

21 November 2018

Enquiries: Jenny Elphinstone Tel 07 4099 9482
Our Ref: MCUC 2932/2018 (Doc ID 881590)
Your Ref:

Administration Office
64 - 66 Front St Mossman
P 07 4099 9444
F 07 4098 2902

Mr Phil Walker
PO Box 380
PORT DOUGLAS QLD 4877

Dear Sir

**DEVELOPMENT APPLICATION FOR A CARETAKER'S ACCOMMODATION
(CODE ASSESSMENT)
AT 37-39 OWEN STREET CRAIGLIE
ON LAND DESCRIBED AS LOT 3 ON SP201317**

Council refers to the above development application lodged with Council and as properly made on the 19 November 2018.

Please find attached the Decision Notice for the above-mentioned development application.

Please quote Council's application number: MCUC 2932/2018 in all subsequent correspondence relating to this development application. Should you require any clarification regarding this, please contact Jenny Elphinstone on telephone 07 4099 9482 or at enquiries@douglas.qld.gov.au.

Yours faithfully



MICHAEL KRIEDEMANN
A/General Manager Operations

encl.

- Decision Notice
- Approved Plans
- Applicant's Rights to make representations and applicant's appeal rights.

DOUGLAS SHIRE COUNCIL

DECISION NOTICE — APPROVAL (WITH CONDITIONS) (GIVEN UNDER SECTION 63 OF *THE PLANNING ACT 2016*)

Thank you for your development application detailed below which was properly made on the 15 October 2018. Please be aware that Douglas Shire Council has assessed your application and decided it as follows.

1. Applicant's details

Name:	Phil Walker
Postal Address:	PO Box 380 Port Douglas Qld 4877

2. Location details

Street address:	37-39 Owen Street, Craiglie
Real property description:	Lot 3 on SP201317
Assessment Manager:	Douglas Shire Council

3. Details of the proposed development

Material Change of Use for a Caretaker's Accommodation.

4. Decision

Decision details:	Development Permit approved in full with conditions. These conditions are set out in <u>Schedule 1</u> Reasons for supporting the decision, despite the conflict with benchmarks – as tabled above.
Date of decision:	21 November 2018.

5. 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
Floor Plans	Tusk Design	November 2018	Drawing D2 Floor Areas and D1 Mezzanine	N/A

6. Further development permits

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

- All Building Work.

All Plumbing and Drainage Work must only be carried in compliance with the *Queensland Plumbing and Drainage Act 2002*.

7. Properly made submissions

Not applicable — No part of the application required public notification.

8. Referral agencies for the application

Not applicable

9. Currency period for the approval

This approval, granted under the provisions of the *Planning Act 2016*, shall lapse six (6) years from the day the approval takes effect in accordance with the provisions of Section 85 of *Planning Act 2016*.

10. Reasons for decision

The reasons for this decision are:

A. Sections 60 and 63 of the *Planning Act 2016*:

1. The conditions and advices as per Schedule 1;
2. To ensure the development satisfies the benchmarks of the 2018 Douglas Shire Council Planning Scheme; and
4. To ensure compliance with the *Planning Act 2016*.

B. Findings on material questions of fact:

1. The application was properly lodged to the Douglas Shire Council on the 19 November 2018 under section 51 of the *Planning Act 2016*;

C. Evidence or other material on which findings were based:

1. Council undertook an investigation of assessment of the development, against the State Development Requirements and the 2018 Douglas Shire Council Planning Scheme in making its assessment manager decision;
2. Council undertook an assessment in accordance with the provisions of section 60 of the *Planning Act 2016*; and
3. The following findings are made:
 - a. Subject to the assessment manager's conditions the development satisfactorily meets the State Planning Policy considerations and the 2018 Douglas Shire Council Planning Scheme requirements sufficient for the assessment of the applications against section 60 of the *Planning Act 2016*.
 - b. In regards to Section 63(iii)(e) of the *Planning Act 2016*:

Benchmark reference	Reasons for the approval despite non-compliance with benchmark
Caretaker's Accommodation Code AO1.1 Gross floor area does not exceed 80m ² PO1 The caretaker's accommodation is of a small scale.	Proposed accommodation is 108m ² and does not comply with acceptable outcome benchmark. The development is considered to be of a small scale and meets the Performance Outcome benchmark.

11. Rights of appeal

The rights of applicants to make representations and rights 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*.

Schedule 2 includes extracts from the Development Assessment Rules and the *Planning Act 2016* that sets down these rights.

SCHEDULE 1 CONDITIONS AND ADVICES IMPOSED BY THE ASSESSMENT MANAGER

PART 1A – CONDITIONS IMPOSED BY THE ASSESSMENT MANAGER

1. Carry out the approved development generally in accordance with the approved drawing(s) and/or document(s), and in accordance with:-
 - a. The specifications, facts and circumstances as set out in the application submitted to Council;
 - b. The following conditions of approval and the requirements of Council's Planning Scheme and the FNQROC Development Manual.

Except where modified by these conditions of approval

Timing of Effect

2. The conditions of the Development Permit must be effected prior to the Commencement of Use, except where specified otherwise in these conditions of approval.

Car Parking

3. One car space must remain available for the Caretaker's Accommodation.

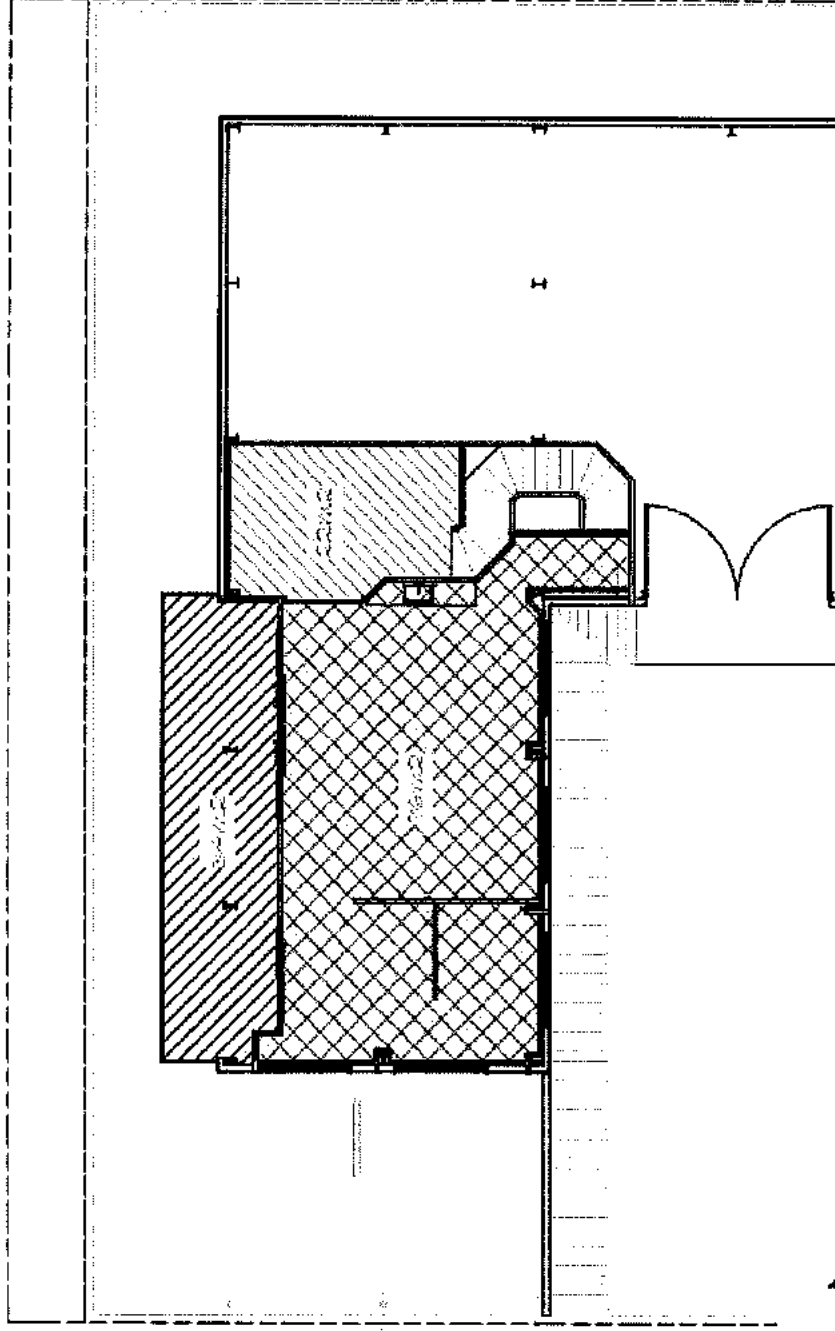
Building Work Compliance

4. Within 3 months of the date of issue of the approval the Applicant/Owner must complete any necessary works and achieve a change of classification for the caretaker's accommodation on the mezzanine floor.

PART 1B – ADVICE NOTES

1. This approval, granted under the provisions of the *Planning Act 2016*, shall lapse six (6) years from the day the approval takes effect in accordance with the provisions of Section 85 of the *Planning Act 2016*.
2. All building site managers must take all action necessary to ensure building materials and/or machinery on construction sites are secured immediately following the first potential cyclone warning and that relevant emergency telephone contacts are provided to Council officers, prior to commencement of works.
3. This approval does not negate the requirement for compliance with relevant Local Laws and statutory requirements. Separate Building and Plumbing approvals are required for the mezzanine floor.
4. For information relating to the *Planning Act 2016* log on to www.dsdmip.qld.gov.au. To access the FNQROC Development Manual, Local Laws and other applicable Policies log on to www.douglas.qld.gov.au.

Approved plans and specifications

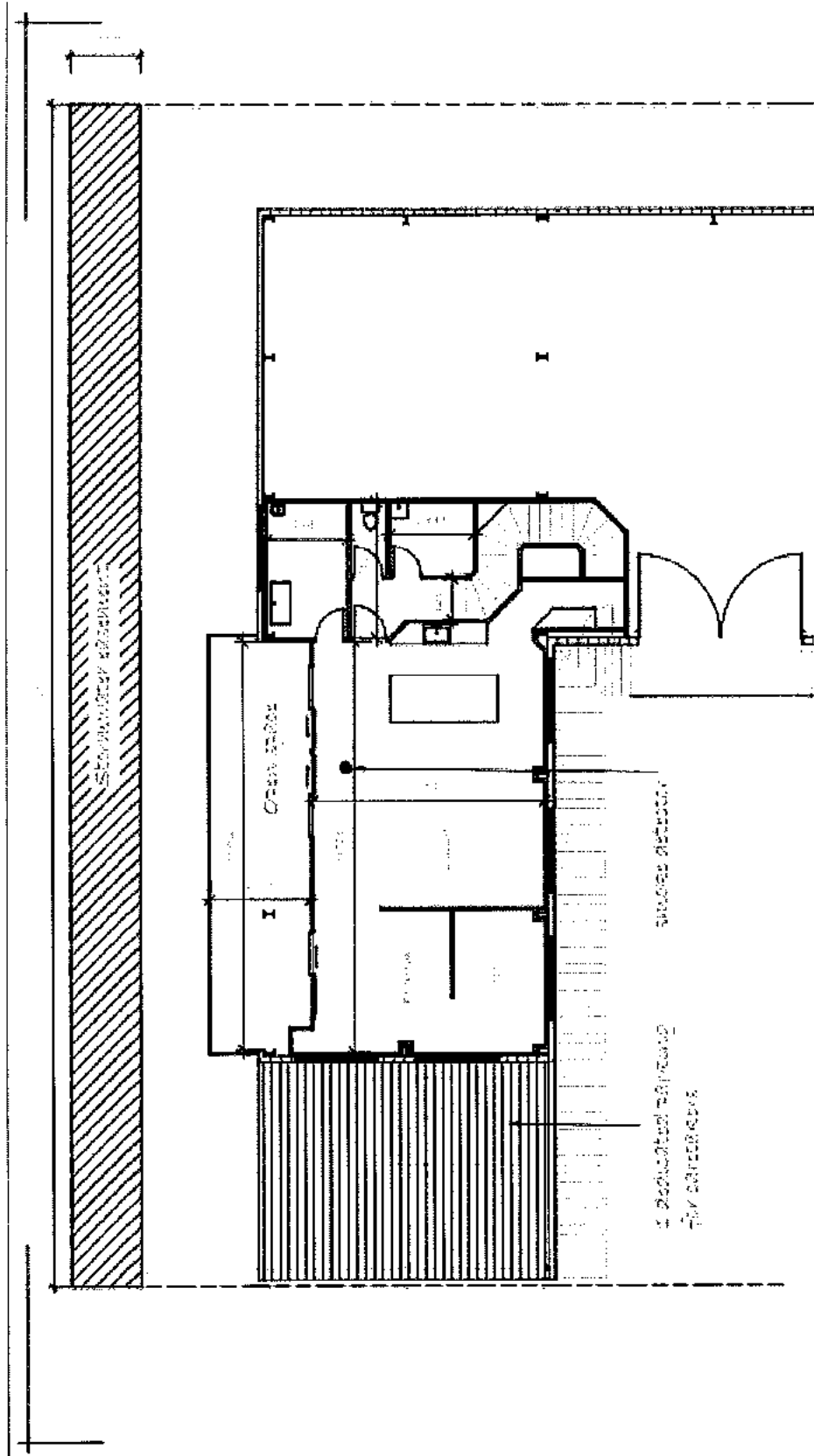


task

Proposed Care takers res for D perry
Lot 3 on SP 201317 Owen Street, Craigie

Dwg. D2 floor plan
Date. November 2018

Scale 1:100



Task

Proposed Care takers res for D perry
 Lot 3 on SP 201317 Owen Street, Craiglue

Dwg. D1-Memoir
 Date. November 2017

Scale 1:100

SCHEDULE 2 – PLANNING ACT 2016 - EXTRACTS ON MAKING REPRESENTATIONS AND ON APPEAL RIGHTS

Planning Act 2016 Making Representations

Planning Act 2016
Chapter 3 Development assessment

[s 74]

- (a) any part of the building work must be assessed against, or having regard to, a matter that is not a building assessment provision; and
 - (b) none of the referral agencies are required to assess the application against, or having regard to, the matter.
- (5) A development permit given by the private certifier for the building work does not authorise the carrying out of the part requiring assessment against, or having regard to, the matter, unless a relevant preliminary approval is in effect for the part.
- (6) In this section—
relevant preliminary approval means a preliminary approval given under the old Act by an entity other than a private certifier.

Division 2 Changing development approvals

Subdivision 1 Changes during appeal period

74 What this subdivision is about

- (1) This subdivision is about changing a development approval before the applicant's appeal period for the approval ends.
- (2) This subdivision also applies to an approval of a change application, other than a change application for a minor change to a development approval.
- (3) For subsection (2), sections 75 and 76 apply—
 - (a) as if a reference in section 75 to a development approval were a reference to an approval of a change application; and
 - (b) as if a reference in the sections to the assessment manager were a reference to the responsible entity; and

Current as at 9 May 2018

Page 89

Authorised by the Parliamentary Counsel

- (c) as if a reference in section 76 to a development application were a reference to a change application; and
- (d) as if the reference in section 76(3)(b) to section 63(2) and (3) were a reference to section 83(4); and
- (e) with any other necessary changes.

75 Making change representations

- (1) The applicant may make representations (*change representations*) to the assessment manager, during the applicant's appeal period for the development approval, about changing—
 - (a) a matter in the development approval, other than—
 - (i) a matter stated because of a referral agency's response; or
 - (ii) a development condition imposed under a direction made by the Minister under chapter 3, part 6, division 2; or
 - (b) if the development approval is a deemed approval—the standard conditions taken to be included in the deemed approval under section 64(8)(c).
- (2) If the applicant needs more time to make the change representations, the applicant may, during the applicant's appeal period for the approval, suspend the appeal period by a notice given to the assessment manager.
- (3) Only 1 notice may be given.
- (4) If a notice is given, the appeal period is suspended—
 - (a) if the change representations are not made within a period of 20 business days after the notice is given to the assessment manager—until the end of that period; or
 - (b) if the change representations are made within 20 business days after the notice is given to the assessment manager, until—

- (i) the applicant withdraws the notice, by giving another notice to the assessment manager; or
 - (ii) the applicant receives notice that the assessment manager does not agree with the change representations; or
 - (iii) the end of 20 business days after the change representations are made, or a longer period agreed in writing between the applicant and the assessment manager.
- (5) However, if the assessment manager gives the applicant a negotiated decision notice, the appeal period starts again on the day after the negotiated decision notice is given.

76 Deciding change representations

- (1) The assessment manager must assess the change representations against and having regard to the matters that must be considered when assessing a development application, to the extent those matters are relevant.
- (2) The assessment manager must, within 5 business days after deciding the change representations, give a decision notice to—
 - (a) the applicant; and
 - (b) if the assessment manager agrees with any of the change representations—
 - (i) each principal submitter; and
 - (ii) each referral agency; and
 - (iii) if the assessment manager is not a local government and the development is in a local government area—the relevant local government; and
 - (iv) if the assessment manager is a chosen assessment manager—the prescribed assessment manager; and
 - (v) another person prescribed by regulation.

[s 77]

- (3) A decision notice (a *negotiated decision notice*) that states the assessment manager agrees with a change representation must—
 - (a) state the nature of the change agreed to; and
 - (b) comply with section 63(2) and (3).
- (4) A negotiated decision notice replaces the decision notice for the development application.
- (5) Only 1 negotiated decision notice may be given.
- (6) If a negotiated decision notice is given to an applicant, a local government may give a replacement infrastructure charges notice to the applicant.

Subdivision 2 Changes after appeal period

77 What this subdivision is about

This subdivision is about changing a development approval, other than the currency period, after all appeal periods in relation to the approval end.

78 Making change application

- (1) A person may make an application (a *change application*) to change a development approval.
- (2) A change application must be made to the responsible entity.
- (3) The *responsible entity* is—
 - (a) for a change application for a minor change to a development condition that a referral agency imposes—the referral agency; or
 - (b) the P&E Court, if—
 - (i) the change application is for a minor change; and
 - (ii) the development approval was given because of an order of the court; and

- (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.

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 any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

Note—

See the P&E Court Act for the court's power to extend the appeal period.

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.

- (6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—
 - (a) the adopted charge itself; or
 - (b) for a decision about an offset or refund—
 - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
 - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

230 Notice of appeal

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—
 - (a) is in the approved form; and
 - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar, must, within the service period, give a copy of the notice of appeal to—
 - (a) the respondent for the appeal; and
 - (b) each co-respondent for the appeal; and
 - (c) for an appeal about a development application under schedule 1, table 1, item 1—each principal submitter for the development application; and
 - (d) for an appeal about a change application under schedule 1, table 1, item 2—each principal submitter for the change application; and
 - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); and

- (f) for an appeal to the P&E Court—the chief executive; and
 - (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The *service period* is—
- (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
 - (b) otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.
- (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 Other appeals

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

- (a) conduct engaged in for the purpose of making a decision; and
- (b) other conduct that relates to the making of a decision; and
- (c) the making of a decision or the failure to make a decision; and
- (d) a purported decision; and
- (e) a deemed refusal.

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

- (a) is final and conclusive; and
- (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the *Judicial Review Act 1991* or otherwise, whether by the Supreme Court, another court, 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.