



Our Ref: File: P29-22 & 01861-15000-000 CRCA:SM
Your Ref: ---

DECISION NOTICE APPROVAL

(Given under section 63 (2) of the *Planning Act 2016*)

19 July 2023

Diamantina Power Station Pty Ltd
Level 12, 80 Ann Street
BRISBANE QLD 4000

Attention: Mr Scott Dale

Dear Mr Dale

The development application described below was properly made to the Council on 5 May 2023.

APPLICANT DETAILS*

Applicant name: Diamantina Power Station Pty Ltd
Applicant contact details: Scott.Dale@apa.com.au

APPLICATION DETAILS

Application number: P29-22
Approval sought: Development Permit for Operational Works
Nature of development proposed: Filling resulting in a change of level greater than 1.0m and of a volume exceeding 50m³
Description of the development proposed: Placing approximately 3,000m³ of fill into an existing costean.

LOCATION DETAILS

Street address: 2 Moran Road
Real property description: Lot 2 on plan SP222005
Local government area: Mount Isa City

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DECISION

Date of decision: 17 July 2023

Decision details: 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.

DETAILS OF APPROVAL

This application is / is not taken to have been approved (a deemed approval) under section 64(5) of the *Planning Act 2016*.

The following approvals are given:

	Planning Regulation 2017 reference	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Development assessable under the planning scheme, superseded planning scheme, a temporary local planning instrument, a master plan or a preliminary approval which includes a variation approval <ul style="list-style-type: none"> • Building Work Not Associated with a Material Change or Use • Plumbing or Drainage Work • Material Change of Use • Reconfiguration of a Lot • Operational Work 		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

CONDITIONS

This approval is subject to the conditions in Attachment 1.

FURTHER DEVELOPMENT PERMITS

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

Nil.

REFERRAL AGENCY FOR THE APPLICATION

The referral agencies for this application are:

For an application involving	Name of referral agency	Advice agency or concurrence agency	Address
Development application for operational work, if- (a) All or part of the premises are within 25m of a State transport corridor; and (b) The work- (ii) involves extracting, excavating or filling more than 50m ³	Department of Transport and Main Roads	Concurrence Agency	Department of Transport and Main Roads C/- State Assessment and Referral Agency Department of State Development, Infrastructure, Local Government and Planning PO Box 5666 TOWNSVILLE QLD 4810 NQSARA@dsmip.gov.au

APPROVED PLANS AND SPECIFICATIONS

Copies of the following plans, specifications and / or drawings are enclosed.

Drawing/report title	Prepared by	Date	Reference no.	Version /issue
Aspect of development: Operational Works				
Supporting Information Report	Ardent Group Pty Ltd	27 April 2023	APA303	1
Mica Creek Solar Farm – Aerial Plan Location of Stockpiles and Trench	Ausrocks Resource Consultants	21 April 2023	Project No. AUQ00266, Dwg No. 00266_MCSF_05	1
Mica Creek Solar Farm – Aerial Plan Trench Original Contours	Ausrocks Resource Consultants	21 April 2023	Project No. AUQ00266, Dwg No. 00266_MCSF_01	1
Mica Creek Solar Farm – Aerial Plan Trench Fill and Section Lines	Ausrocks Resource Consultants	21 April 2023	Project No. AUQ00266, Dwg No. 00266_MCSF_03	1
Long Section A-A'	Ausrocks Resource Consultants	27 April 2023	-	-
Cross Section B-B'	Ausrocks Resource Consultants	27 April 2023	-	-

CURRENCY PERIOD FOR THE APPROVAL (Section 85 of the Planning Act 2016)

Two (2) years from the date of the Decision Notice.

STATEMENT OF REASONS

1. Reasons for the Decision

The reasons for this decision are:

The proposed Operational Works to place fill into an existing costean at 2 Moran Road, Mount Isa, has been assessed against the below Assessment Benchmarks found in the *State Planning Policy, North West Regional Plan* and *City of Mount Isa Planning Scheme 2020*.

Assessment has concluded that the proposal is consistent with the applicable benchmarks, subject to compliance with a number of conditions of approval, and the proposal has therefore been approved in full subject to conditions.

2. Assessment Benchmarks

The following are the benchmarks applying for this development:

Benchmarks applying for the development	Benchmark reference
<i>State Interest Policies and Assessment Benchmarks</i>	<i>Part E, State Planning Policy</i>
<i>Regional Strategies and Policies</i>	<i>Part E, North West Regional Plan</i>
<i>Airport Environs Overlay Code</i>	<i>Part 8.2.1, City of Mount Isa Planning Scheme 2020</i>
<i>Biodiversity Overlay Code</i>	<i>Part 8.2.2, City of Mount Isa Planning Scheme 2020</i>
<i>Bushfire Hazard Overlay</i>	<i>Part 8.2.3, City of Mount Isa Planning Scheme 2020</i>
<i>Flood Hazard Overlay Code</i>	<i>Part 8.2.5, City of Mount Isa Planning Scheme 2020</i>
<i>Wetlands and Waterway Corridors Overlay Code</i>	<i>Part 8.2.10, City of Mount Isa Planning Scheme 2020</i>
<i>Excavation and Filling Code</i>	<i>Part 9.4.3, City of Mount Isa Planning Scheme 2020</i>

3. Compliance with Benchmarks

Benchmark reference	Reasons for the approval despite non-compliance with benchmark
Acceptable Outcome 3.1 Part 9.4.3, City of Mount Isa Planning Scheme 2020	While the proposed filling will exceed 0.3m above natural ground level, it is noted the material will be contained within an existing costean and, as such, will not generate any visual amenity impacts on adjoining or surrounding land.

4. Matters Prescribed by Regulation

Nil.

APPEAL RIGHTS

The rights of an applicant to appeal to a tribunal or the Planning and Environment Court against a decision about a development application are set out in chapter 6, part 1 of the *Planning Act 2016*. 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*.

APPEAL BY A SUBMITTER

A submitter for a development application may appeal to the Planning and Environment Court against:

- any part of the development application for the development approval 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 3 is an extract from the *Planning Act 2016* that sets down the applicant's appeal rights and the appeal rights of a submitter.

Should you have any further queries, please contact Council's Development and Land Use section on (07) 4747 3200.

Yours faithfully



Tim Rose
Acting Chief Executive Officer

CC: State Assessment and Referral Agency
Department of State Development, Infrastructure,
Local Government and Planning
PO Box 5666
TOWNSVILLE QLD 4810

Encl: Attachment 1—Conditions of the approval
Part 1—Conditions imposed by the Assessment Manager (Mount Isa City Council)
Part 2—Conditions required by the referral agency response
Attachment 2 – Approved Plans
Attachment 3—Extract on Appeal Rights (*Planning Act 2016*)

ATTACHMENT 1

PART 1

CONDITIONS IMPOSED BY ASSESSMENT MANAGER (MOUNT ISA CITY COUNCIL)

Application: P29-22 for Operational Works to place 3,000m³ of fill into an existing costean at 2 Moran Road, Mount Isa.

Council advise that the Development Application was approved by Mount Isa City Council's Acting Chief Executive Officer through Delegated Authority (Delegated Authority No. 2057) on 17 July 2023 for the Operational Works to place 3,000m³ into an existing costean at 2 Moran Road, Mount Isa, described as Lot 2 on plan SP222005, subject to the following conditions:

NUMBER	CONDITION	TIMING
PLANNING		
General		
1.	The development shall be carried out generally in accordance with the approved plans and drawings attached to this approval except where conditions of this approval dictate otherwise. <i>For clarity, any change to the development that is not generally in accordance with the approved plans and drawings must be approved by Council pursuant to a 'change application' under Chapter 3, Part 5, Division 2, Subdivision 2 of the Planning Act 2016;</i>	<i>At all times</i>
2.	The owner/developer shall bear the cost of all alterations necessary to public utility mains, services or installations necessitated by this approval and such works shall be to Council specifications and satisfaction	<i>As specified</i>
3.	The developer shall remove, and lawfully dispose of, all refuse material - including car bodies, household appliances and scrap metal, currently within the costean prior to the introduction of any fill material. Under no circumstances shall any onsite refuse be buried as a result of the works;	<i>Prior to the placement of any fill material</i>
4.	The fill material shall be deposited in such a way as to maximise water infiltration and minimise the ponding of rainwater in the costean. The costean area shall be incorporated into the existing Erosion and Sediment Control Plan for the Dugald River Solar Farm;	<i>At all times</i>

5.	The final surface of the fill material shall be covered with a layer of growth media, and seeded, to ensure ground cover regrowth following completion of the works. The developer shall maintain the freshly seeded surface, including irrigation where necessary, until such time as the ground cover regrowth becomes established;	<i>At the conclusion of filling works and until groundcover regrowth becomes established</i>
6.	Following the completion of all works, the developer shall reinstate the existing fence around the costean area to its original location;	<i>At the completion of all works</i>
ENVIRONMENTAL SERVICES		
7.	<p>The operator must achieve the 'general environmental duty' to mitigate any environmental harm and/or nuisance described under the <i>Environmental Protection Act 1994</i>.</p> <p>(a) there is no discharge of contaminants to land or water that may harm the environment or create a nuisance from the operation of the activity.</p> <p>(b) there is discharge of contaminants to air that may harm the environment or create a nuisance from the operation of the activity.</p> <p>(c) noise nuisance is prevented or minimised at noise sensitive places.</p> <p>(d) Waste production and disposal must be minimised, and waste must be managed so it does not harm the environment or create a nuisance from the operation of the activity;</p>	<i>At all times</i>
8.	Chemicals and other liquids such as fuels, solvents, oils, batteries and coolants must be kept within a secondary containment system that is impervious to the materials stored within it and must be managed to prevent the release of contaminants to waters or land. Any release must be reported by telephone to the Department of Environment and Science (DES) Pollution Hotline or Council. Any such release must be reported as soon as practicable but no later than 24 hours, after becoming aware of the release;	<i>At all times</i>
Waste		
9.	Waste production and disposal must be managed and dispose of accordingly to the <i>Waste Reduction and Recycling Act 2011 & Waste Reduction and Recycling Regulation 2011</i> ;	<i>At all times</i>
Water		
10.	A contaminant must not be placed in a position where it could reasonably be expected to move or wash into a roadside gutter, stormwater drain or waters;	<i>At all times</i>
Noise		
11.	<p>Prevent/ minimise the emission of noise that causes, or is likely to cause, environmental nuisance at sensitive or commercial places.</p> <p>All work must be undertaken within the prescribed timeframe as mentioned in <i>Environmental Protection Act 1994</i>;</p>	<i>At all times</i>

Air		
12.	The release of dust and/or particulate matter resulting from the activity must not cause environmental nuisance at any nuisance sensitive or commercial place.	<i>At all times</i>

The applicant is reminded that, in addition to the conditions of this permit, compliance is required with all applicable Commonwealth and Queensland legislation.

The assessment of this application has not included an examination of the compliance with applicable legislation, with the exception of those aspects which have been examined by any referral agency, and the issue of the permit is not to be taken as evidence or assertion of such compliance.

The following list indicates some of the legislation which is commonly applicable to development. Whilst every endeavour has been made to make the list as complete as possible there may be other applicable legislation that has not been included.

- *Aboriginal Cultural Heritage Act 2003*
- *Biosecurity Act 2014*
- *Body Corporate and Community Management Act 1997*
- *Building Act 1975*
- *Building Units and Group Titles Act 1980*
- *Child Care Act 2002*
- *Dangerous Goods Safety Management Act 2001*
- *Disability Discrimination Act 1992 (Commonwealth)*
- *Electrical Safety Act 2002*
- *Environmental Protection Act 1994*
- *Explosives Act 1999*
- *Fisheries Act 1994*
- *Food Act 2006*
- *Land Act 1994*
- *Land Protection (Pest and Stock Route) Act 2002*
- *Land Title Act 1994*
- *Native Title (Queensland) Act 1993 and Commonwealth native title legislation*
- *Pest Management Act 2001*
- *Plumbing and Drainage Act 2002*
- *Public Health Act 2005*
- *Queensland Heritage Act 1992*
- *Radiation Safety Act 1999*
- *Recreational Areas Management Act 2006*
- *Regional Planning Interests Act 2014*
- *Residential Services (Accreditation) Act 2002*
- *Transport Infrastructure Act 1994*
- *Vegetation Management Act 1999*
- *Water Act 2000*

ATTACHMENT 1
Part 2
CONDITIONS IMPOSED BY
CONCURRENCE AGENCY
(DEPARTMENT OF TRANSPORT AND MAIN ROADS)

Application: P29-22 for Operational Works to place 3,000m³ of fill into an existing costean at 2 Moran Road, Mount Isa.

(SARA letter dated 27 June 2023, Application/Reference No: 2305-34816 SRA refers, copy attached).



SARA reference: 2305-34816 SRA
 Council reference: P29-22
 Applicant reference: -

27 June 2023

Mount Isa City Council
 PO Box 815
 Mount Isa QLD 4825
 city@mountisa.qld.gov.au

Attention: Development and Land Use Section

Dear Sir/Madam

SARA referral agency response—2 Moran Road, Mount Isa

(Referral agency response given under section 56 of the *Planning Act 2016*)

The development application described below was confirmed as properly referred by the State Assessment and Referral Agency (SARA) on 29 May 2023.

Response

Outcome:	Referral agency response – with conditions
Date of response:	27 June 2023
Conditions:	The conditions in Attachment 1 must be attached to any development approval
Advice:	Advice to the applicant is in Attachment 2
Reasons:	The reasons for the referral agency response are in Attachment 3

Development details

Description:	Development permit	Operational work for Placing approximately 3,000m ³ of fill into an existing costean.
SARA role:	Referral agency	
SARA trigger:	Schedule 10, Part 9, Division 4, Subdivision 2, Table 5, Item 1 (10.9.4.2.5.1) (Planning Regulation 2017)	
	Operational work on premises near a state transport corridor	

SARA reference: 2305-34816 SRA
Assessment manager: Mount Isa City Council
Street address: 2 Moran Road, Mount Isa
Real property description: 2SP222005
Applicant name: Mr Scott Dale
Applicant contact details: Level 12, 80 Ann Street
Brisbane QLD 4000
scott.dale@apa.com.au

Human Rights Act 2019
considerations: A consideration of the 23 fundamental human rights protected under the Human Rights Act 2019 has been undertaken as part of this decision. It has been determined that this decision does not limit human rights

Representations

An applicant may make representations to a concurrence agency, at any time before the application is decided, about changing a matter in the referral agency response (s.30 Development Assessment Rules). Copies of the relevant provisions are in **Attachment 4**.

A copy of this response has been sent to the applicant for their information.

For further information please contact Kirsty Geaney, Principal Planning Officer, on 47583414 or via email NQSARA@dasilgp.qld.gov.au who will be pleased to assist.

Yours sincerely



Graeme Kenna
Manager (Planning)

cc Mr Scott Dale, scott.dale@apa.com.au
enc Attachment 1 - Referral agency conditions
Attachment 2 - Advice to the applicant
Attachment 3 - Reasons for referral agency response
Attachment 4 - Representations about a referral agency response provisions

Attachment 1—Referral agency conditions

(Under section 56(1)(b)(i) of the *Planning Act 2016* the following conditions must be attached to any development approval relating to this application)

No.	Conditions	Condition timing
Operational Works - Filling		
<p>Schedule 10, Part 9, Division 4, Subdivision 2, Table 5, Item 1 (10.9.4.2.5.1) (Planning Regulation 2017) - The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of Department of Transport and Main Roads to be the enforcement authority for the development to which this development approval relates for the administration and enforcement of any matter relating to the following condition(s):</p>		
1.	<p>(a) Any excavation, filling/backfilling/compaction, retaining structures, batters, stormwater management measures and other works involving ground disturbance must not encroach or de-stabilise the railway corridor or cause similar adverse impacts.</p> <p>(b) RPEQ certification, with supporting documentation including details of the excavation methodology, erosion and sediment control measures and any other management strategies, must be provided to the Program Delivery and Operations Branch, North Queensland Region (North.Queensland.IDAS@tmr.qld.gov.au) within the Department of Transport and Main Roads confirming that the development has been designed to be constructed in accordance with part (a) of this condition.</p>	<p>(a) At all times</p> <p>(b) Prior to the commencement of operational work</p>
2.	<p>(a) Stormwater management of the development must not cause worsening to the operating performance of the railway corridor such that any works on the land must not:</p> <ul style="list-style-type: none"> i) create any new discharge points for stormwater runoff onto the railway corridor; ii) concentrate or increase the velocity of flows to the railway corridor; iii) interfere with and/or cause damage to the existing stormwater drainage on the railway corridor; iv) surcharge any existing culvert or drain on the railway corridor; v) reduce the quality of stormwater discharge onto the railway corridor; vi) impede or interfere with any overland flow or hydraulic conveyance from the railway corridor; vii) reduce the flood immunity of the railway corridor. <p>(b) RPEQ certification, with supporting documentation including details of temporary stormwater management measures during excavation works, must be provided to the Program Delivery and Operations Branch, North Queensland Region (North.Queensland.IDAS@tmr.qld.gov.au) within the Department of Transport and Main Roads confirming that the development has been designed to be constructed in accordance with parts (a) of this condition.</p>	<p>(a) At all times</p> <p>(b) Prior to the commencement of operational work</p>

Attachment 2—Advice to the applicant

General advice	
1.	Terms and phrases used in this document are defined in the <i>Planning Act 2016</i> , its regulation or the State Development Assessment Provisions (SDAP) (version 3.0). If a word remains undefined it has its ordinary meaning.

Attachment 3—Reasons for referral agency response

(Given under section 56(7) of the *Planning Act 2016*)

The reasons for the SARA's decision are:

The proposed development achieves the relevant benchmarks of State code 2 of SDAP. Specifically, the development:

- does not result in an increase in the likelihood or frequency of accidents, fatalities or serious injury for users of a railway;
- does not adversely impact the structural integrity or physical condition of railways, rail transport infrastructure or other rail infrastructure within a railway corridor;
- does not compromise the operating performance of railway corridors;
- does not adversely impact the state's ability to plan, construct, maintain, upgrade or operate railway corridors, future railway corridors and associated rail transport infrastructure or other rail infrastructure;
- does not significantly increase the cost to the state to plan, construct, maintain, upgrade or operate railway corridors, future railway corridors, rail transport infrastructure or other rail infrastructure.

Material used in the assessment of the application:

- the development application material and submitted plans
- *Planning Act 2016*
- Planning Regulation 2017
- the SDAP (version 3.0), as published by SARA
- the Development Assessment Rules
- SARA DA Mapping system
- State Planning Policy mapping system

Attachment 4—Representations about a referral agency response provisions

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ATTACHMENT 3

PLANNING ACT 2016

EXTRACT ON APPEAL RIGHTS

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
 - (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
 - (iii) for an appeal against a failure to make a decision about an application or other matter under the *Plumbing and Drainage Act 2018*—at anytime after the period within which the application or matter was required to be decided ends; or
 - (iv) otherwise—20 business days after the day the notice is given; or
- (g) 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.

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- (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, 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.
- (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.

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- (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.

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- (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.

[s 235]

- (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

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- (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

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- (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

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- (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

[s 247]

- 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

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- (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 *Plumbing 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.
- (6) In this section—

enforcement notice includes an enforcement notice under the *Plumbing and Drainage Act 2018*.

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; or
- (f) for a failure to make a decision about an application or other matter under the *Plumbing and Drainage Act 2018*—
- (i) ordering the entity responsible for deciding the application or matter to decide the application or matter by a stated time and, if the entity does not comply with the order, deciding the application or matter; or
 - (ii) deciding the application or matter.
- (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
 - (b) further regulate the use; or
 - (c) require the use to be changed.