Appeal Rights

SUSTAINABLE PLANNING ACT 2009, IDAS DEVELOPMENT APPLICATION

Part 1 – Appeals to the Planning and Environment Court

461 Appeals by applicants.

(1) An applicant for a development application may appeal to the court against any of the following—

(a) the refusal, or the refusal in part, of the development application;

(b) any condition of a development approval, another matter stated in a development approval and the identification or inclusion of a code under section 242;

(c) the decision to give a preliminary approval when a development permit was applied for;

(d) the length of a period mentioned in section 341;

(e) a deemed refusal of the development application.

(2) An appeal under subsection (1)(a), (b), (c) or (d) must be started within 20 business days (the ***applicant's appeal period***) after—

(a) f a decision notice or negotiated decision notice is given—the day the decision notice or negotiated decision notice is given to the applicant; or

(b) otherwise—the day a decision notice was required to be given to the applicant.

(3) An appeal under subsection (1)(e) may be started at any time after the last day a decision on the matter should have been made.

462 Appeals by submitters—general.

(1) A submitter for a development application may appeal to the court only against—

(a) the part of the approval relating to the assessment manager's decision about any part of the application requiring impact assessment under section 314; or

(b) the part of the approval relating to the assessment manager's decision under section 327.

(2) To the extent an appeal may be made under subsection (1), the appeal may be against 1 or more of the following—

(a) the giving of a development approval;

(b) any provision of the approval including—

(i) a condition of, or lack of condition for, the approval; or

(ii) the length of a period mentioned in section 341 for the approval.

(3) However, a submitter may not appeal if the submitter—

(a) withdraws the submission before the application is decided; or

(b) has given the assessment manager a notice under section 339(1)(b)(ii).

(4) The appeal must be started within 20 business days (the ***submitter's appeal period***) after the decision notice or negotiated decision notice is given to the submitter.

463 Additional and extended appeal rights for submitters for particular development applications.

(1) This section applies to a development application to which chapter 9, part 7 applies.

(2) A submitter of a properly made submission for the application may appeal to the court about a referral agency's response made by a prescribed concurrence agency for the application.

(3) However, the submitter may only appeal against a referral agency's response to the extent it relates to—

(a) if the prescribed concurrence agency is the chief executive (environment)— development for an aquacultural ERA; or

(b) if the prescribed concurrence agency is the chief executive (fisheries)— development that is—

(i) a material change of use of premises for aquaculture; or

(ii) operational work that is the removal, damage or destruction of a marine plant.

(4) Despite section 462(1), the submitter may appeal against the following matters for the application even if the matters relate to code assessment—

(a) a decision about a matter mentioned in section 462(2) if it is a decision of the chief executive (fisheries);

(b) a referral agency's response mentioned in subsection (2).

464 Appeals by advice agency submitters.

(1) Subsection (2) applies if an advice agency, in its response for an application, told the assessment manager to treat the response as a properly made submission.

(2) The advice agency may, within the limits of its jurisdiction, appeal to the court about—

(a) any part of the approval relating to the assessment manager's decision about any part of the application requiring impact assessment under section 314; or

(b) any part of the approval relating to the assessment manager's decision under section 327.

(3) The appeal must be started within 20 business days after the day the decision notice or negotiated decision notice is given to the advice agency as a submitter.

(4) However, if the advice agency has given the assessment manager a notice under section 339(1)(b)(ii), the advice agency may not appeal the decision.

Part 2 – Appeals to the Building & Development Dispute Resolution Committee

S 519 Appeal by applicant—particular development application for material change of use of premises.

(1) This section applies to a development application if the application is only for a material change of use of premises that involves the use of a prescribed building.

(2) However, this section does not apply to the development application if any part of the application required impact assessment and any properly made submissions were received by the assessment manager for the application.

(3) The applicant for the development application may appeal to a building and development committee against any of the following—

(a) the refusal, or the refusal in part, of the application;

(b) any condition of the development approval and another matter, other than the identification or inclusion of a code under section 242, stated in the development approval;

(c) the decision to give a preliminary approval when a development permit was applied for;

(d) the length of a period mentioned in section 341;

(e) a deemed refusal of the application.

(4) An appeal under subsection (3)(a), (b), (c) or (d) must be started within 20 business days (the ***applicant's appeal period***) after—

(a) if a decision notice or negotiated decision notice is given—the day the decision notice or negotiated decision notice is given to the applicant; or

(b) otherwise—the day a decision notice was required to be given to the applicant.

(5) An appeal under subsection (3)(e) may be started at any time after the last day a decision on the matter should have been made.

522 Appeal by applicant—condition of particular development approval

(1) This section applies to a development application if—

(a) the application is only for a material change of use that involves the use of a building classified under the BCA as a class 2 building; and

(b) the proposed development is for premises of not more than 3 storeys; and

(c) the proposed development is for not more than 60 sole-occupancy units.

(2) However, this section does not apply to the development application if any part of the application required impact assessment and any properly made submissions were received by the assessment manager for the application.

(3) The applicant for the development application may appeal to a building and development committee against a condition of the development approval.

(4) The appeal must be started within 20 business days (the ***applicant's appeal period***) after—

(a) if a decision notice or negotiated decision notice is given—the day the decision notice or negotiated decision notice is given to the applicant; or

(b) otherwise—the day a decision notice was required to be given to the applicant.

(5) In this section—

sole-occupancy unit, in relation to a class 2 building, means a room or other part of the building used as a dwelling by a person to the exclusion of any other person.

storey means a space within a building between 2 floor levels, or a floor level and a ceiling or roof, other than—

(a) a space containing only—

(i) a lift shaft, stairway or meter room; or

(ii) a bathroom, shower room, laundry, water closet or other sanitary compartment; or

(iii) accommodation for not more than 3 motor vehicles; or

(iv) a combination of any things mentioned in subparagraph (i), (ii) or (iii); or

(b) a mezzanine.

Note:

Attached is a Rights of Appeal Waiver form. Please complete and return this form if you are satisfied with the approval and agree to the conditions contained therein and you wish to waiver the 20 day appeal period available under the *Sustainable Planning Act 2009.*

RIGHTS OF APPEAL WAIVER

Fax To: Fraser Coast Regional Council

Fax Number: (07) 4125 9795

Attention: Building Services

Re:

(tick one)

☐ Development Permit for Material Change of Use

Property situated at ……..

Development Permit No: ……

☐ Preliminary Approval for Building Work

Property situated at ……..

Approval Reference: ……..

This advice is to confirm that I/We have received the above approval and agree to the conditions contained therein. I/We hereby waiver My/Our appeal rights available under the *Sustainable Planning Act 2009.*

……. ……
Signature Date

……. ……
Signature Date