



Our Ref: LM:SR:DA/4241 AD2021/0000305

Your Ref:

25 January 2021

Anita Stemmler & Andreas Stemmler  
PMB via Cairns  
Lakeland Qld 4871

Dear Mr and Mrs Stemmler

**Decision Notice - approval (with conditions)**  
Given under section 63 of the *Planning Act 2016*

The development application described below was properly made to Cook Shire Council on 30 September 2020.

**Applicant details**

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Applicant name: Anita Stemmler & Andreas Stemmler

Applicant contact details: PMB via Cairns  
Peninsula Developmental Road  
Lakeland Qld 4871

**Application details**

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Application number: DA/4241

Approval sought: Development Permit

Description of the development proposed: Reconfiguration of a Lot by way of Boundary Realignment – 2 into 2 Lots.

**Location details**

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Street address: Peninsula Developmental Road LAKELAND 4871

Real property description: Lot: 25 SP: 218120 and Lot: 10 SP 218120



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**Decision**

Date of decision: 19 January 2021

Decision Details: Approved in full with conditions. These conditions are set out in Attachment 1 and are clearly identified to indicate whether the assessment manager or concurrence agency imposed them.

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**Details of the approval**

Development Permit Boundary Realignment (2 into 2 Lots)

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**Variation approval details**

N/A

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**Conditions**

This approval is subject to the conditions in Attachment 1.

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**Further development permits**

N/A

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**Properly made submissions**

Not applicable - no part of the application required public notification.

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**Referral Agencies**

Not applicable to this application

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**Other requirements under section 43 of the Planning Regulation**

N/A

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**Approved plans and specifications**

Copies of the approved plans, specifications and/or drawings are enclosed in Attachment 1.

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**Currency period for the approval**

This development approval will lapse at the end of the period set out in section 85 of the *Planning Act 2016*.

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**Rights of appeal**

The rights of applicants to appeal to a tribunal or the Planning and Environment court against decisions about a development application are set out in chapter 6, part 1 of the *Planning Act 2016*. For particular applications, there may be also be a right to make an



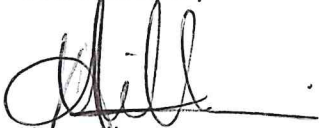
application for a declaration by a tribunal (see chapter 6, part 2 of the *Planning Act 2016*).

An applicant and/or submitter may appeal to the Planning and Environment Court or the Development tribunal against a number of matters (see Schedule 1 of the *Planning Act 2016*).

A copy of the extracts of the above referenced sections of the *Planning Act 2016* are attached (Attachment 2).

For further information, please contact Town Planning, Planning and Environment Services on 07 4082 0500 or email: [mail@cook.qld.gov.au](mailto:mail@cook.qld.gov.au) .

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lisa Miller', with a long horizontal flourish extending to the right.

Lisa Miller

Manager

Environment and Planning

cc: Mr E. Lees and Ms S. Marsh, PMB Lakeland, Qld 4871

enc: **Attachment 1** – Conditions imposed by the assessment manager

**Attachment 2** – Extract of Appeal Provisions (Chapter 6, Part 1 and Part 2 and Schedule 1 of the *Planning Act 2016*).



## **Attachment 1.**

### **A. Assessment Manager (Council) Conditions**

#### **Approved Plan**

1. The development must be carried out generally in accordance with the following Proposal Plan (Appendix 1) submitted with the application, except for any variations required to comply with the conditions of this approval:
  - Plan of Development – Boundary Realignment (2 Lots into 2 Lots) Peninsula Developmental Road, Lakeland, Cooktown – Council Ref: DA/4241/ SARA Ref: 2003-15900 SPL SRA (Print Date 23/03/2020) per applicants Anita and Andy Stemmler.

#### **Access**

2. Access to proposed amended Lot 10 on SP218120 must remain via the existing crossover on Peninsula Developmental Road as the only designated driveway.
3. Access to Lot 25 on SP218120 must remain via the existing crossover on Peninsula Developmental Road as the only designated driveway.

#### **Water Supply**

4. Water supply to each allotment must remain the same. Any variation of water reticulation supply, plumbing or drainage must comply to legislative requirements and may require an application.

#### **Effluent Disposal**

5. Any application for wastewater treatment and disposal must include details of the proposed wastewater disposal systems and calculation demonstrating compliance with the Queensland Plumbing and Wastewater Code and AS/NZS 1547:2000 – 'On-site domestic wastewater management'. Details are to be provided at the time of lodgement of a plumbing and building application.

#### **Fire Management**

6. The development must be maintained at all times to a standard so as not to create a fire hazard.

#### **Environmental Protection**

7. No State Declared or environmental pests, plants and animals are to be introduced onto the property.

#### **Stormwater Drainage**

8. All stormwater drainage must be directed to a legal point of discharge.





### **Public Utilities**

9. The developer is responsible for the cost of any alteration to the public utilities as a result of complying with conditions of this approval.
10. Utilities design must be in accordance with the FNQROC Development Manual D8 Operational Works Design Guidelines "Utilities.

### **Compliance**

11. All relevant conditions of this development permit must be complied with prior to the Plan of Survey being submitted to Council for endorsement.

### **Outstanding Charges**

12. All rates, service charges, interest and other charges levied on the land are to be paid prior to Council endorsement of the Plan of Survey.

### **Currency Period**

13. The reconfiguration of a lot approval authorised by this Development Permit must be completed and the Plan of Survey submitted to Council for endorsement within one (4) years from the commencement of this approval or this approval will lapse.

## **B. Advice (Council)**

1. The applicant be advised that a further Development Permit is required for carrying out Building works for any proposed or existing structure on-site, along with Plumbing and Drainage Approval/Compliance Permits required for any Plumbing and Drainage works, prior to any building construction associated with this development.
2. The erection and use of any future buildings must comply with the *Building Act 1975* and all other relevant Acts, Regulations and Laws, and these approval conditions.
3. The applicant be advised that any future vegetation clearing of regulated vegetation identified on the approved plan of development must be approved by the Department of Natural Resources, Mines, and Energy prior to works commencing.
4. The applicant/owner is to ensure compliance with the requirements of the *Aboriginal Cultural Heritage Act 2003* and in particular 'the duty of care' that it imposes on all landowners.



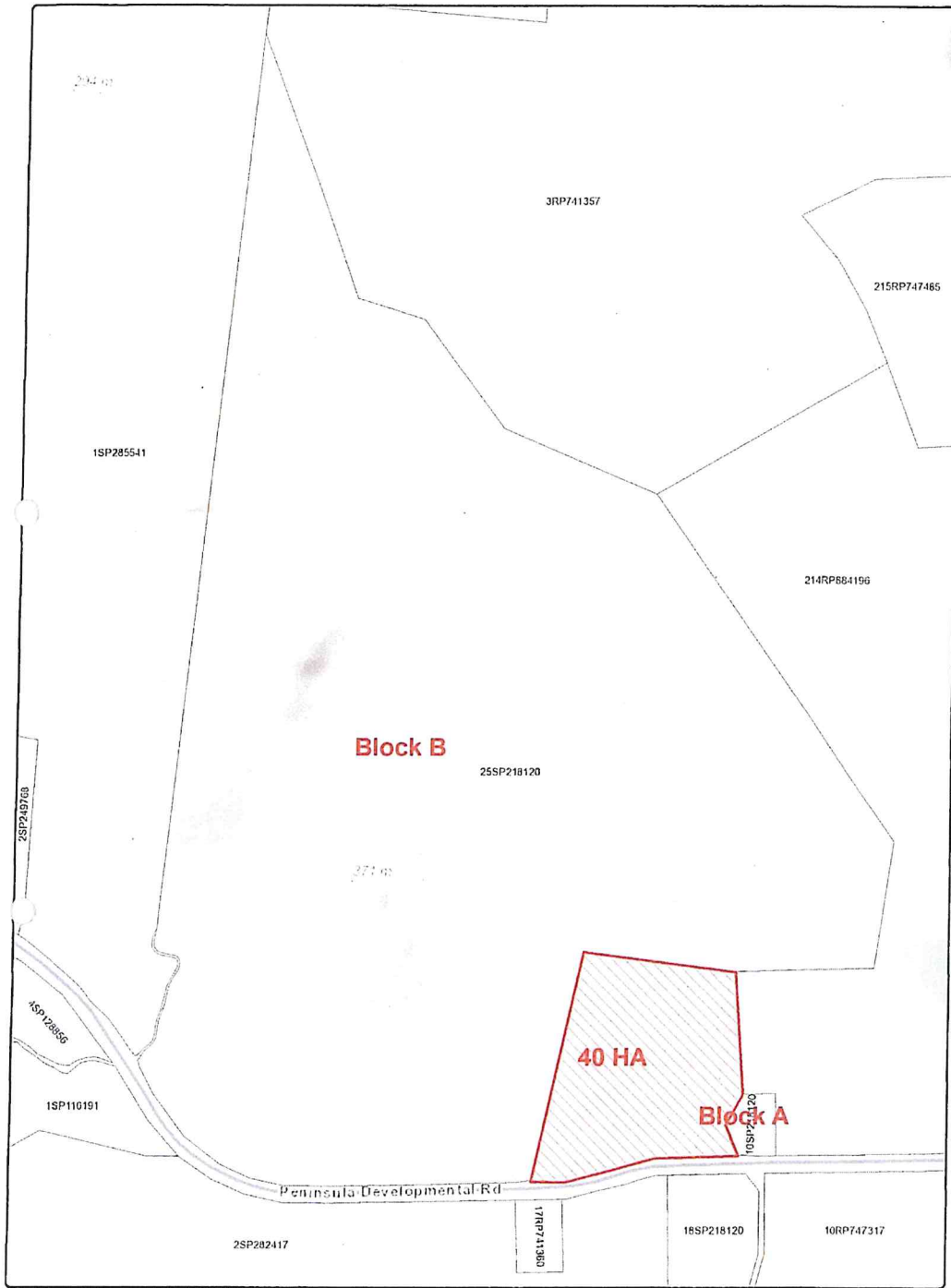
**C. Concurrence Agency (Queensland Treasury) Response:**

Nil Concurrence Agency Response required.

*As the proposed development is not creating a lot less than 25 hectares, and referral agency assessment is not triggered for native vegetation clearing.*

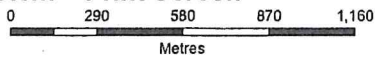
*Referral agency assessment is not triggered for reconfiguring a lot near a State transport corridor due to the proposed development not involving a new or changed access to a state controlled road.*





**DA Mapping System – Print Screen**

Date: 24/06/2020



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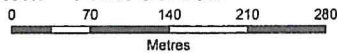
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**DA Mapping System – Print Screen**

Date: 12/03/2020



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- (2) The person is taken to have engaged in the representative's conduct, unless the person proves the person could not have prevented the conduct by exercising reasonable diligence.
- (3) In this section—
- conduct* means an act or omission.
- representative* means—
- (a) of a corporation—an executive officer, employee or agent of the corporation; or
  - (b) of an individual—an employee or agent of the individual.
- state of mind*, of a person, includes the person's—
- (a) knowledge, intention, opinion, belief or purpose; and
  - (b) reasons for the intention, opinion, belief or purpose.

- (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 an appeal relating to the *Plumbing and Drainage Act 2018*—

- (i) for an appeal against an enforcement notice given because of a belief mentioned in the *Plumbing and Drainage Act 2018*, section 143(2)(a)(i), (b) or (c)—5 business days after the day the notice is given; or
- (ii) for an appeal against a decision of a local government or an inspector to give an action notice under the *Plumbing and Drainage Act 2018*—5 business days after the notice is given; or

## Chapter 6 Dispute resolution

### Part 1 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

- (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, section 1, table 1, item 1—each principal submitter for the application whose submission has not been withdrawn; and
  - (d) for an appeal about a change application under schedule 1, section 1, table 1, item 2—each principal submitter for the application whose submission has not been withdrawn; and
  - (e) each person who may elect to be a co-respondent for the appeal other than an eligible submitter for a development application or change application the subject of the appeal; 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).
- (6) A person elects to be a co-respondent to an appeal by filing a notice of election in the approved form—
- (a) if a copy of the notice of appeal is given to the person—within 10 business days after the copy is given to the person; or
  - (b) otherwise—within 15 business days after the notice of appeal is lodged with the registrar of the tribunal or the P&E Court.

- (iii) otherwise—20 business days after the day the notice is given; or
- (e) 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—

- (7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department's website for this purpose.

### 231

#### Non-appealable decisions and matters

- (1) Subject to this chapter, section 316(2), 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, any tribunal or another entity; and

- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, any 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.

## Part 2 Development tribunal

### Division 1

#### General

### 233

#### Appointment of referees

- (1) The Minister, or chief executive, (the *appointer*) may appoint a person to be a referee, by an appointment notice, if the appointer considers the person—  
(a) has the qualifications or experience prescribed by regulation; and  
(b) has demonstrated an ability—  
(i) to negotiate and mediate outcomes between parties to a proceeding; and  
(ii) to apply the principles of natural justice; and  
(iii) to analyse complex technical issues; and  
(iv) to communicate effectively, including, for example, to write informed succinct and well-organised decisions, reports, submissions or other documents.

- (2) The appointer may—
- (a) appoint a referee for the term of not more than 3 years, stated in the appointment notice; and
  - (b) reappoint a referee, by notice, for further terms of not more than 3 years.
- (3) If an appointer appoints a public service officer as a referee, the officer holds the appointment concurrently with any other appointment that the officer holds in the public service.
- (4) A referee must not sit on a tribunal unless the referee has given a declaration, in the approved form and signed by the referee, to the chief executive.
- (5) The appointer may cancel a referee's appointment at any time by giving a notice, signed by the appointer, to the referee.
- (6) A referee may resign the referee's appointment at any time by giving a notice, signed by the referee, to the appointer.
- (7) In this section—
- appointment notice* means—
- (a) if the Minister gives the notice—a gazette notice, or
  - (b) if the chief executive gives the notice—a notice given to the person appointed as a referee.

## 234

### Referee with conflict of interest

- (1) This section applies if the chief executive informs a referee that the chief executive proposes to appoint the referee as a tribunal member, and either or both of the following apply—
- (a) the tribunal is to hear a matter about premises—
    - (i) the referee owns; or
    - (ii) for which the referee was, is, or is to be, an architect, builder, drainer, engineer, planner, plumber, plumbing inspector, certifier, site evaluator or soil assessor; or

- (iii) for which the referee has been, is, or will be, engaged by any party in the referee's capacity as an accountant, lawyer or other professional; or
  - (iv) situated or to be situated in the area of a local government of which the referee is an officer, employee or councillor;
  - (b) the referee has a direct or indirect personal interest in a matter to be considered by the tribunal, and the interest could conflict with the proper performance of the referee's functions for the tribunal's consideration of the matter.
- (2) However, this section does not apply to a referee only because the referee previously acted in relation to the preparation of a relevant local planning instrument.
- (3) The referee must notify the chief executive that this section applies to the referee, and on doing so, the chief executive must not appoint the referee to the tribunal.
- (4) If a tribunal member is, or becomes, aware the member should not have been appointed to the tribunal, the member must not act, or continue to act, as a member of the tribunal.

## 235

### Establishing development tribunal

- (1) The chief executive may at any time establish a tribunal, consisting of up to 5 referees, for tribunal proceedings.
- (2) The chief executive may appoint a referee for tribunal proceedings if the chief executive considers the referee has the qualifications or experience for the proceedings.
- (3) The chief executive must appoint a referee as the chairperson for each tribunal.
- (4) A regulation may specify the qualifications or experience required for particular proceedings.
- (5) After a tribunal is established, the tribunal's membership must not be changed.

**236 Remuneration**

A tribunal member must be paid the remuneration the Governor in Council decides.

**237 Tribunal proceedings**

- (1) A tribunal must ensure all persons before the tribunal are afforded natural justice.
- (2) A tribunal must make its decisions in a timely way.
- (3) A tribunal may—
  - (a) conduct its business as the tribunal considers appropriate, subject to a regulation made for this section; and
  - (b) sit at the times and places the tribunal decides; and
  - (c) hear an appeal and application for a declaration together; and
  - (d) hear 2 or more appeals or applications for a declaration together.
- (4) A regulation may provide for—
  - (a) the way in which a tribunal is to operate, including the qualifications of the chairperson of the tribunal for particular proceedings; or
  - (b) the required fee for tribunal proceedings.

**238 Registrar and other officers**

- (1) The chief executive may, by gazette notice, appoint—
  - (a) a registrar; and
  - (b) other officers (including persons who are public service officers) as the chief executive considers appropriate to help a tribunal perform its functions.

- (2) A person may hold the appointment or assist concurrently with any other public service appointment that the person holds.

**Division 2 Applications for declarations**

**239 Starting proceedings for declarations**

- (1) A person may start proceedings for a declaration by a tribunal by filing an application, in the approved form, with the registrar.
- (2) The application must be accompanied by the required fee.

**240 Application for declaration about making of development application**

- (1) The following persons may start proceedings for a declaration about whether a development application is properly made—
  - (a) the applicant;
  - (b) the assessment manager.
- (2) However, a person may not seek a declaration under this section about whether a development application is accompanied by the written consent of the owner of the premises to the application.
- (3) The proceedings must be started by—
  - (a) the applicant within 20 business days after receiving notice from the assessment manager, under the development assessment rules, that the development application is not properly made; or
  - (b) the assessment manager within 10 business days after receiving the development application.
- (4) The registrar must, within 10 business days after the proceedings start, give notice of the proceedings to the respondent as a party to the proceedings.

- (5) In this section—  
*respondent* means—
- (a) if the applicant started the proceedings—the assessment manager; or
  - (b) if the assessment manager started the proceedings—the applicant.

#### 241 Application for declaration about change to development approval

- (1) This section applies to a change application for a development approval if—
- (a) the approval is for a material change of use of premises that involves the use of a classified building; and
  - (b) the responsible entity for the change application is not the P&E Court.
- (2) The applicant, or responsible entity, for the change application may start proceedings for a declaration about whether the proposed change to the approval is a minor change.
- (3) The registrar must, within 10 business days after the proceedings start, give notice of the proceedings to the respondent as a party to the proceedings.
- (4) In this section—  
*respondent* means—
- (a) if the applicant started the proceedings—the responsible entity; or
  - (b) if the responsible entity started the proceedings—the applicant.

### Division 3 Tribunal proceedings for appeals and declarations

#### 242 Action when proceedings start

- If a document starting tribunal proceedings is filed with the registrar within the period required under this Act, and is accompanied by the required fee, the chief executive must—
- (a) establish a tribunal for the proceedings; and
  - (b) appoint 1 of the referees for the tribunal as the tribunal's chairperson, in the way required under a regulation; and
  - (c) give notice of the establishment of the tribunal to each party to the proceedings.

#### 243 Chief executive excusing noncompliance

- (1) This section applies if—
- (a) the registrar receives a document purporting to start tribunal proceedings, accompanied by the required fee; and
  - (b) the document does not comply with any requirement under this Act for validly starting the proceedings.
- (2) The chief executive must consider the document and decide whether or not it is reasonable in the circumstances to excuse the noncompliance (because it would not cause substantial injustice in the proceedings, for example).
- (3) If the chief executive decides not to excuse the noncompliance, the chief executive must give a notice stating that the document is of no effect, because of the noncompliance, to the person who filed the document.
- (4) The chief executive must give the notice within 10 business days after the document is given to the chief executive.
- (5) If the chief executive does excuse the noncompliance, the chief executive may act under section 242 as if the noncompliance had not happened.

**244 Ending tribunal proceedings or establishing new tribunal**

- (1) The chief executive may decide not to establish a tribunal when a document starting tribunal proceedings is filed, if the chief executive considers it is not reasonably practicable to establish a tribunal.

*Examples of when it is not reasonably practicable to establish a tribunal—*

- there are no qualified referees or insufficient qualified referees because of a conflict of interest
- the referees who are available will not be able to decide the proceedings in a timely way

- (2) If the chief executive considers a tribunal established for tribunal proceedings—

(a) does not have the expertise to hear or decide the proceedings; or

(b) is not able to make a decision for proceedings (because of a tribunal member's conflict of interest, for example);

the chief executive may decide to suspend the proceedings and establish another tribunal, complying with section 242(c), to hear or re-hear the proceedings.

- (3) However, the chief executive may instead decide to end the proceedings if the chief executive considers it is not reasonably practicable to establish another tribunal to hear or re-hear the proceedings.

(4) If the chief executive makes a decision under subsection (1) or (3), the chief executive must give a decision notice about the decision to the parties to the proceedings.

(5) Any period for starting proceedings in the P&E Court, for the matter that is the subject of the tribunal proceedings, starts again when the chief executive gives the decision notice to the party who started the proceedings.

- (6) The decision notice must state the effect of subsection (5).

**245 Refunding fees**

The chief executive may, but need not, refund all or part of the fee paid to start proceedings if the chief executive decides under section 244—

- (a) not to establish a tribunal; or
- (b) to end the proceedings.

**246 Further material for tribunal proceedings**

- (1) The registrar may, at any time, ask a person to give the registrar any information that the registrar reasonably requires for the proceedings.

*Examples of information that the registrar may require—*

- material about the proceedings (plans, for example)
- information to help the chief executive decide whether to excuse noncompliance under section 243
- for a deemed refusal—a statement of the reasons why the entity responsible for deciding the application had not decided the application during the period for deciding the application.

- (2) The person must give the information to the registrar within 10 business days after the registrar asks for the information.

**247 Representation of Minister if State interest involved**

If, before tribunal proceedings are decided, the Minister decides the proceedings involve a State interest, the Minister may be represented in the proceedings.

**248 Representation of parties at hearing**

A party to tribunal proceedings may appear—

- (a) in person, or
- (b) by an agent who is not a lawyer.

**249 Conduct of tribunal proceedings**

- (1) Subject to section 237, the chairperson of a tribunal must decide how tribunal proceedings are to be conducted.
- (2) The tribunal may decide the proceedings on submissions.
- (3) If the proceedings are to be decided on submissions, the tribunal must give all parties a notice asking for the submissions to be made to the tribunal within a stated reasonable period.
- (4) Otherwise, the tribunal must give notice of the time and place of the hearing to all parties.
- (5) The tribunal may decide the proceedings without a party's submission (written or oral) if—
  - (a) for proceedings to be decided on submissions—the party's submission is not received within the time stated in the notice given under subsection (3); or
  - (b) for proceedings to be decided by hearing—the person, or the person's agent, does not appear at the hearing.
- (6) When hearing proceedings, the tribunal—
  - (a) need not proceed in a formal way; and
  - (b) is not bound by the rules of evidence; and
  - (c) may inform itself in the way it considers appropriate; and
  - (d) may seek the views of any person; and
  - (e) must ensure all persons appearing before the tribunal have a reasonable opportunity to be heard; and
  - (f) may prohibit or regulate questioning in the hearing.
- (7) If, because of the time available for the proceedings, a person does not have an opportunity to be heard, or fully heard, the person may make a submission to the tribunal.

**250 Tribunal directions or orders**

A tribunal may, at any time during tribunal proceedings, make any direction or order that the tribunal considers appropriate.

*Examples of directions—*

- a direction to an applicant about how to make their development application comply with this Act
- a direction to an assessment manager to assess a development application, even though the referral agency's response to the assessment manager was to refuse the application

**251 Matters tribunal may consider**

- (1) This section applies to tribunal proceedings about—
  - (a) a development application or change application; or
  - (b) an application or request (however called) under an applicable Act if—
    - (i) the application or request relates to a decision made under that Act, other than a decision made by the Queensland Building and Construction Commission; and
    - (ii) an information notice about the decision was given or was required to be given under that Act.
- (2) The tribunal must decide the proceedings based on the laws in effect when—
  - (a) the application or request was properly made; or
  - (b) if the application or request was not required to be properly made—the application or request was made.
- (3) However, the tribunal may give the weight that the tribunal considers appropriate, in the circumstances, to any new laws.
- (4) In this section—

*applicable Act* means—

  - (a) the Building Act; or
  - (b) the *Planning and Drainage Act 2018*.



### 252 Deciding no jurisdiction for tribunal proceedings

- (1) A tribunal may decide that the tribunal has no jurisdiction for tribunal proceedings, at any time before the proceedings are decided—
  - (a) on the tribunal's initiative; or
  - (b) on the application of a party.
- (2) If the tribunal decides that the tribunal has no jurisdiction, the tribunal must give a decision notice about the decision to all parties to the proceedings.
- (3) Any period for starting proceedings in the P&E Court, for the matter that is the subject of the tribunal proceedings, starts again when the tribunal gives the decision notice to the party who started the proceedings.
- (4) The decision notice must state the effect of subsection (3).
- (5) If the tribunal decides to end the proceedings, the fee paid to start the proceedings is not refundable.

### 253 Conduct of appeals

- (1) This section applies to an appeal to a tribunal.
- (2) Generally, the appellant must establish the appeal should be upheld.
- (3) However, for an appeal by the recipient of an enforcement notice, the enforcement authority that gave the notice must establish the appeal should be dismissed.
- (4) The tribunal must hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against.
- (5) However, the tribunal may, but need not, consider—
  - (a) other evidence presented by a party to the appeal with leave of the tribunal; or
  - (b) any information provided under section 246.

### 254 Deciding appeals to tribunal

- (1) This section applies to an appeal to a tribunal against a decision.
- (2) The tribunal must decide the appeal by—
  - (a) confirming the decision; or
  - (b) changing the decision; or
  - (c) replacing the decision with another decision; or
  - (d) setting the decision aside, and ordering the person who made the decision to remake the decision by a stated time; or
  - (e) for a deemed refusal of an application—
    - (i) ordering the entity responsible for deciding the application to decide the application by a stated time and, if the entity does not comply with the order, deciding the application; or
    - (ii) deciding the application.
- (3) However, the tribunal must not make a change, other than a minor change, to a development application.
- (4) The tribunal's decision takes the place of the decision appealed against.
- (5) The tribunal's decision starts to have effect—
  - (a) if a party does not appeal the decision—at the end of the appeal period for the decision; or
  - (b) if a party appeals against the decision to the P&E Court—subject to the decision of the court, when the appeal ends.

### 255 Notice of tribunal's decision

A tribunal must give a decision notice about the tribunal's decision for tribunal proceedings, other than for any directions or interim orders given by the tribunal, to all parties to proceedings.

**256 No costs orders**

A tribunal must not make any order as to costs.

**257 Recipient's notice of compliance with direction or order**  
If a tribunal directs or orders a party to do something, the party must notify the registrar when the thing is done.

**258 Tribunal may extend period to take action**

- (1) This section applies if, under this chapter, an action for tribunal proceedings must be taken within a stated period or before a stated time, even if the period has ended or the time has passed.
- (2) The tribunal may allow a longer period or a different time to take the action if the tribunal considers there are sufficient grounds for the extension.

**259 Publication of tribunal decisions**

The registrar must publish tribunal decisions under the arrangements, and in the way, that the chief executive decides.

**Chapter 7 Miscellaneous**  
**Part 1 Existing uses and rights protected**

**260 Existing lawful uses, works and approvals**

- (1) If, immediately before a planning instrument change, a use of premises was a lawful use of premises, the change does not—
- (a) stop the use from continuing; or

**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 the Building Act, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission; or
  - (h) a decision to give an enforcement notice—
    - (i) in relation to a matter under paragraphs (a) to (g); or
    - (ii) under the *Plumbing and Drainage Act 2018*; or
  - (i) an infrastructure charges notice; or
  - (j) the refusal, or deemed refusal, of a conversion application; 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.
- (8) In this section—
  - storey see the Building Code, part A1.1.

Table 1 Appeals to the P&E Court and, for certain matters, to a tribunal	
1. Development applications	
For a development application other than an excluded application, 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.

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

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
<p>3. Extension applications</p> <p>For an extension application other than an extension application called in by the Minister, an appeal may be made against—</p> <p>(a) the assessment manager's decision on the extension application; or</p> <p>(b) a deemed refusal of the extension application.</p>			

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

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 agency's referral response—the concurrence agency	1 A concurrence agency that is not a co-respondent 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
<p>2. Change applications</p> <p>For a change application other than an excluded application, an appeal may be made against—</p> <p>(a) the responsible entity's decision on the change application; or</p> <p>(b) a deemed refusal of the change application.</p>			

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

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 concurrent agency, other than the chief executive, for the application	The assessment manager	If a concurrent 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			
<i>Examples of errors in applying an adopted charge—</i>			
<ul style="list-style-type: none"> <li>• the incorrect application of gross floor area for a non-residential development</li> <li>• applying an incorrect 'use category', under a regulation, to the development</li> </ul>			
(ii) the working out of extra demand, for section 120; or			
(iii) an offset or refund; or			
(b) there 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) for an appeal to the P&E Court—the amount of the charge is so unreasonable that no reasonable relevant local government could have imposed the amount.			

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

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)	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 For a development application or change application other than an excluded application, an appeal may be made against the decision to approve the application, to the extent the decision relates to— (a) any part of the development application or change application 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)	Column 4 Co-respondent by election (if any)
1 For a development application—an eligible submitter for the development application	1 For a development application—the manager	1 The applicant about a concurrence agency's referral response—the concurrence agency	1 The applicant about a concurrence agency's referral response—the concurrence agency	Another eligible submitter for the application
2 For a change application—an eligible submitter for the change application	2 For a change application—the responsible entity	2 If the appeal is about a concurrence agency's referral response—the concurrence agency	2 If the appeal is about a concurrence agency's referral response—the concurrence agency	Another eligible submitter for the application
3 An eligible advice-agency for the development application or change application				

Table 2 Appeals to the P&E Court only				
3. Eligible submitter and eligible advice agency appeals For a development application or change application other than an excluded application, an appeal may be made against a provision of the development approval, or a failure to include a provision in the development approval, to the extent the matter relates to— (a) any part of the development application or change application 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)	Column 4 Co-respondent by election (if any)
1 For a development application—an eligible submitter for the development application	1 For a development application—the manager	1 The applicant about a concurrence agency's referral response—the concurrence agency	1 The applicant about a concurrence agency's referral response—the concurrence agency	Another eligible submitter for the application
2 For a change application—an eligible submitter for the change application	2 For a change application—the responsible entity	2 If the appeal is about a concurrence agency's referral response—the concurrence agency	2 If the appeal is about a concurrence agency's referral response—the concurrence agency	Another eligible submitter for the application
3 An eligible advice-agency for the development application or change 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).				

Table 2 Appeals to the P&E Court only			
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 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	The Minister	—	If an owner or occupier starts the appeal—the owner of the registered premises
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	—	—	—
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.			

Table 2 Appeals to the P&E Court only			
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 a 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

Table 3 Appeals to a tribunal only			
2. Inspection of building work An appeal may be made against a decision of a building certifier or referral agency about the inspection of building work that is the subject of a building development approval under the Building Act.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant for the development approval	The person who made the decision	—	—
3. Certain decisions under the Building Act and the <i>Plumbing and Drainage Act 2018</i> An appeal may be made against— (a) a decision under the Building Act, other than a decision made by the Queensland Building and Construction Commission, if an information notice about the decision was given or required to be given under that Act; or (b) a decision under the <i>Plumbing and Drainage Act 2018</i> , other than a decision made by the Queensland Building and Construction Commission, if an information notice about the decision was given or required to be given 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 received, or was entitled to receive, an information notice about the decision	The entity that 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.			

Table 3 Appeals to a tribunal only			
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	—	—
5. Failure to make a decision about an application or other matter under the <i>Plumbing and Drainage Act 2018</i> An appeal may be made against a failure to make a decision under the <i>Plumbing and Drainage Act 2018</i> , other than a failure by the Queensland Building and Construction Commission to make a decision, within the period required under that Act, if an information notice about the decision was required to be given 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 an information notice about the decision	The entity that failed to make the decision	—	—