



Our Ref: 101811-27
Your Ref: 35250-001-01

22 February 2021

DSDSATSIP on behalf of Sandra and Phillip Smith (HO Applicants) and others
C/- Brazier Motti Pty Ltd
PO Box 1185
Cairns QLD 4870

Attention: Michael Tessaro

Dear Michael,

Negotiated Decision Notice – Approved in full with conditions
Given under section 76 of the *Planning Act 2016*

The development application described below was properly made to Yarrabah Aboriginal Shire Council on 04 August 2021. The decision was determined by Yarrabah Aboriginal Shire Council at the ordinary meeting on the **16 February 2022**.

Applicant details

Applicant name:	Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships on behalf of Sandra and Phillip Smith (HO Applicants) and others C/- Brazier Motti Pty Ltd
Applicant contact details:	4054 0400 cns.planning@braziermotti.com.au

Application details

Application number:	101811-27
Approval sought:	Development Permit for a Reconfiguring a Lot
Description of the development proposed:	4 Lots into 5 Lots, Access Easement and New Road

Location details

Street address:	Back Beach Road (Kunjurra), Yarrabah
Real property description:	57 SP278074, 570 SP178074, 206 SP167913, & 2007 SP167913

Decision

Date of decision: This Negotiated Decision Notice dated 16 February 2022 replaces the Decision Notice dated 17 November 2021.

Decision Details: Approved in full with conditions. These conditions are set out in **Attachment 1**.

Details of the approval

Development Permit Reconfiguring a Lot (4 Lots into 5 Lots, Access Easement and New Road)

Conditions

This approval is subject to the conditions in **Attachment 1**.

Further development permits

Development Permit for Operational Works (including for works associated with the new road)

Properly made submissions

Not applicable.

Other requirements under section 43 of the Planning Regulation

Not applicable

Approved plans and specifications

Copies of the following plans are enclosed.

Drawing / report title	Prepared by	Date	Reference no.	Version / issue
Aspect of development: Reconfiguring a Lot				
Proposed Reconfiguration	Brazier Motti	21/10/2021 01/06/2021	Job No: 35250/1-1, Plan No: 35250/001 DC, Page: 1 of 2	N/A
Proposed Reconfiguration	Brazier Motti	01/06/2021	Job No: 35250/1-1, Plan No: 35250/001 C, Page: 2 of 2	N/A
Proposed Reconfiguration Survey Plan	Brazier Motti	01/06/2021	Job No: 35250/1-1, Plan No: 35250/001 C, Page: 2 of 2	N/A

Application number: YASC 101811-27
Approval sought: Negotiated Decision Notice Development Permit for a Reconfiguring a Lot
Development: 4 Lots into 5 Lots, Access Easement and New Road

Currency period for the approval

This approval, granted under the provisions of the Planning Act 2016, shall lapse **four (4)** years from the day the approval takes effect in accordance with the provisions of section 85 of the *Planning Act 2016*.

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*).

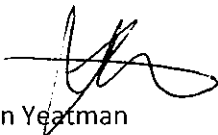
An applicant and/or submitter may appeal to the Planning and Environment Court or the Development tribunal against a number of matters (see Schedule 1 of the *Planning Act 2016*). A copy of the extracts of the sections of the *Planning Act 2016* are attached (**Attachment 2**).

Other details

You are further advised that the truth and accuracy of the information provided in the application form and accompanying information is relied upon when assessing and deciding this application. If you find an inaccuracy in any of the information provided above or have a query or need to seek clarification about any of these details, please contact Yarrabah Aboriginal Shire Council on (07) 4056 9120.

For further information please contact Yarrabah Aboriginal Shire Council on (07) 4056 9120.

Yours sincerely,



Leon Yeatman
Chief Executive Officer

Att: **Attachment 1** - Conditions imposed by the assessment manager
Attachment 2 - Extract of Appeal Provisions (Chapter 6, Part 1 of the *Planning Act 2016*).

ATTACHMENT 1 CONDITIONS IMPOSED BY THE ASSESSMENT MANAGER

APPROVED PLANS

The term ‘approved drawing(s) and / or document(s)’ or other similar expressions means:

Drawing or Document	Reference	Date
Proposed Reconfiguration	Job No: 35250/1-1, Plan No: 35250/001 DC, Page: 1 of 2	21/10/2021 01/06/2021
Proposed Reconfiguration	Job No: 35250/1-1, Plan No: 35250/001 C, Page: 2 of 2	01/06/2021
Proposed Reconfiguration Survey Plan	Job No: 35250/1-1, Plan No: 35250/001 C, Page: 2 of 2	01/06/2021

ASSESSMENT MANAGER CONDITIONS

Assessment Manager Conditions

1. This approval, granted under the provisions of the *Planning Act 2016*, shall lapse four (4) years from the day the approval takes effect in accordance with the provisions of section 85 of the *Planning Act 2016*.
2. 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, including recommendations and findings confirmed within technical reports; and
 - b. The following conditions of approval and the requirements of Council’s Planning Scheme.
 Except where modified by these conditions of approval.
 At all times

Timing of Effect

3. The conditions of the Development Permit must be carried out to the satisfaction of the Chief Executive Officer prior to the Council issuing a Compliance Certificate for the Plan of Survey, except where specified otherwise in these conditions of approval.
 At all times

Lawful Point of Discharge

4. All stormwater from each new lot must be directed to a lawful point of discharge such that it does not adversely affect surrounding properties or properties downstream from the development, all to the requirements and satisfaction of the Chief Executive Officer
 Prior to signing and dating Survey Plan

Sediment and Erosion Control

- | | |
|--|---|
| 6. Soil and water management measures must be installed and implemented prior to discharge of water from the site, such that no external stormwater flow from the site adversely affects surrounding or downstream properties (in accordance with the requirements of the Environmental Protection Act 1994, and the FNQROC Development Manual). | Prior to signing and dating Survey Plan |
| 7. Any construction work associated with this development shall be carried out in accordance with FNQROC Development Manual and sound engineering practice. | Prior to signing and dating Survey Plan |

Easement

- | | |
|---|---|
| 8. The developer is to pay all costs (including Council's legal expenses) to prepare and register the easement (for access and any services) over Lot 206 for the benefit of Lot 301 to the requirements and satisfaction of the Chief Executive Officer. | Prior to signing and dating Survey Plan |
|---|---|

General

- | | |
|--|---|
| 9. Where utilities (such as water on non-standard alignments) traverse lots to service another lot, easements must be created in favour of Council for access and maintenance purposes. The applicant is to pay all costs (including Council's legal expenses) to prepare and register the easement documents. | Prior to signing and dating Survey Plan |
|--|---|

Water Supply

- | | |
|--|---|
| 10. Each lot must be connected to the reticulated water supply at the time of construction at full cost to the applicant, designed and constructed in accordance with the FNQROC Development Manual. | Prior to signing and dating Survey Plan |
|--|---|

Sewerage Works

- | | |
|---|---|
| 11. The method of on-site effluent disposal for each lot must be in accordance with the <i>Plumbing and Drainage Act 2018</i> . 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 <i>AS/NZS, 1547:2000 – 'On-site domestic wastewater management'</i> . Details are to be provided prior to Council issuing a Compliance Certificate for the Plan of Survey. | Prior to signing and dating Survey Plan |
|---|---|

Fire Management

- | | |
|--|--------------|
| 12. The development must be maintained at all times to a standard so as not to create a fire hazard. | At all times |
|--|--------------|

ADVICE

1. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.
2. For information relating to the Planning Act 2016 log on to <https://planning.dsdmip.qld.gov.au>. To access the FNQROC Development Manual log on to <https://www.fnqroc.qld.gov.au>. To access Local Laws and other applicable policies log on to the Yarrabah Aboriginal Shire Council website <https://www.yarrabah.qld.gov.au>.
3. The site is not serviced by a Mains Electricity Supply. Each landowner is responsible for providing an independent energy system with sufficient capacity to service each lot (at near average energy demands associated with the development) as an alternative to reticulated electricity where:
 - a. It is approved by the relevant regulatory authority; and
 - b. It can be demonstrated that no air or noise emissions; and
 - c. It can be demonstrated that no adverse impact on visual amenity will occur.

DEFINITION

In accordance with the *Planning Act 2016*, **Reconfiguring a lot means:**

- (a) *creating lots by subdividing another lot; or*
- (b) *amalgamating 2 or more lots; or*
- (c) *rearranging the boundaries of a lot by registering a plan of subdivision under the Land Act or Land Title Act; or*
- (d) *dividing land into parts by agreement rendering different parts of a lot immediately available for separate disposition or separate occupation, other than by an agreement that is—*
 - (i) *a lease for a term, including renewal options, not exceeding 10 years; or*
 - (ii) *an agreement for the exclusive use of part of the common property for a community titles scheme under the Body Corporate and Community Management Act 1997; or*
- (e) *creating an easement giving access to a lot from a constructed road.*

INFRASTRUCTURE CHARGES

1. Yarrabah Aboriginal Shire Council does not levy infrastructure charges or impose conditions for trunk infrastructure.

APPEAL RIGHTS

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 also be a right to make an application for a declaration by a tribunal (see chapter 6, part 2 of the *Planning Act 2016*).

A copy of the relevant appeal provisions is attached as **Attachment 2**.

STATEMENT OF REASONS

The reasons for this decision are:

1. The proposed development complies with the outcomes sought for the Environmental management zone.
2. The proposed development complies with the outcomes sought for the Special purposes zone.
3. The boundary realignment resolves encroachments currently occupied by their respective lots.
4. The site has historically been used for residential uses.
5. The proposed development is a practical approach to resolve encroachment issues.

Assessment Benchmarks

The site is in the Environmental Management Zone and Special Purposes Zone and the Reconfiguration is Impact assessable development.

The proposed development was assessed against the following assessment benchmarks of Yarrabah Aboriginal Shire Council Planning Scheme:

Assessment Benchmarks	Zone
	<ul style="list-style-type: none"> • Environmental management • Special purposes
	Overlays
	<ul style="list-style-type: none"> • Acid sulfate soils • Biodiversity areas • Bushfire hazard • Coastal hazard
	Development Codes
	<ul style="list-style-type: none"> • Access, parking and servicing • Filling and excavation • Landscaping • Protection of sensitive land uses • Operational works • Reconfiguring a lot • Vegetation management

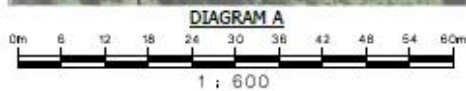
Compliance Discussion

The assessment of the proposed development has considered the relevant Performance Outcomes and Acceptable Outcomes, and also the Purpose statements of the benchmarks relevant to the application.

Any other relevant matters in accordance with s45 (5) of the *Planning Act 2016* and s31 of the *Planning Regulation 2017* (impact assessable only) e.g. State Planning Policies and Local Policies and Strategies.

APPENDIX 1: Approved plan(s) & Document(s)





 Building Envelope

This plan is conceptual and for discussion purposes only. All areas, dimensions and land use are preliminary, subject to investigation, survey, engineering, and Local Authority and Agency approvals.

PROPOSED RECONFIGURATION
 Lots 57, 206, 301, 570, 2007 & New Road
 Cancelling Lots 57 & 570 on SP278074 and
 Lots 206 & 2007 on SP167913
 Locality of Yarrabah
 Yarrabah Aboriginal Shire Council

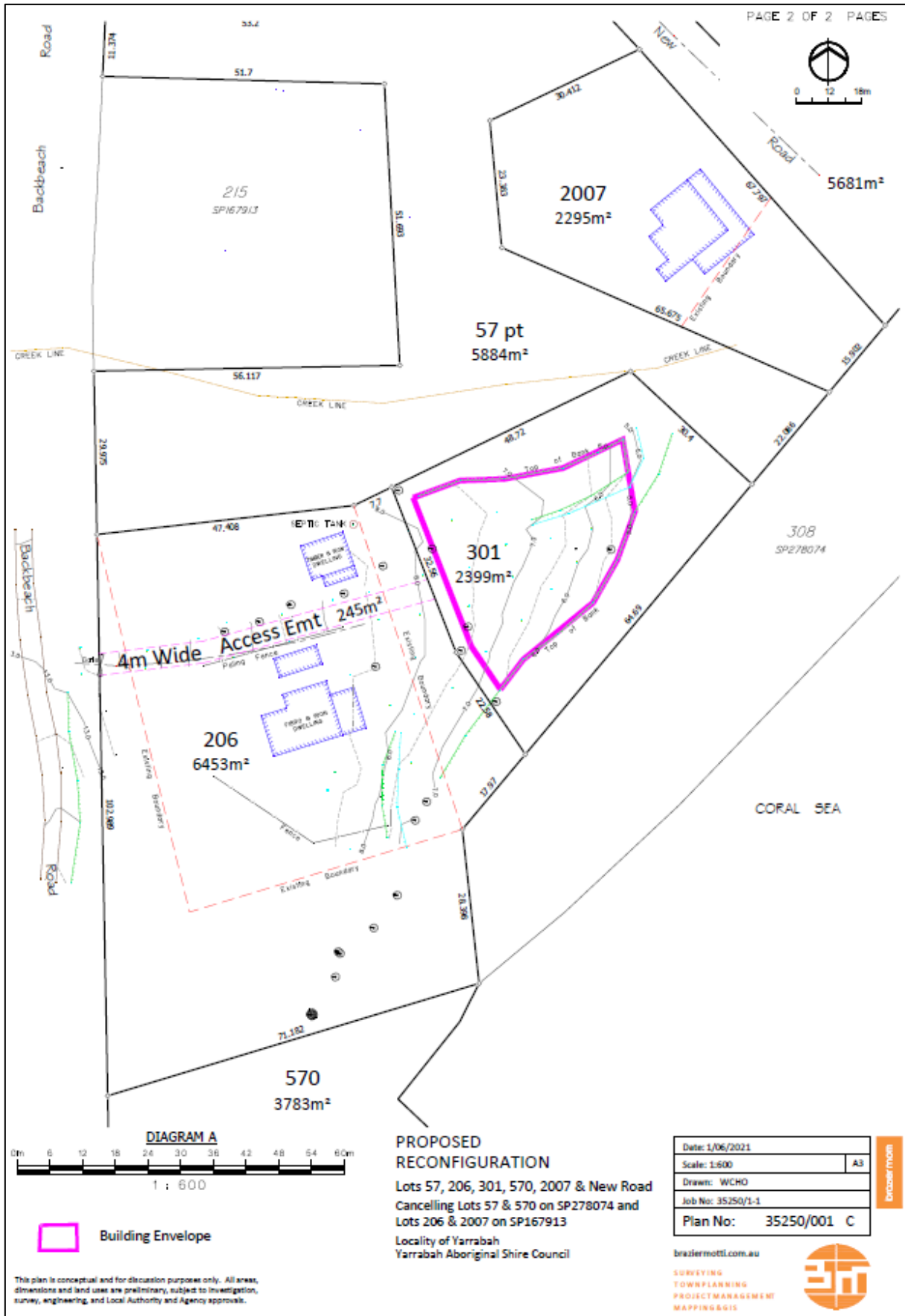
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Draughtsman



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

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- (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) 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.
- (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

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- (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.
- (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.