nearby rural uses. The built form is sited with appropriate separation distances from all boundaries, 50 metres from the north boundary road frontage (Port Curtis Road) and approximately 300 metres from the east, west and south boundaries of the subject site which is considered to be an effective buffer to minimise any potential adverse impacts generated from the development.
- Operations of the Medium Impact Industry use (Industrial Spray Painting Facility) will solely occur during daytime hours (7:00am to 5:00pm Monday to Friday) and suitable separation distances from the closest residential land use (100 metres) is also considered to be an effective buffer to mitigate any potential off-site impacts to the surrounding area due to the emission of light, noise, odour or dust. Furthermore, operations will occur within a fully enclosed and ventilated workshop ensuring hazardous materials are contained.

Therefore, the development is considered to comply with the purpose of the Rural Zone and Performance Outcomes 14 and 15. To the extent any conflicts are identified, regard to relevant matters is considered to outweigh those conflicts.

Assessment Benchmarks

- Rural Zone Code – Performance Outcome 1

Reasons for the approval despite non-compliance with benchmark

Acceptable Outcome 1.1 prescribes that the maximum height of new buildings does not exceed two (2) storeys and ten (10) metres above ground level.

The height of the workshop structure is approximately one (1) storey and 10.5 metres above ground level. Exceeding this requirement by 0.5 metres is considered minimal in the context of the site. The proposed structure will be proportionate with the heights of the existing buildings and is located with appropriate setbacks (50 metres from the road boundary (Port Curtis Road).

Furthermore, the subject site is improved with multiple Development Approvals for large scale offices, workshops, sheds, and holding yards for the operation, maintenance and repair of mining equipment. The proposal only results in a 442 square metre increase to gross floor area (GFA) which is not anticipated to impact on the rural character of the locality, having regard to the scale and visibility of the existing buildings on the subject site.

Therefore, the development is considered to comply with the overarching Performance Outcome 1

Assessment Benchmarks

- Strategic Framework - 3.4 - Natural Environment and Hazards; and
- Flood Hazard Overlay Code – Performance Outcome 4

Reasons for the approval despite non-compliance with benchmark

The development does not comply with Acceptable Outcome 4.1.1 as it involves the construction of a new structure and Acceptable Outcome 4.1.4 as the class 10a structure is located within the Rural Zone and exceeds the 50 square metre size minimum.

The development is for a 442 square metre shed within an existing industrial/mining site. As contemplated under Specific Outcome (3) of 3.4.3 Element – Natural Hazards within the Strategic Framework of the *Rockhampton Region Planning Scheme 2015*, significant areas of the Rockhampton region are already established within the Fitzroy River floodplain area. This site is historically located within one of these areas and is wholly affected by Riverine Flooding, H2 (Medium) to H3 (High) within the established areas of the site. Despite this, a flood assessment has been prepared by a registered engineering that concludes the additional structure on the subject site will not result in a material increase in flood level or flood hazard on upstream, downstream or adjacent properties for the following reasons:

- Local and global (Riverine Flooding) flood heights will not increase as there will be no material change to existing hydraulic parameters and no loss of storage due to the construction of a 442 square metre structure.
- There will be no change to depth or velocity as the structure will be located on existing hardstand area and will be open during a flood event to allow water to freely flow in and around the structure without causing nuisance to neighbouring properties.
- The structure is a non-habitable class 10a structure and construction materials are proposed to be robust and flood-resistant materials, therefore minimising the risk and damage to property during a flood event.
- A Flood Contingency management plan is in place which includes:
 - Monitoring flood warnings to allow for preparation.
 - Removal of loose material and potential debris; and
 - Relocation of all equipment off site.

Therefore, it is considered the development is compatible with the level of risk associated with the flood hazard and no increased risks to persons, infrastructure, or property are likely to occur as a result of the development.

Assessment Benchmarks

- Landscaping Code

Reasons for the approval despite non-compliance with benchmark

| |
|---|
| No landscaping is proposed as part of the development. The subject site has two (2) road frontages (Port Curtis Road and Old Bruce Highway South) with a total length of just over one (1) kilometre. Council does not consider imposing landscaping conditions for the full length of the subject site's road frontage reasonable in this instance. Large, grassed road verges with sporadic street trees are established along both road frontages which is considered appropriate for the rural character of the area. |
| Relevant Matters |
| <p>The proposed development was assessed against the following relevant matters:</p> <ul style="list-style-type: none"> Hastings Deering has historically been located on the subject site for over 54 years. They are an established large scale mining, construction and heavy transport operator, which can be considered ancillary to mining which is a consistent use that can coexist within the Rural Zone if impacts can be mitigated, and it is considered that the likely impacts of the development have been satisfactorily addressed as part of the application; and The site is currently developed with a non-rural use, despite the Rural Zoning. Furthermore, the development site is not located on land identified on the agricultural land classification mapping and given the site's existing approvals and land use requirements it is considered not viable in a productive rural capacity. |
| Matters raised in submissions |
| The proposal was the subject of public notification between 13 March 2023 and 31 March 2023, in accordance with the requirements of the Planning Act 2016 and the Development Assessment Rules, and no submissions were received. |
| Matters prescribed by regulation |
| <ul style="list-style-type: none"> The <i>Rockhampton Region Planning Scheme 2015</i> (version 2.2); and The common material, being the material submitted with the application. |

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: | Amanda O'Mara <u>COORDINATOR</u> <u>DEVELOPMENT ASSESSMENT</u> | Signature: |  | Date: | 2 June 2023 |
|-------|---|------------|--|-------|-------------|

Attachment 1 – Conditions of the approval

Part 1 – Conditions imposed by the assessment manager [Note: where a condition is imposed about infrastructure under Chapter 4 of the Planning Act 2016, the relevant provision of the Act under which this condition was imposed must be specified.]

Attachment 2—Extract on appeal rights

Attachment 1 – Part 1 Rockhampton Regional Council Conditions

Planning Act 2016

1.0 ADMINISTRATION

- 1.1 The owner, the owner's successors in title, and any occupier of the premises is responsible for ensuring compliance with the conditions of this development approval.
- 1.2 Where these Conditions refer to "Council" in relation to requiring Council to approve or to be satisfied as to any matter, or conferring on the Council a function, power or discretion, that role may be fulfilled in whole or in part by a delegate appointed for that purpose by the Council.
- 1.3 All conditions, works, or requirements of this development approval must be undertaken and completed:
- 1.3.1 to Council's satisfaction;
 - 1.3.2 at no cost to Council; and
 - 1.3.3 prior to the commencement of the use, unless otherwise stated.
- 1.4 The following further Development Permits must be obtained prior to the commencement of any works associated with their purposes:
- 1.4.1 Plumbing and Drainage Works; and
 - 1.4.2 Building Works:
- 1.5 All Development Permits for Plumbing and Drainage Works must be obtained prior to the issue of a Development Permit for Building Works.
- 1.6 All works must be designed, constructed and maintained in accordance with the relevant Council policies, guidelines and standards, unless otherwise stated.
- 1.7 All engineering drawings/specifications, design and construction works must be in accordance with the requirements of the relevant Australian Standards and must be approved, supervised and certified by a Registered Professional Engineer of Queensland.

2.0 APPROVED PLANS AND DOCUMENTS

- 2.1 The approved development must be completed and maintained generally in accordance with the approved plans and documents, except where amended by any condition of this development approval:

| <u>Plan/Document Name</u> | <u>Prepared by</u> | <u>Date</u> | <u>Reference No.</u> | <u>Version/Issue</u> |
|---------------------------|-------------------------------------|-------------------|----------------------|----------------------|
| Proposed Floor Plan | design elements building designers | 19 September 2022 | S-01 | - |
| Section A & 3D View | design elements building designers | 19 September 2022 | S-02 | - |
| Flood Hazard Assessment | Patcol Group (Consulting Engineers) | 13 February 2023 | 22-603 | - |

- 2.2 Where there is any conflict between the conditions of this development approval and the details shown on the approved plans and documents, the conditions of this development approval must prevail.
- 3.0 PLUMBING AND DRAINAGE WORKS
- 3.1 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.
- 3.2 The development must be connected to Council's reticulated sewerage and water networks if required.
- 3.3 The existing sewerage and water connection point(s) must be retained, and upgraded, if necessary, to service the development.
- 3.4 Adequate domestic and firefighting protection must be provided to the development, and must be certified by a hydraulic engineer or other suitably qualified person.
- 3.5 Alteration, disconnection or relocation of internal plumbing and sanitary drainage works associated with the existing building must be in accordance with regulated work under the Plumbing and Drainage Act 2018 and Council's Plumbing and Drainage Policies.
- 3.6 All sanitary drainage works must comply with Australian Plumbing and Drainage Standard AS3500 Part 2 section 3 and 4 for flood affected areas.
- 3.7 Amended sewerage/Sewerage trade waste permits must be obtained for the discharge of any non-domestic waste into Council's reticulated sewerage network. Arrestor traps must be provided where commercial or non-domestic waste is proposed to be discharged into the sewer system.
- 4.0 STORMWATER WORKS
- 4.1 All stormwater must drain to a demonstrated lawful point of discharge and must not adversely affect surrounding land or infrastructure in comparison to the pre-development conditions, including but not limited to blocking, altering or diverting existing stormwater runoff patterns or having the potential to cause damage to other infrastructure.
- 5.0 ROOF AND ALLOTMENT DRAINAGE WORKS
- 5.1 All roof and allotment runoff from the development must be directed to a lawful point of discharge and must not restrict, impair or change the natural flow of runoff water or cause a nuisance to surrounding land or infrastructure.
- 6.0 SITE WORKS
- 6.1 Site works must be constructed such that they do not, at any time, in any way restrict, impair or change the natural flow of runoff water, or cause a nuisance or worsening to surrounding land or infrastructure.
- 7.0 BUILDING WORKS
- 7.1 The Spray Paint Facility must be designed and constructed using suitable flood resilient materials.
- 7.2 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.
- 7.3 Any lighting devices associated with the development, such as sensory lighting, must be positioned on the development site and shielded so as not to cause glare or other nuisance to nearby residents and motorists. Night lighting must be designed, constructed and operated in accordance with Australian Standard AS4282 "Control of the obtrusive effects of outdoor lighting".

- 7.4 Impervious paved waste storage area/s must be provided in accordance with the Environmental Protection Regulation 2019 and must be:
- 7.4.1 designed and located so as not to cause a nuisance to neighbouring properties;
 - 7.4.2 screened to obstruct from view the contents of the waste storage area;
 - 7.4.3 setback a minimum of two (2) metres from any road frontage; and
 - 7.4.4 provided with a suitable hosecock and hoses at the refuse container area, and washdown must be drained to the in accordance with the Sewerage Trade Waste provisions and the *Plumbing and Drainage Act 2018*.
- 8.0 ELECTRICITY
- 8.1 Electricity services must be provided to the development in accordance with the standards and requirements of the relevant service provider.
- 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 HEALTH
- 10.1 Odour and visible contaminants, including but not limited to dust, fume, smoke, aerosols, overspray or particulates, must not be released to the environment in a manner that will or may cause environmental nuisance or harm unless such release is authorised by Council.
- 10.2 No contaminants are permitted to be released to land or water, including soil, silt, oils, detergents, paints etcetera. Any wash-down areas used for the maintenance or cleaning of equipment must be appropriately bunded and drained to the reticulated sewerage network in accordance with a trade waste permit.
- 11.0 SURFACE COATING AND SPRAY PAINTING
- 11.1 Surface coating and spray painting must be carried out in a fully enclosed booth built to Australian Standard AS4114:2020 "Spray painting booths, designated spray painting areas and paint mixing rooms.
- 11.2 Certification that the surface coating or spray painting booth has been built and installed in accordance with Australian Standard AS4114:2020 and must be provided to Council prior to the commencement of the use.
- 11.3 Efficient spray equipment with a transfer efficiency of at least sixty-five percent (65%) (such as high volume low pressure spray guns and airless spray guns) must be used for all spraying outside of a spray booth.
- 12.0 OPERATING PROCEDURES
- 12.1 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 Port Curtis Road.
- 12.2 All the doors of the shed (industrial Spray-Painting Facility) must remain open during any flood event affecting the subject land in accordance with the Flood Hazard Assessment by Patcol Group (Consulting Engineers) dated 13 February 2023.
- 12.3 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.

- 12.4 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.
- 12.5 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.
- 12.6 Cleaning of plant equipment and vehicles must be carried out in an area where wastewater can be suitably managed so as not to cause contaminants to release into waterways or overland flow paths.
- 12.7 All waste storage areas must be:
- 12.7.1 kept in a clean and tidy condition; and
 - 12.7.2 maintained in accordance with *Environmental Protection Regulation 2019*.

ADVISORY NOTES

NOTE 1. Aboriginal Cultural Heritage

It is advised that under section 23 of the *Aboriginal Cultural Heritage Act 2003*, a person who carries out an activity must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage (the "cultural heritage duty of care"). Maximum penalties for breaching the duty of care are listed in the Aboriginal cultural heritage legislation. The information on Aboriginal cultural heritage is available on the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships website www.dsdsatsip.qld.gov.au

NOTE 2. 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. Building and Plumbing Works

A Development Permit for Building Works must be obtained for the proposed industrial shed structure on the development site; and

A Development Permit for Plumbing and Drainage Works must be obtained for any plumbing and drainage works associated with the proposed building structure on the development site.

NOTE 5. Infrastructure Charges Notice

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

The following is an extract from the *Planning Act 2016* (Chapter 6)

Appeal rights

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states—
 - (a) matters that may be appealed to—
 - (i) either a tribunal or the P&E Court; or
 - (ii) only a tribunal; or
 - (iii) only the P&E Court; and
 - (b) the person—
 - (i) who may appeal a matter (the **appellant**); and
 - (ii) who is a respondent in an appeal of the matter; and
 - (iii) who is a co-respondent in an appeal of the matter; and
 - (iv) who may elect to be a co-respondent in an appeal of the matter.
 - (2) An appellant may start an appeal within the appeal period.
 - (3) The **appeal period** is—
 - (a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency or
 - (b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
 - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or
 - (d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
 - (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or
 - (f) for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.
- Note—
See the P&E Court Act for the court's power to extend the appeal period.
- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
 - (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
 - (6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—
 - (a) the adopted charge itself; or
 - (b) for a decision about an offset or refund—
 - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
 - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

230 Notice of appeal

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—
 - (a) is in the approved form; and
 - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar must, within the service period, give a copy of the notice of appeal to—

- (a) the respondent for the appeal; and
 - (b) each co-respondent for the appeal; and
 - (c) for an appeal about a development application under schedule 1, table 1, item 1—each principal submitter for the development application; and
 - (d) for an appeal about a change application under schedule 1, table 1, item 2—each principal submitter for the change application; and
 - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); and
 - (f) for an appeal to the P&E Court—the chief executive; and
 - (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The **service period** is—
- (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
 - (b) otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection
- (6) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

231 Other appeals

- (1) Subject to this chapter, schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
- (2) The Judicial Review Act 1991, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the Judicial Review Act 1991 in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section— **decision** includes—
 - (a) conduct engaged in for the purpose of making a decision; and
 - (b) other conduct that relates to the making of a decision; and
 - (c) the making of a decision or the failure to make a decision; and
 - (d) a purported decision; and
 - (e) a deemed refusal.

non-appealable, for a decision or matter, means the decision or matter—

- (a) is final and conclusive; and
- (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the Judicial Review Act 1991 or otherwise, whether by the Supreme Court, another court, a tribunal or another entity; and
- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

232 Rules of the P&E Court

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with rules of the P&E Court.

Schedule 1

Appeals section 229

1 Appeal rights and parties to appeals

- (1) Table 1 states the matters that may be appealed to—(a) the P&E court; or (b) a tribunal.
- (2) However, table 1 applies to a tribunal only if the matter involves—
 - (a) the refusal, or deemed refusal of a development application, for—
 - (i) a material change of use for a classified building; or
 - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
 - (b) a provision of a development approval for—
 - (i) a material change of use for a classified building; or
 - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
 - (c) if a development permit was applied for—the decision to give a preliminary approval for—
 - (i) a material change of use for a classified building; or
 - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
 - (d) a development condition if—
 - (i) the development approval is only for a material change of use that involves the use of a building classified under the Building Code as a class 2 building; and
 - (ii) the building is, or is proposed to be, not more than 3 storeys; and
 - (iii) the proposed development is for not more than 60 sole-occupancy units; or
 - (e) a decision for, or a deemed refusal of, an extension application for a development approval that is only for a material change of use of a classified building; or
 - (f) a decision for, or a deemed refusal of, a change application for a development approval that is only for a material change of use of a classified building; or
 - (g) a matter under this Act, to the extent the matter relates to—
 - (i) the Building Act, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission; or
 - (ii) the Plumbing and Drainage Act, part 4 or 5; or
 - (h) a decision to give an enforcement notice in relation to a matter under paragraphs (a) to (g); or
 - (i) a decision to give an infrastructure charges notice; or
 - (j) the refusal, or deemed refusal, of a conversion application; or
 - (k) a matter that, under another Act, may be appealed to the tribunal; or
 - (l) a matter prescribed by regulation.
- (3) Also, table 1 does not apply to a tribunal if the matter involves—
 - (a) for a matter in subsection (2)(a) to (d)—
 - (i) a development approval for which the development application required impact assessment; and
 - (ii) a development approval in relation to which the assessment manager received a properly made submission for the development application; or
 - (b) a provision of a development approval about the identification or inclusion, under a variation approval, of a matter for the development.
- (4) Table 2 states the matters that may be appealed only to the P&E Court.
- (5) Table 3 states the matters that may be appealed only to the tribunal.
- (6) In each table—
 - (a) column 1 states the appellant in the appeal; and
 - (b) column 2 states the respondent in the appeal; and
 - (c) column 3 states the co-respondent (if any) in the appeal; and
 - (d) column 4 states the co-respondents by election (if any) in the appeal.
- (7) If the chief executive receives a notice of appeal under section 230(3)(f), the chief executive may elect to be a co-respondent in the appeal.

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

| 1. Development applications An appeal may be made against— <ol style="list-style-type: none"> (a) the refusal of all or part of the development application; or (b) the deemed refusal of the development application; or (c) a provision of the development approval; or (d) if a development permit was applied for—the decision to give a preliminary approval. | | | |
|---|------------------------|---------------------------------------|--|
| Column 1 Appellant | Column 2 Respondent | Column 3 Co-respondent (if any) | Column 4 Co-respondent by election (if any) |
| The applicant | The assessment manager | If the appeal is about a concurrence | 1 A concurrence agency that is not a co-respondent |

| Table 1 Appeals to the P&E Court and, for certain matters, to a tribunal | | | |
|---|------------------------|---|---|
| | | agency's referral response—the concurrence agency | 2 If a chosen Assessment manager is the respondent—the prescribed assessment manager 3 Any eligible advice agency for the application 4 Any eligible submitter for the application |
| 2. Change applications An appeal may be made against— (a) a responsible entity's decision for a change application, other than a decision made by the P&E court; or (b) a deemed refusal of a change application. | | | |
| Column 1 Appellant | Column 2 Respondent | Column 3 Co-respondent (if any) | Column 4 Co-respondent by election (if any) |
| 1 The applicant 2 If the responsible entity is the assessment manager—an affected entity that gave a pre-request notice or response notice | The responsible entity | If an affected entity starts the appeal—the applicant | 1 A concurrence agency for the development application 2 If a chosen assessment manager is the respondent—the prescribed assessment manager 3 A private certifier for the development application 4 Any eligible advice agency for the change application 5 Any eligible submitter for the change application |
| 3. Extension applications An appeal may be made against— (a) the assessment manager's decision about an extension application; or (b) a deemed refusal of an extension application. | | | |
| Column 1 Appellant | Column 2 Respondent | Column 3 Co-respondent (if any) | Column 4 Co-respondent by election (if any) |
| 1 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 | | | |
|---|---|---------------------------------------|---|
| 4. Infrastructure charges notices 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"> The incorrect application of gross floor area for a non-residential development Applying an incorrect ‘use category’, under a regulation, to the development (i) The working out of extra demands, for section 120; or (ii) An offset or refund; or 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 | - | - |
| 5. Conversion applications 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 | - | - |
| 6. Enforcement notices 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 |

| Table 2 Appeals to the P&E Court only | | | |
|--|---|---------------------------------------|---|
| 1. Appeals from tribunal An appeal may be made against a decision of a tribunal, other than a decision under section 252, on the ground of— (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

| Table 2 Appeals to the P&E Court only | | | |
|---|------------------------|---------------------------------------|--|
| An appeal may be made against a decision of the Minister under chapter 7, part 4. | | | |
| Column 1 Appellant | Column 2 Respondent | Column 3 Co-respondent (if any) | Column 4 Co-respondent by election (if any) |
| 1 A person given a decision notice about the decision 2 If the decision is to register premises or renew the registration of premises—an owner or occupier of premises in the affected area for the registered premises who is dissatisfied with the decision | The Minister | - | If an owner or occupier starts the appeal – the owner of the registered premises |
| 6. Local laws An appeal may be made against a decision of a local government, or conditions applied, under a local law about— (a) the use of premises, other than a use that is the natural and ordinary consequence of prohibited development; or (b) the erection of a building or other structure. | | | |
| Column 1 Appellant | Column 2 Respondent | Column 3 Co-respondent (if any) | Column 4 Co-respondent by election (if any) |
| A person who— (a) applied for the decision; and (b) is dissatisfied with the decision or conditions. | The local government | - | - |

| Table 3 Appeals to the tribunal only | | | |
|---|------------------------|---------------------------------------|---|
| 1. Building advisory agency appeals An appeal may be made against giving a development approval for building work to the extent the building work required code assessment against the building assessment provisions. | | | |
| Column 1 Appellant | Column 2 Respondent | Column 3 Co-respondent (if any) | Column 4 Co-respondent by election (if any) |
| A building advisory agency for the development application related to the approval | The assessment manager | The applicant | 1 A concurrence agency for the development application related to the approval 2 A private certifier for the development application related to the approval |
| 3. Certain decisions under the Building Act and the Plumbing and Drainage Act An appeal may be made against a decision under— (a) the Building Act, other than a decision made by the Queensland Building and Construction Commission; or (b) the Plumbing and Drainage Act, part 4 or 5. | | | |
| Column 1 Appellant | Column 2 Respondent | Column 3 Co-respondent (if any) | Column 4 Co-respondent by election (if any) |

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