



Decision Notice Approval (amended)

Planning Act Form 5 (version 1.2 effective 7 February 2020) made under Section 282 of the Planning Act 2016 for a decision notice (approval) under s83 Planning Act 2016

Application number:	D/278-2013	Contact:	Aidan Murray
Notice Date:	4 July 2024	Contact Number:	07 4936 8099

APPLICANT DETAILS

Name:	P. Waardyk and M. Stokes		
Postal address:	C/- Capricorn Survey Group (CQ) Pty Ltd PO Box 1391 ROCKHAMPTON QLD 4700		
Phone no:	07 4927 5199	Mobile no:	Email: reception@csgcq.com.au

I acknowledge receipt of the above change application on 17 June 2022 and confirm the following:

DEVELOPMENT APPROVAL

'Other Change' to Development Permit for Material Change of Use for an Extractive Industry

PROPERTY DESCRIPTION

Street address:	Lot 100 Nine Mile Road, Fairy Bower
Real property description:	Lot 100 on SP318665

Dear P. Waardyk and M. Stokes

I advise that, on 25 June 2024 the above change 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.

CHANGES TO CONDITIONS

The conditions which have been changed or cancelled are as follows:

1)	Condition 1.6	Changed	25 June 2024
2)	Condition 1.10	Deleted	25 June 2024
3)	Condition 1.11	New	25 June 2024
4)	Condition 2.1	Changed	25 June 2024
5)	Condition 3.1	Deleted	26 November 2019
6)	Condition 3.2	Deleted	26 November 2019
7)	Condition 3.3	Deleted	26 November 2019

8)	Condition 4.1	Deleted	25 June 2024
9)	Condition 4.2	Deleted	25 June 2024
10)	Condition 4.3	Deleted	25 June 2024
11)	Condition 4.4	Changed	25 June 2024
12)	Condition 4.5	New	25 June 2024
13)	Condition 4.6	New	25 June 2024
14)	Condition 4.7	New	25 June 2024
15)	Condition 5.1	Deleted	25 June 2024
16)	Condition 5.2	Changed	25 June 2024
17)	Condition 5.3	Deleted	25 June 2024
18)	Condition 6.1	Deleted	25 June 2024
19)	Condition 6.2	Deleted	25 June 2024
20)	Condition 6.4	Deleted	25 June 2024
21)	Condition 7.7	Changed	25 June 2024
22)	Condition 7.8	Changed	25 June 2024
23)	Condition 7.9	Deleted	25 June 2024
24)	Condition 7.10	Deleted	25 June 2024
25)	Condition 7.11	New	25 June 2024
26)	Condition 7.12	New	25 June 2024
27)	Condition 8.3	Deleted	25 June 2024
28)	Condition 9.3	New	26 November 2019
29)	Condition 9.4	New	26 November 2019
30)	Condition 9.5	New	26 November 2019
31)	Condition 10.2	Changed	25 June 2024
32)	Condition 10.10	New	25 June 2024
33)	Condition 10.11	New	25 June 2024
34)	Condition 10.12	New	25 June 2024
35)	Condition 11.1	New	25 June 2024
36)	Advisory Note 1	New	25 June 2024
37)	Advisory Note 2	New	25 June 2024
38)	Advisory Note 3	New	25 June 2024

39)	Advisory Note 4	New	25 June 2024
40)	Advisory Note 5	New	25 June 2024
41)	Advisory Note 7	New	25 June 2024
42)	Advisory Note 8	New	25 June 2024
43)	Advisory Note 9	New	25 June 2024
44)	Advisory Note 10	New	25 June 2024

1. DETAILS OF THE APPROVAL

The following approvals are given:

	Development Permit	Preliminary Approval
Development assessable under the planning scheme, superseded planning scheme, a temporary local planning instrument, a master plan or a preliminary approval which includes a variation approval - Material change of use	<input checked="" type="checkbox"/>	<input type="checkbox"/>

2. CONDITIONS

This approval is subject to the conditions in Attachment 1.

3. FURTHER DEVELOPMENT PERMITS REQUIRED

Please be advised that the following development permits are required to be obtained before the development can be carried out:

Type of development permit required	Subject of the required development permit
Operational Works	Site Works
Building Works Assessable against the Planning Scheme (Preliminary Approval)	
Building Works Assessable against the Building Assessment Provisions	

4. SUBMISSIONS

Properly made submissions were made in relation to the application.

There were three (3) properly made submissions received from the following submitter(s);

Name of principal submitter	Residential or business address	Electronic address (if provided)
1. Goldenyears No 10 Pty Ltd C/- Brett Lewis	8 East Street, Rockhampton Qld 4700	manager@rdogroup.com.au
2. L4 Group Pty Ltd C/- Christine Lewis	26 Brecknell Street, The Range Qld 4700	admin@bellewp.com.au
3. Nine Mile Sands Pty Ltd C/- Brett Lewis	PO Box 8089, Allenstown Qld 4700	manager@rockhamptonsands.com.au

5. REFERRAL AGENCIES

The following Referral Agencies were activated by this application.

For an application involving	Name of agency	Role of Agency	Contact Details
ENVIRONMENTALLY RELEVANT ACTIVITIES			
<i>Schedule 10, Part 5, Division 4, Table 2 - Non-devolved environmentally relevant activities</i>			
<p>Development application for a material change of use that is assessable development under section 8, if—</p> <p>(a) the environmentally relevant activity the subject of the application has not been devolved to a local government under the Environmental Protection Regulation; and</p> <p>(b) the chief executive is not the prescribed assessment manager for the application</p>	<p>The chief executive of the department in which the <i>Planning Act 2016</i> is administered:</p> <p>State Development, Infrastructure, Local Government and Planning (State Assessment and Referral Agency Department)</p>	<p>Concurrence</p>	<p><u>In person:</u> Level 2, 209 Bolsover Street, Rockhampton City</p> <p><u>Online lodgement using MyDAS2:</u> https://prod2.dev-assess.qld.gov.au/suite/</p> <p><u>Email:</u> RockhamptonSARA@dsdilg.p.qld.gov.au</p> <p><u>Postal:</u> PO Box 113 Rockhampton Qld 4700</p>
STATE TRANSPORT INFRASTRUCTURE (Generally)			
<i>Schedule 10, Part 9, Division 4, Subdivision 1, Table 1 – Aspect of development stated in schedule 20</i>			
<p>Development application for an aspect of development stated in schedule 20 that is assessable development under a local categorising instrument or section 21, if—</p> <p>(a) the development is for a purpose stated in schedule 20, column 1 for the aspect; and</p> <p>(b) the development meets or exceeds the threshold—</p> <p>(i) for development in local government area 1—stated in schedule 20, column 2 for the purpose; or</p> <p>(ii) for development in local government area 2—stated in schedule 20, column 3 for the purpose; and</p> <p>(c) for development in local government area 1—the development is not for an accommodation activity or an office at premises wholly or partly in the excluded area</p> <p>However, if the development is for a combination of purposes stated in the same item of schedule 20, the threshold is for the combination of purposes and not for each individual purpose.</p>	<p>The chief executive of the department in which the <i>Planning Act 2016</i> is administered:</p> <p>State Development, Infrastructure, Local Government and Planning (State Assessment and Referral Agency Department)</p>	<p>Concurrence</p>	<p><u>In person:</u> Level 2, 209 Bolsover Street, Rockhampton City</p> <p><u>Online lodgement using MyDAS2:</u> https://prod2.dev-assess.qld.gov.au/suite/</p> <p><u>Email:</u> RockhamptonSARA@dasilgp.qld.gov.au</p> <p><u>Postal:</u> PO Box 113 Rockhampton Qld 4700</p>
WETLAND PROTECTION AREA			
<i>Schedule 10, Part 20, Division 4, Table 3 – Material change of use of premises in wetland in protection area</i>			

<p>Development application for a material change of use that is assessable development under a local categorising instrument, other than a material change of use relating to a domestic housing activity, government supported transport infrastructure or electricity operating works, if—</p> <p>(a) all or part of the premises are in a wetland protection area; and</p> <p>(b) the material change of use involves operational work that is high impact earthworks in a wetland protection area</p>	<p>The chief executive of the department in which the <i>Planning Act 2016</i> is administered:</p> <p>State Development, Infrastructure, Local Government and Planning (State Assessment and Referral Agency Department)</p>	<p>Concurrence</p>	<p><u>In person:</u> Level 2, 209 Bolsover Street, Rockhampton City</p> <p><u>Online lodgement using MyDAS2:</u> https://prod2.dev-assess.qld.gov.au/suite/</p> <p><u>Email:</u> RockhamptonSARA@dsg.ilgp.qld.gov.au</p> <p><u>Postal:</u> PO Box 113 Rockhampton Qld 4700</p>
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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>Plan / Document Number & Revision / Issue</u>	<u>Prepared By</u>	<u>Dated</u>
Proposed Site Development Layout	WD1057.1, Rev C	Tapsell Consulting Engineers	14 September 2011
Location of Proposed Project Area	6208-06m, Rev B	Schlencker Surveying	18 November 2011
Material Change of Use (Extractive Industry) 'Other Change'	7379-01-MCU-A, Issue A	Capricorn Survey Group (CQ)	14 June 2019
Site Management Plan to Extract Sand from the Corner of Fogarty Road & Nine Mile Road (Lots 431 & 432 on LIV401245)	-	Hardcore Performance Pty Ltd	Not Dated
Preliminary Acid Sulphate Soil Investigation Proposed Sand Extractive Industry	3798-100810-1.0, Final Issue	Future-Plus Environmental	16 August 2010
Letter from McMurtrie Consulting Engineers to DTMR regarding Traffic Engineering Assessment of Proposed Use	026-10-11	McMurtrie Consulting Engineers	15 May 2013
Transport and Pavement Impact Assessment	R002-22-23/004, Rev B	McMurtrie Consulting Engineers	28 August 2023
Technical Memorandum from McMurtrie Consulting Engineers	R002-22-23/004	McMurtrie Consulting Engineers	27 November 2023
Lot 100 Nine Mile Road, Fairy Bower – Flood Impact Assessment	R.30001.001.002, Issue 2	Water Engineering Plus	22 August 2023
Environmental Report	D/278-2013, EPR01425013, Final V2	Steer Environmental Consulting	12 September 2023

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	
'Other Change' to Material Change of Use for an Extractive Industry	
Reasons for Decision	
<p>a) Assessment of the development against the relevant zone purpose, planning scheme codes and planning scheme policies demonstrates that the proposed development will not cause significant adverse impacts on the surrounding natural environment, built environment and infrastructure, community facilities, or local character and amenity; and</p> <p>b) On balance, the application should be approved because the circumstances favour Council exercising its discretion to approve the application even though the development does not comply with an aspect of the assessment benchmarks.</p>	
Assessment Benchmarks	
<p>The development was assessed against the following assessment benchmarks:</p> <ul style="list-style-type: none"> • Local Government Infrastructure Plan; • Strategic Framework; • Rural Zone Code; • Acid Sulfate Soils Overlay Code; • Airport Environs Overlay Code; • Biodiversity Overlay Code; • Flood Hazard Overlay Code; • Steep Land Overlay Code; • Extractive Industry 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 Benchmark	Reasons for the approval despite non-compliance with benchmark
Extractive Industry Code PO2	<p>The development does not comply with Acceptable Outcome (AO) 2.1, which requires a vegetated buffer with a minimum width of thirty (30) metres along all boundaries of the site. A vegetation buffer has not been proposed by the Applicant or conditioned to be provided.</p> <p>The extraction and operations areas are located over 300 metres from the nearest sensitive land use (dwelling houses on surrounding rural properties) and maintain reasonable separation from the future state transport corridor described as the 'Rockhampton Ring Road'. As such, a vegetated buffer or screening along the property boundaries is not considered necessary or practical to maintain the amenity of surrounding residents. Conditions of approval have been included referencing the relevant environmental standards (e.g. environmental nuisance and amenity under <i>Environmental Protection Act 1994</i>). The development is considered to achieve the intent of the Performance Outcome</p>

	(PO) 2 and the Purpose and Overall Outcomes of the Extractive Industry Code.
Extractive Industry Code PO4	The development does not comply with Acceptable Outcome (AO) 4.1 as the internal roads are not sealed. Instead, internal haul roads will be a gravel surface. Low vehicle speeds will be used at all times with dust suppression measures being implemented where necessary. This is considered sufficient to achieve the Performance Outcome (PO) 4 where supported by reasonable and relevant conditions within this Development Permit and the associated Environmental Authority Approval regulated by the Department of Environment and Science (DES).
Extractive Industry Code PO5	The development does not comply with Acceptable Outcome (AO) 5.1, which requires security fencing be provided for the full length of the site perimeter around stockpiles and operations areas. The site instead has standard rural fencing around the property boundaries with a security gate at the vehicle access point from Fogarty Road. The fencing and gate currently provided as well as the site location and other factors are considered sufficient to not compromise public safety and ensure risks are minimal, thereby achieving Performance Outcome (PO) 5.
Access, Parking and Transport Code PO6	The application does not comply with Acceptable Outcome (AO) 6.1 as the on-site parking, access and manoeuvring facilities, are not sealed but are instead constructed of gravel. The site is located in the Rural Zone and well separated from any sensitive land uses. The nearest land use is another extractive industry on a separate property. The risk of amenity impacts from dust is therefore considered low risk subject to appropriate mitigation measures. Conditions of approval require that all access works are designed and constructed in accordance with Capricorn Municipal Guidelines and relevant Australian Standards. Based on the above, parking and servicing facilities are designed to meet user requirements and therefore comply with Performance Outcome (PO) 6.
Flood Hazard Overlay Code PO4	The development does not comply with AO 4.1.1 as there are buildings proposed / located on-site in the Extreme (H5) Flood Hazard Overlay area. The applicant must obtain separate approvals in relation to the Planning Scheme and the Building Assessment Provisions for the proposed buildings. Advisory Notes 7 and 8 address these requirements. The Building Works Assessable against the Planning Scheme application will need to demonstrate there will be no increase to the flood risk towards people and property to thereby achieve the intent of PO4.
Flood Hazard Overlay Code PO10	<p>It was identified within the application material and Flood Impact Assessment that the bund walls result in some reduction of onsite flood storage and changes to flood characteristics and is therefore non-compliant with Performance Outcome (PO) 10 of the code. The entire subject site and surrounding area sees complete inundation during a range of flood events up to and including the Defined Flood Event (DFE). The development is operating under the existing approval and no changes to the existing access points are proposed. Due to the nature of the extractive industry and the typical warning time for riverine flooding, evacuation and 'abandonment' of the site is considered feasible prior to a flood event.</p> <p>In order to comply with the purpose and overall outcomes of the Flood Hazard Code, the applicant was required to demonstrate to Council that the development does not materially impede the flow of floodwaters through the site or cause unacceptable impacts external to the site. This is to be enforced through Condition 7.7 of the Development permit which requires:</p> <ul style="list-style-type: none"> • Site works must be constructed such that they do not, at any time, cause an unreasonable interference with infrastructure or a person's use of land. <p>The applicant submitted a Flood Impact Assessment prepared by a Registered Professional Engineer of Queensland (RPEQ) which is included as an approved plan (refer to condition 2.1). As part of this assessment, a number of mitigation options were investigated and assessed via an iterative process with the intent of reducing the impacts on peak flood levels external to the site as result of site</p>

	<p>works. The initial works required to limit the impacts external to the site are as follows:</p> <ul style="list-style-type: none"> • Removal/shortening of Environmentally Relevant Activity (ERA) berms/Topsoil stockpiles along both the eastern boundary and to the southeast of the excavation void; • Lowering of short topsoil stockpile adjacent to Fogarty Road in north of site to 2016 levels; • Lower level of area around pond north of main site access road; and • Filling of western extents of extraction void back to 2008 levels and relocating pit berms to the east. <p>The above mitigation measures have been incorporated into the Development Permit as condition of approval (refer to condition 7.12) to ensure the required and recommended actions are undertaken to reasonably mitigate flood impacts as much as practicably possible. The RPEQ assessment findings suggests that while the flood modelling with mitigating actions will still result in impacts external to the site, Council's Officers agree that this does not constitute an unlawful or unreasonable interference with the owners use or enjoyment of the land. This has been demonstrated through an assessment of the flood model including the proposed mitigation measures at specific geographic points. The approved Flood Impact Assessment provides the raw data of these impacts and is included as an approved plan (refer to condition 2.1). On review of the resulting flood impacts, the modelling demonstrates that the increase to flood level and impacts external to the site are generally quite limited. Giving consideration to the overall depth for the flood plain, the impact predicted following implementation of the mitigation measures is considered negligible.</p> <p>Therefore, the change application is considered to be generally consistent with the purpose and overall outcomes of the Flood Hazard Overlay Code.</p>
Relevant Matters	
The proposed development was not assessed against any relevant matters outside of the matters prescribed by regulation.	
Matters raised in submissions	
The proposal was the subject of public notification between 25 September 2023 and 19 October 2023, in accordance with the requirements of the <i>Planning Act 2016</i> and the Development Assessment Rules, and three (3) submissions were received.	
Various internal inconsistencies regarding the nature and scope of the application	The submitter/s raised concerns around various internal inconsistencies regarding the nature and scope of the application throughout the application material. Council's procedure for making application material for public notification is to publish all required and relevant documents that have been issued and received for the application to date as per the <i>Planning Regulation 2017</i> . As a result, multiple versions of some reports, plans and other documents were made available including earlier versions that were amended, replaced, corrected or superseded as part of the statutory assessment process. Updated documentation was provided in response to an information request and further advice correspondence issued by Council and the State Assessment Referral Agency (SARA). On reviewing the submission/s and the relevant application material, Council officers identified that a number of the internal consistencies referred to are because of the amendments to the development proposal and the accompanying material.
Missing information and inconsistencies on DA Form 1	As the proposal is for a change application to amend an existing approval, the applicant submitted the required Change Application Form (Planning Act Form 5). Planning Act Form 5 indicates which sections of DA Form 1 must be completed for an 'Other Change' application, and it is not necessary to fully complete DA Form 1. Where there were any errors or inconsistencies in the original material submitted, this was clarified with the applicant and Council officers, as well as officers representing the State Assessment Referral Agency

	(SARA), and all were satisfied that the information provided was sufficient to assess the change application.
Maximum extractive industry threshold	The 'Other Change' application was originally submitted to Council seeking to increase the maximum output of the extractive industry from 250,000 tonnes per annum (tpa) to 1,000,000 tpa. After the initial lodgement, the applicant amended the application to reduce the proposed maximum extraction to 500,000 tpa and updated the accompanying reports, plans and material to match. This accounts for the scope inconsistency in the original Change Application Form lodged compared to the later material, as highlighted by the submitter/s. Correspondence with the applicant prior to public notification confirmed that the proposed change sought is for 500,000 tpa.
Requirement to submit an application for Operational Works approval	The submitter/s raised concerns about the requirement for an operational works application to be lodged to facilitate the existing approved extractive industry activity as well as the proposed 'Other Change'. While Operational Works Approval is required for site works, it is not necessary that it be included with the change application as it can be applied for as a separate application. Conditions of approval indicate that a Development Permit for Operational Works (site works) must be obtained and establishes the requirements and guidelines that must be complied with. Any non-compliance would be subject to Council's standard development compliance process in accordance with the <i>Planning Act 2016</i> .
Addressing the Extractive Industry Code	The submitter/s raised concerns that the change application material lodged prior to public notification did not directly address the Extractive Industry Code of the Rockhampton Region Planning Scheme. Council requested the applicant address the code through further advice correspondence issued on 1 November 2023. The applicant provided a response addressing the code on 24 January 2024 which has been incorporated into Council officers' assessment of the change application.
Alternative haulage route not accounted for in the Traffic and Pavement Impact Assessment (TPIA)	The submitter/s highlighted that the Traffic and Pavement Impact Assessment (TPIA) undertaken considers that all outbound traffic will exit the site by turning right onto Nine Mile Road from Fogarty Road, and all inbound traffic will enter the site by turning left onto Fogarty Road from Nine Mile Road. The submitter/s raised concerns that the operator (Hardcore Sands) for the extractive industry "currently supplies multiple truckloads of product per day into the market by exiting left from Fogarty Road onto Nine Mile Road which then return to the site via this same route". The TPIA forms part of the approved plans and documents and is therefore statutory for the development. Should the operation utilise any unapproved transport routes, Council can undertake compliance investigation and action if necessary.
Stormwater management, erosion and sediment control	<p>The submitter/s raised concerns that the applicant's "proposed compliance response does not align with existing infrastructure" and that the site "currently captures and diverts stormwater from the operational (screening and stockpiling) area" and "releases sediment laden water to the road reserve on Fogarty Road". They raised concerns about discharged water creating a safety hazard within the road reserve and resulting in encroachment of water onto their lot on the opposite of Fogarty Road. Stormwater, erosion and sediment control measures are required and conditioned within the Environmental Authority approval issued under the <i>Environmental Protection Act 1994</i> by the Department of Environment and Science (DES). The Environmental Authority approval takes precedence with regard to this concern and it is considered that it is better addressed under those conditions rather than Council's jurisdiction. The change application was assessed by the environmental authority through the mandated concurrence referral to the State Assessment Referral Agency (SARA).</p> <p>The concurrence referral agency (SARA) has undertaken assessment as part of the change application process and provided advice stating, "The applicant is also required to submit an amendment application to the Department of Environment and Science in accordance with Chapter 5, Part 7 of the <i>Environmental Protection Act 1994</i> to amend the environmental authority EPPR00236013 prior to commencing any activities associated with the</p>

	<p>increased rate of extraction". Therefore, Council officers deem that appropriate consideration has been given to stormwater management, erosion and sediment control within the context of this change application to the development permit.</p>
<p>Flood Impact Assessment and unlawfully built structures in the Flood Hazard Overlay</p>	<p>The submitter/s raised concerns around the Flood Impact Assessment prepared and lodged by the applicant. The primary concern is in relation to an identified increase to peak flood levels west of the subject site which affects the submitter/s property. Council officers' analysis of the Flood Impact Assessment and review of the modelled flood impacts resulting from the proposed development has been detailed above within the assessment benchmarks section of the Statement of Reasons.</p> <p>The submitter's also raised concerns in relation to some perceived inaccuracies in the Flood Impact Assessment e.g. they believe the referenced stockpile of topsoil on the eastern boundary to be a "permanent bund with extensive drain constructed on the internal side". However, the Flood Impact Assessment recommends removal of this 'stockpile' and other areas to revert the part of the land to the natural surface level and reduce off-site flood impacts. Bund walls around the extraction pits will be reduced to Q100 levels but are required to prevent contaminated water from exiting the site in accordance with the conditions of the Environmental Authority approval managed by the Department of Environment and Science (DES).</p>
<p>Biodiversity overlay and land rehabilitation</p>	<p>The submitter/s raised a concern in relation to an inconsistency between different parts of the application material regarding the proposed rehabilitation approach. Separate parts of the material alternatively state that the land be returned to grazing pasture or the extractive pits are to be used as agricultural water storages on the extractive industry ceasing to operate. The Environmental Authority approval contains conditions relating to the rehabilitation of the land and it is considered reasonable that this takes precedence and is best addressed under those conditions.</p> <p>The concurrence referral agency (SARA) has undertaken assessment as part of the change application process and provided advice stating, "The applicant is also required to submit an amendment application to the Department of Environment and Science in accordance with Chapter 5, Part 7 of the <i>Environmental Protection Act 1994</i> to amend the environmental authority EPPR00236013 prior to commencing any activities associated with the increased rate of extraction". Therefore, Council officers deem that appropriate consideration has been given to biodiversity matters within the context of this change application to the development permit.</p>
<p>Dust mitigation measures</p>	<p>The submitter/s raised concerns around dust mitigation measures not being implemented appropriately or effectively. An Environmental Report provides detail around the exact measures intended to be implemented and has been included as an approved plan/document for the Development Permit (refer to condition 2.1) to form part of the operating procedures for the development. Dust mitigation and other environmental nuisance matters are regulated under the <i>Environmental Protection Act 1994</i> and subordinate legislation managed by the Department of Environment and Science (DES). The Environmental Authority approval EPPR00236013 provides conditions for managing dust and environmental nuisance in accordance with the relevant standards for Environmentally Relevant Activities (ERA).</p> <p>The concurrence referral agency (SARA) has undertaken assessment as part of the change application process and provided advice stating, "The applicant is also required to submit an amendment application to the Department of Environment and Science in accordance with Chapter 5, Part 7 of the <i>Environmental Protection Act 1994</i> to amend the environmental authority EPPR00236013 prior to commencing any activities associated with the increased rate of extraction". Therefore, Council officers deem that appropriate consideration has been given to dust mitigation within the context of this change application to the development permit.</p>
<p>Environmental report inconsistencies and</p>	<p>The submitter/s raised concerns around inconsistencies and errors in the Applicant's environmental report. Some of these concerns relate to matters that</p>

errors	<p>are subject to the Environmental Authority approval managed by the Department of Environment and Science (DES). Therefore it is not considered reasonable or relevant for Council to comment on these particular matters.</p> <p>The concurrence referral agency (SARA) has undertaken assessment as part of the change application process and provided advice stating, "The applicant is also required to submit an amendment application to the Department of Environment and Science in accordance with Chapter 5, Part 7 of the <i>Environmental Protection Act 1994</i> to amend the environmental authority EPPR00236013 prior to commencing any activities associated with the increased rate of extraction". Therefore, Council officers deem that appropriate consideration has been given to the applicant's environmental report.</p>
Environmental Authority Approval EPPR00236013	<p>The submitter/s raised concerns in relation to the existing Environmental Authority approval that relates to the existing extractive industry activity as well as the proposed changes. The Environmental Authority approval is not subject to Council's jurisdiction for decision-making or compliance purposes but is instead managed by the Department of Environment and Science (DES).</p> <p>The concurrence referral agency (SARA) has undertaken assessment as part of the change application process and provided advice stating, "The applicant is also required to submit an amendment application to the Department of Environment and Science in accordance with Chapter 5, Part 7 of the <i>Environmental Protection Act 1994</i> to amend the environmental authority EPPR00236013 prior to commencing any activities associated with the increased rate of extraction". Therefore, Council officers deem that appropriate consideration has been given to the Environmental Authority approval within the context of this change application to the development permit.</p>
Matters prescribed by regulation	
<ul style="list-style-type: none"> • The Rockhampton Region Planning Scheme 2015 (version 2.2); • Central Queensland Regional Plan 2013; • State Planning Policy (July 2017); • The existing development approval D/278-2013; • The common material, being the material submitted with the application. 	

9. RIGHTS OF APPEAL

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*. For particular applications, 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 down 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. ORIGINAL DECISION ASSESSMENT MANAGER

Name: Bob Holmes <u>GENERAL MANAGER</u> <u>REGIONAL SERVICES</u>	Date: 5 February 2014
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12. ASSESSMENT MANAGER

Name: Amanda O'Mara <u>COORDINATOR</u> <u>DEVELOPMENT ASSESSMENT</u>	Signature: 	Date: 4 July 2024
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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

ADMINISTRATION

- 1.1 The Developer is responsible for ensuring compliance with this approval and the Conditions of the approval by an employee, agent, contractor or invitee of the Developer.
- 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 of the Council may be fulfilled in whole or in part by a delegate appointed for that purpose by the Council.
- 1.3 All conditions of this approval must be undertaken and completed to the satisfaction of Council, at no cost to Council.
- 1.4 All conditions, works, or requirements of this approval must be undertaken and completed prior to the commencement of the use, unless otherwise stated.
- 1.5 Where applicable, infrastructure requirements of this approval must be contributed to the relevant authorities, at no cost to Council prior to the commencement of the use, unless otherwise stated.
- 1.6 The following further Development Permits must be obtained prior to the commencement of any works associated with their purposes:
 - 1.6.1 Operational Works:
 - (i) Deleted
 - (ii) Deleted
 - (iii) Deleted
 - (iv) Site Works;
 - 1.6.2 Building Works Assessable against the Planning Scheme (Preliminary Approval);
 - 1.6.3 Building Works Assessable against the Building Assessment Provisions.
- 1.7 All Development Permits for Operational Works and Plumbing and Drainage Works must be obtained prior to the issue of a Development Permit for Building Works.
- 1.8 Unless otherwise stated, all works must be designed, constructed and maintained in accordance with the relevant Council policies, guidelines and standards.
- 1.9 All engineering drawings/specifications, design and construction works must comply with the requirements of the relevant *Australian Standards* and must be approved, supervised and certified by a Registered Professional Engineer of Queensland.
- 1.10 Deleted
- 1.11 The Environmentally Relevant Activity Permit must be amended to reflect this development approval and approved by the Department of Environment and Science prior to the commencement of the use.

2.0 APPROVED PLANS AND DOCUMENTS

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

<u>Plan / Document Name</u>	<u>Plan / Document Number & Revision / Issue</u>	<u>Prepared By</u>	<u>Dated</u>

<u>Plan / Document Name</u>	<u>Plan / Document Number & Revision / Issue</u>	<u>Prepared By</u>	<u>Dated</u>
Proposed Site Development Layout	WD1057.1, Rev C	Tapsell Consulting Engineers	14 September 2011
Location of Proposed Project Area	6208-06m, Rev B	Schlencker Surveying	18 November 2011
Material Change of Use (Extractive Industry) 'Other Change'	7379-01-MCU-A, Issue A	Capricorn Survey Group (CQ)	14 June 2019
Site Management Plan to Extract Sand from the Corner of Fogarty Road & Nine Mile Road (Lots 431 & 432 on LIV401245)	-	Hardcore Performance Pty Ltd	Not Dated
Preliminary Acid Sulphate Soil Investigation Proposed Sand Extractive Industry	3798-100810-1.0, Final Issue	Future-Plus Environmental	16 August 2010
Letter from McMurtrie Consulting Engineers to DTMR regarding Traffic Engineering Assessment of Proposed Use	026-10-11	McMurtrie Consulting Engineers	15 May 2013
Transport and Pavement Impact Assessment	R002-22-23/004, Rev B	McMurtrie Consulting Engineers	28 August 2023
Technical Memorandum from McMurtrie Consulting Engineers	R002-22-23/004	McMurtrie Consulting Engineers	27 November 2023
Lot 100 Nine Mile Road, Fairy Bower – Flood Impact Assessment	R.30001.001.002, Issue 2	Water Engineering Plus	22 August 2023
Environmental Report	D/278-2013, EPR01425013, Final V2	Steer Environmental Consulting	12 September 2023

2.2 Where there is any conflict between the conditions of this approval and the details shown on the approved plans and documents, the conditions of approval must prevail.

2.3 Where conditions require the above plans or documents to be amended, the revised document(s) must be submitted for endorsement by Council prior to the submission of a Development Application for Operational Works.

3.0 STAGED DEVELOPMENT

3.1 Deleted.

3.2 Deleted.

3.3 Deleted.

4.0 ROAD WORKS

4.1 Deleted

4.2 Deleted

4.3 Deleted

4.4 A road maintenance levy must be paid on a six-monthly basis for the duration of the activity, calculated by the owner / operator of the development. Details are to be provided to Council every six months, which includes the tonnage hauled from the site over the preceding six-month period and the calculation of the levy payable. The calculation must be

based on the below rate and increased by Consumer Price Index (CPI) as appropriate. The amount shown below is relevant for the March 2013 value and will be calculated in future years adjusted each year by the CPI (All Groups Brisbane).

Tonnage	Rate
0-250,000 tonnes	\$0.4153 per tonne

Note: CPI of March 2013 – 102.0

- 4.5 A road maintenance levy must be paid on a six-monthly basis for the duration of the activity, calculated by the owner / operator of the development. Details are to be provided to Council every six months, which includes the tonnage hauled from the site over the preceding six-month period and the calculation of the levy payable. The calculation must be based on the below rate and increased by Consumer Price Index (CPI) as appropriate. The amount shown below is relevant for the December 2023 value and will be calculated in future years adjusted each year by the CPI (All Groups Brisbane).

Tonnage	Rate
250,001 - 500,000 tonnes	\$0.4697 per tonne

Note: CPI of December 2023 – 137.7

- 4.6 Prior to commencing haulage from the site greater than 250,000tpa, two sets of roadside signs including 'Narrow Bridge' (W4-1) and 'Next 200m' (R9-6) must be installed at 200 metres south and 200 metres north of Lion Creek Bridge. Additionally, a sign stating 'Trucks stops here to give-way to opposing traffic' must be installed at 15 metres south of the Lion Creek Bridge with appropriate line markings.
- 4.7 For the extraction volume of material above 250,000 tonnes, a 'bridge/major drainage structures' levy must be paid on a six-monthly basis for the duration of the activity, calculated by the owner / operator of the development. Details are to be provided to Council every six months which includes the tonnage hauled from the site over the preceding six month period and the calculation of the levy payable. The calculation must be based on the below rate and increased by Consumer Price Index (CPI) as appropriate. The amount shown below is relevant for the December 2023 value and will be calculated in future years adjusted each year by the CPI (All Groups Brisbane).

Tonnage	Rate
250,001 - 500,000 tonnes	\$0.11 per tonne

Note: CPI of December 2023 – 137.7

5.0 ACCESS WORKS

5.1 Deleted

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

5.3 Deleted

6.0 STORMWATER WORKS

6.1 Deleted

6.2 Deleted

6.3 All stormwater drainage must be discharged such that it does not restrict, impair or change the natural flow of runoff water or cause a nuisance to adjoining properties or infrastructure.

6.4 Deleted

7.0 SITE WORKS

7.1 A Development Permit for Operational Works (site works) must be obtained prior to the commencement of any site works.

- 7.2 Any application for a Development Permit for Operational Works (site works) must be accompanied by an earthworks' plan which clearly identifies the following:
- 7.2.1 the location of cut and/or fill;
 - 7.2.2 the type of fill to be used and the manner in which it is to be compacted;
 - 7.2.3 the quantum of fill to be deposited or removed and finished cut and/or fill levels;
 - 7.2.4 details of any proposed access routes to the site which are intended to be used to transport fill to or from the site; and
 - 7.2.5 the maintenance of access roads to and from the site so that they are free of all cut and/or fill material and cleaned as necessary.
- 7.3 As recommended in the report titled Preliminary Acid Sulphate Soil Investigation (refer to Condition 2.1), further testing for acid sulphate soils must be completed in accordance with the *State Planning Policy 2/02 – Planning and Managing Development Involving Acid Sulphate Soils*, the *Guidelines for Sampling and Analysis of Lowland Acid Sulphate Soils in Queensland 1998* and *Queensland Acid Sulphate Soil Technical Manual – Soil Management Guidelines*. The results of this further testing must be submitted to Council as part of any application for a Development Permit for Operational Works (site works).
- 7.4 Groundwater extraction activities (including drainage, pumping or other activity that removes groundwater) carried out in association with excavation activities require a groundwater investigation in accordance with Section 7 of the *State Planning Policy 2/02 Planning and Managing Development Involving Acid Sulphate Soils*. The results of this investigation are to be submitted as part of any application for a Development Permit for Operational Works (site works).
- 7.5 Sampling associated with the acid sulfate soils investigation should follow the *Guidelines for Sampling and Analysis of Lowland Acid Sulphate Soils in Queensland (Ahern et al 1998)*. Laboratory analysis associated with the acid sulphate soils investigation should follow the *Laboratory Methods Guidelines of the Queensland Acid Sulphate Soil Technical Manual*.
- 7.6 If Acid Sulphate Soils are found to be present an appropriate management plan must be submitted to Council for approval along with any application for a Development Permit for Operational Works (site works).
- 7.7 Site works must be constructed such that they do not, at any time, cause an unreasonable interference with infrastructure or a person's use of land.
- 7.8 Any vegetation cleared or removed must be:
- (i) mulched on-site and utilised on-site for landscaping purposes;
 - (ii) removed for disposal at a location approved by Council within sixty (60) days of clearing; or
 - (iii) Burned in accordance with a permit obtained from the local Fire Warden.
- 7.9 Deleted
- 7.10 Deleted
- 7.11 Topsoil stockpiles must be stored in a way that minimises any obstruction, restriction or alteration of floodwater flow direction.
- 7.12 All activities must be carried out in accordance with the Flood Impact Assessment recommendations in particular mitigation options and future works.
- (i) Removal/shortening of Environmentally Relevant Activity (ERA) berms/Topsoil stockpiles along both the eastern boundary and to the southeast of the excavation void;
 - (ii) Lowering of short topsoil stockpiles adjacent to Fogarty Road in north of site to 2016 levels;
 - (iii) Lower level of area around pond north of main site access road; and

- (iv) Filling of western extents of extraction void back to 2008 levels and relocating pit berms to the east.

8.0 ASSET MANAGEMENT

- 8.1 Any alteration necessary to electricity, telephone, water mains, sewerage mains, and/or public utility installations resulting from the development or in connection with the development, must be at full cost to the Developer.
- 8.2 Any damage to existing kerb and channel, pathway or roadway (including removal of concrete slurry from public land, pathway, roads, kerb and channel and stormwater gullies and drainage lines) which may occur during any works carried out in association with the approved development must be repaired. This must include the reinstatement of the existing traffic signs and pavement markings which may have been removed.
- 8.3 Deleted

9.0 ENVIRONMENTAL

- 9.1 Any application for a Development Permit for Operational Works must be accompanied by a detailed Erosion and Sedimentation Control Plan as detailed in the Site Management Plan to Extract Sand from the Corner of Fogarty Road and Nine Mile Road (Lots 431 and 432 on LIV401245) prepared by Hardcore Performance Pty Ltd.
- 9.2 The Erosion and Sedimentation Control Plan must be implemented and maintained on-site for the duration of the works, and until all exposed soil areas are permanently stabilised (for example, turfed, hydromulched, concreted, landscaped). The prepared Erosion and Sedimentation Control Management Plan must be available on-site for inspection by Council Officers during those works.

10.0 OPERATING PROCEDURES

- 10.1 All construction materials, waste, waste skips, machinery and contractors' vehicles must be located and stored or parked within the site. No storage of materials, parking of construction machinery or contractors' vehicles will be permitted in Fogarty Road or Nine Mile Road.
- 10.2 This approval is for the extraction and transportation of sand from the subject premises which must be undertaken in accordance with the endorsed plans (refer to condition 2.1) and at an extraction rate of no more than 500,000 tonnes per annum.
- 10.3 The hours of operations must be limited to:
 - (i) 0600 hours to 1800 hours on Monday to Saturday; and
 - (ii) no operations on Sunday or Public Holidays
- 10.4 A detailed record of the extraction, including date, quantity extracted and transported from site must be maintained on site for inspection by Council.
- 10.5 There must be no servicing or maintenance of vehicles on the site.
- 10.6 Excavation and filling must be located sufficiently clear of the boundary so that there is no damage to adjoining properties or road reserves due to the effects of erosion.
- 10.7 Deleted
- 10.8 No contaminated water must be directly or indirectly released from the premises on to the ground, into groundwater or natural run-off systems.
- 10.9 Cleaning of plant and trucks must be carried out in area where contaminants cannot be released into the environment.
- 10.10 All waste materials and consumables generated by the operation must be immediately removed from site and disposed of at a licensed waste receiver. Any chemicals, fuels or consumables in containers of greater than 15 litres must be stored within a secondary containment system.
- 10.11 Any lighting devices associated with the development, such as sensory lighting, must be positioned on the 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'.

10.12 B-Double or larger vehicles are not permitted to enter or be used within the subject site.

Note: B-Double or larger vehicles are not permitted to use Fogarty Road and Nine Mile Road as it is not a B-Double route, except where an appropriate National Heavy Vehicle Regulator Permit has been obtained.

11.0 PLUMBING AND DRAINAGE WORKS

11.1 On-site water supply for domestic and firefighting purposes must be provided and may include the provision of a bore, dams, water storage tanks or a combination of each.

ADVISORY NOTES

NOTE 1. Aboriginal Cultural Heritage Act, 2003

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 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 property 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. Infrastructure Charges Notice

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

NOTE 5. Duty to Notify of Environmental Harm

If a person becomes aware that serious or material environmental harm is caused or threatened by an activity or an associated activity, that person has a duty to notify Rockhampton Regional Council.

NOTE 6. Environmental Nuisance

Emissions from the activity must not cause an environmental nuisance.

NOTE 7. Building Work

A Development Permit for Building Works assessable against the Building Assessment Provisions must be obtained for any buildings or structures on the site.

NOTE 8. Building Work Assessable Against the Planning Scheme

A Preliminary Approval for Building Works Assessable against the Planning Scheme must be obtained for any buildings or structures on the site. An application must be made to Council and be accompanied by a Flood Impact Assessment prepared and endorsed by a Registered Engineer Professional of Queensland (RPEQ).

NOTE 9. Plumbing and Drainage Work

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

NOTE 10. Sanitary Drainage Work

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

All regulated sanitary drainage works must comply with *Australian Plumbing and Drainage Standard AS3500* Part 2 section 3 and 4 for flood affected areas.

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

Appeal rights

229 Appeals to tribunal or P&E Court

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

230 Notice of appeal

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

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

231 Other appeals

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

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

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

232 Rules of the P&E Court

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

Schedule 1

Appeals section 229

1 Appeal rights and parties to appeals

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

Table 1			
Appeals to the P&E Court and, for certain matters, to a tribunal			
1. Development applications An appeal may be made against— (a) the refusal of all or part of the development application; or (b) the deemed refusal of the development application; or (c) a provision of the development approval; or (d) if a development permit was applied for—the decision to give a preliminary approval.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant	The assessment manager	If the appeal is about a concurrence	1 A concurrence agency that is not a co-respondent

Table 1			
Appeals to the P&E Court and, for certain matters, to a tribunal			
		agency's referral response—the concurrence agency	2 If a chosen Assessment manager is the respondent—the prescribed assessment manager 3 Any eligible advice agency for the application 4 Any eligible submitter for the application
2. Change applications An appeal may be made against— (a) a responsible entity's decision for a change application, other than a decision made by the P&E court; or (b) a deemed refusal of a change application.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 The applicant 2 If the responsible entity is the assessment manager—an affected entity that gave a pre-request notice or response notice	The responsible entity	If an affected entity starts the appeal—the applicant	1 A concurrence agency for the development application 2 If a chosen assessment manager is the respondent—the prescribed assessment manager 3 A private certifier for the development application 4 Any eligible advice agency for the change application 5 Any eligible submitter for the change application
3. Extension applications An appeal may be made against— (a) the assessment manager's decision about an extension application; or (b) a deemed refusal of an extension application.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 The applicant 2 For a matter other than a deemed refusal of an extension application – a concurrence agency, other than the chief executive, for the application	The assessment manager	If a concurrence agency starts the appeal – the applicant	If a chosen assessment manager is the respondent – the prescribed assessment manager
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 <ul style="list-style-type: none"> (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			

Table 1 Appeals to the P&E Court and, for certain matters, to a tribunal			
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	-	-
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	Column 4 Co-respondent by election

Table 2			
Appeals to the P&E Court only			
		(if any)	(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
<p>3. Eligible submitter and eligible advice agency appeals</p> <p>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—</p> <p>(a) any part of the development application or the change application, for the development approval, that required impact assessment; or</p> <p>(b) a variation request.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
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
<p>4. Compensation claims</p> <p>An appeal may be made against—</p> <p>(a) a decision under section 32 about a compensation claim; or</p> <p>(b) a decision under section 265 about a claim for compensation; or</p> <p>(c) a deemed refusal of a claim under paragraph (a) or (b).</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person dissatisfied with the decision	The local government to which the claim was made	-	-
<p>5. Registered premises</p> <p>An appeal may be made against a decision of the Minister under chapter 7, part 4.</p>			
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	The Minister	-	If an owner or occupier starts the appeal – the owner of the registered premises

Table 2 Appeals to the P&E Court only			
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			
<p>6. Local laws An appeal may be made against a decision of a local government, or conditions applied, under a local law about—</p> <p>(a) the use of premises, other than a use that is the natural and ordinary consequence of prohibited development; or</p> <p>(b) the erection of a building or other structure.</p>			
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			
<p>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.</p>			
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
<p>3. Certain decisions under the Building Act and the Plumbing and Drainage Act An appeal may be made against a decision under—</p> <p>(a) the Building Act, other than a decision made by the Queensland Building and Construction Commission; or</p> <p>(b) the Plumbing and Drainage Act, part 4 or 5.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who received, or was entitled to receive, notice of the decision	The person who made the decision	-	-
<p>4. Local government failure to decide application under the Building Act An appeal may be made against a local government's failure to decide an application under the Building Act within the period required under that Act.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent	Column 4 Co-respondent by election

Table 3			
Appeals to the tribunal only			
		(if any)	(if any)
A person who was entitled to receive, notice of the decision	The local government to which the application was made	-	-