

27 September 2019

**Enquiries:** Daniel Lamond  
**Our Ref:** ROL 2019\_3161 (921638)  
**Your Ref:** FILE 20191378

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K A Knight & M J Knight  
C/- GMA Certification  
PO Box 831  
PORT DOUGLAS QLD 4877

**Email:** adminpd@gmacert.com.au or mjknaknight@gmail.com

Dear Sir/Madam

**Development Application for Reconfiguration of a Lot (1 Lot into 2 Lots and  
Access Easement)  
356A Mowbray River Road, Mowbray and 358 Mowbray River Road,  
Mowbray  
Land Described as Lot 95 on SP121802 and Lot 94 on SP121802**

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

Please quote Council's application number: ROL 2019\_3161 in all subsequent correspondence relating to this development application.

Should you require any clarification regarding this, please contact Daniel Lamond on telephone 07 4099 9456.

Yours faithfully



**Paul Hoye**  
**Manager Environment & Planning**

encl.

- Decision Notice
  - Approved Drawing(s) and/or Document(s)
  - Reasons for Decision
- Advice For Making Representations and Appeals (Decision Notice)



# Decision Notice

## Approval (with conditions)

*Given under section 63 of the Planning Act 2016*

### Applicant Details

**Name:** K A Knight & M J Knight  
**Postal Address:** C/- GMA Certification  
PO Box 831  
PORT DOUGLAS QLD 4877  
**Email:** adminpd@amacert.com.au or mjknighth@gmail.com

### Property Details

**Street Address:** 356A Mowbray River Road MOWBRAY, 358 Mowbray River Road MOWBRAY  
**Real Property Description:** LOT: 95 SP: 121802 and LOT: 94 SP: 121802  
**Local Government Area:** Douglas Shire Council

### Details of Proposed Development

Development Permit - Reconfiguring a Lot (1 Lot into 2 Lots and Access Easement)

### Decision

**Date of Decision:** 27 September 2019  
**Decision Details:** Approved (subject to conditions)

### Approved Drawing(s) and/or Document(s)

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

Drawing or Document	Reference	Date
Reconfiguration of a Lot- Plan of Lots 95 & 96 Cancelling Lot 95 on SP121802 Mowbray River Road, Mowbray	Drawing No PR144010-1 Issue A	12 August 2019
<b>FNQROC Development Manual Standard Drawing/s for Vehicle Access</b>		

**Note** – The plans referenced above will require amending in order to comply with conditions of this Decision Notice.

### **Assessment Manager Conditions & Advices**

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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 Council endorsement of the Plan of Survey, except where specified otherwise in these conditions of approval.

### **Assessment of Access Driveway**

3. Provide a detailed design of the proposed driveway and access for endorsement by the Chief Executive Officer. The design must;
  - a. Be designed such that where there is a grade shift to 1 in 4 (25%), there is an area with a grade of no more than 1 in 6 (16.6%) prior to this area, for a distance of at least 5 metres;
  - b. on gradients greater than 1 in 6 (16.6%) driveways are designed to ensure the cross-fall of the driveway is one way and directed into the hill, for vehicle safety and drainage purposes;
  - c. be designed to include all necessary associated drainage that intercepts and directs storm water runoff to a lawful point of discharge;
  - d. be designed to ensure that any excavation or fill does not exceed 1.8 metres in height for each batter or retaining wall;
  - e. be designed in accordance with AS2890.1- 2004;
  - f. be constructed with concrete or bitumen access treatment for the full length of Easement A on SP121802.

Prior to Council endorsing the Plan of Survey, the driveway access must be constructed in accordance with the endorsed access driveway detailed design.

### **Drainage Plan**

4. Provide an RPEQ certified drainage plan which demonstrates protection of the site driveway access.

### **Water Supply Works**

5. Undertake a hydraulic investigation to demonstrate that acceptable minimum and maximum pressures are achieved under the conditions nominated in the FNQROC Development Manual. At a minimum, the investigation must:
  - a. Include a hydrant flow and pressure test on Council's main in Mowbray River Road during a peak consumption period;
  - b. Identify the size of the private service required to achieve acceptable pressure at the allotment boundary of Lot 96. That is from Mowbray River Road, extending along the access easement to Lot 96.
  - c. Identify if a private booster pump and storage tank is required to augment pressure.

The investigation must be endorsed by a Building Hydraulic Designer or Registered Professional Engineer of Queensland (RPEQ) and water connection works must be completed prior to Council endorsement of the Plan of Survey.

### **Sediment and Erosion Control**

6. Soil and water management measures must be installed/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).

### **Relocation of Services**

7. Provide written evidence from a licensed surveyor that all services (water, telecommunications and power) are constructed to service the new allotment.

### **Access Easement/s**

8. Create an access easement to allow vehicle access over Lot 95 in favour of Lot 96. The approved easement documents must be submitted at the same time as seeking Council endorsement of the Plan of Survey and must be lodged and registered with the Department of Natural Resources and Mines in conjunction with the Plan of Survey.

### **Electricity and Telecommunications**

9. Written evidence of negotiations with Ergon Energy and the telecommunication authority must be submitted to Council stating that both an electricity supply and telecommunications service will be provided to the development prior to Council endorsement of the Plan of Survey.

### **Further Development Permits**

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Not applicable

## **Concurrence Agency Response**

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Not applicable

## **Currency Period for the Approval**

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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*.

## **Rights to make Representations & Rights of Appeal**

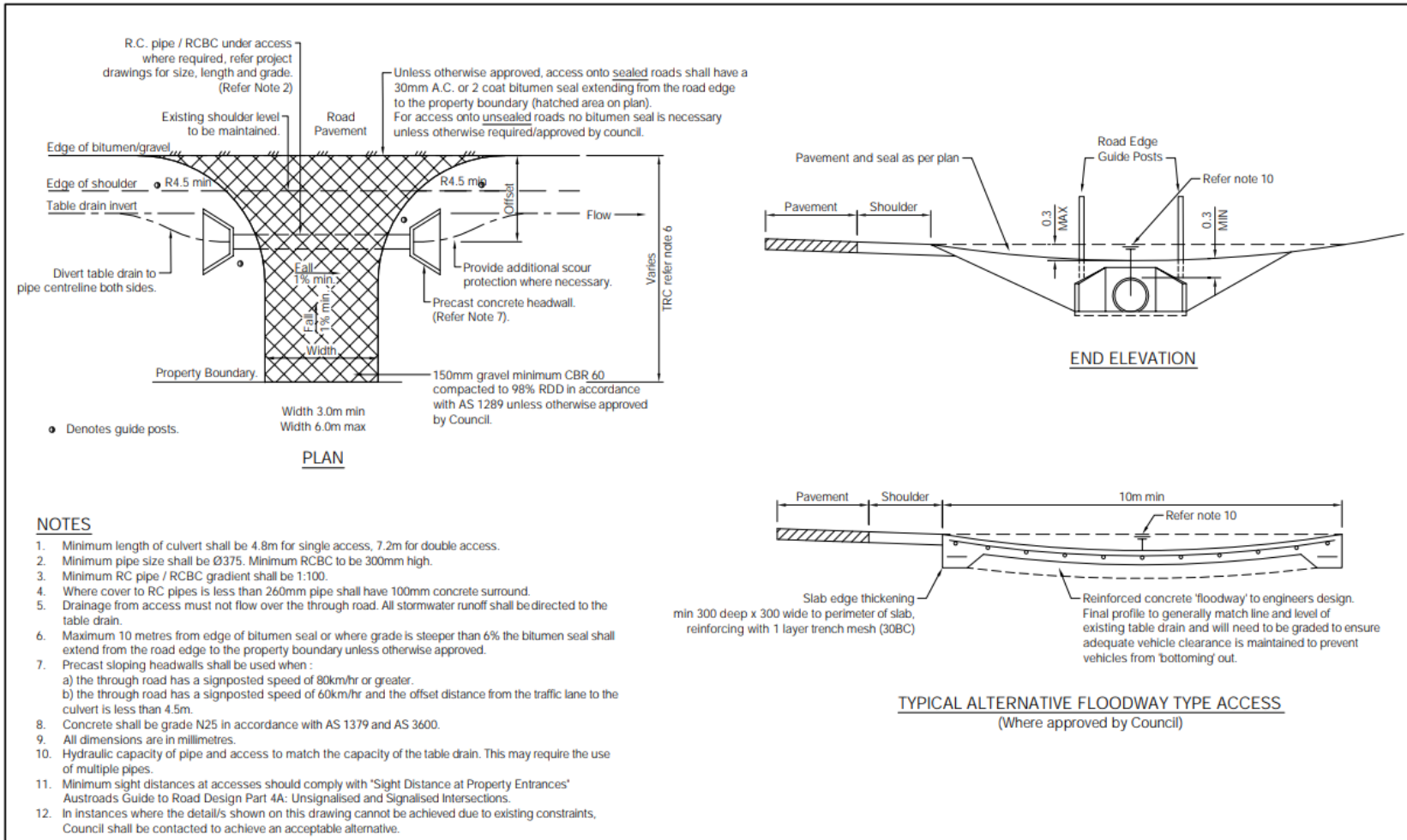
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The rights of applicants to make representations and rights to appeal to a Tribunal or the Planning and Environment Court against decisions about a development application are set out in Chapter 6, Part 1 of the *Planning Act 2016*.

A copy of the relevant appeal provisions are attached.



# Rural allotment Access Crossover Design



**NOTES**

- Minimum length of culvert shall be 4.8m for single access, 7.2m for double access.
- Minimum pipe size shall be Ø375. Minimum RCBC to be 300mm high.
- Minimum RC pipe / RCBC gradient shall be 1:100.
- Where cover to RC pipes is less than 260mm pipe shall have 100mm concrete surround.
- Drainage from access must not flow over the through road. All stormwater runoff shall be directed to the table drain.
- Maximum 10 metres from edge of bitumen seal or where grade is steeper than 6% the bitumen seal shall extend from the road edge to the property boundary unless otherwise approved.
- Precast sloping headwalls shall be used when:
  - the through road has a signposted speed of 80km/hr or greater.
  - the through road has a signposted speed of 60km/hr and the offset distance from the traffic lane to the culvert is less than 4.5m.
- Concrete shall be grade N25 in accordance with AS 1379 and AS 3600.
- All dimensions are in millimetres.
- Hydraulic capacity of pipe and access to match the capacity of the table drain. This may require the use of multiple pipes.
- Minimum sight distances at accesses should comply with 'Sight Distance at Property Entrances' Austroads Guide to Road Design Part 4A: Unsignalised and Signalised Intersections.
- In instances where the detail/s shown on this drawing cannot be achieved due to existing constraints, Council shall be contacted to achieve an acceptable alternative.

E	MINOR AMENDMENTS	26/11/14
D	COMBINED PLAN DETAIL AND ADDED SECTIONS	28/11/12
C	VARIOUS MINOR AMENDMENTS	13/01/06
B	NOTES AMENDED	18/01/05
A	ORIGINAL ISSUE	12/03/04
REVISIONS		DATE

**DISCLAIMER**

The authors and sponsoring organizations shall have no liability or responsibility to the user or any other person or entity with respect to any liability, loss or damage caused or alleged to be caused, directly or indirectly, by the adoption and use of these Standard Drawings including, but not limited to, any interruption of service, loss of business or anticipatory profits, or consequential damages resulting from the use of these Standard Drawings. Persons must not rely on these Standard Drawings as the equivalent of, or a substitute for, project-specific design and assessment by an appropriately qualified professional.



RURAL ALLOTMENT ACCESSES

Standard Drawing S1105				
A	B	C	D	E

## Reasons for Decision

The reasons for this decision are:

1. Sections 60, 62 and 63 of the *Planning Act 2016*:
  - a) to ensure the development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme Version 1.0; and
  - b) to ensure compliance with the *Planning Act 2016*.
2. Findings on material questions of fact:
  - a) the development application was properly lodged to the Douglas Shire Council 2019 under section 51 of the *Planning Act 2016* and Part 1 of the *Development Assessment Rules*;
  - b) the development application contained information from the applicant which Council reviewed together with Council's own assessment against the 2017 State Planning Policy and the 2018 Douglas Shire Planning Scheme Version 1.0 in making its assessment manager decision.
3. Evidence or other material on which findings were based:
  - a) the development triggered assessable development under the Assessment Table associated with the Rural Zone Code;
  - b) Council undertook an assessment in accordance with the provisions of sections 60, 62 and 63 of the *Planning Act 2016*; and
  - c) the applicant's reasons have been considered and the following findings are made:
    - i) Subject to conditions, the development satisfactorily meets the Planning Scheme benchmarks.



## Extracts from the Planning Act 2016 - Making Representations During Applicant's Appeal Period

Planning Act 2016  
Chapter 3 Development assessment

[s 74]

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### 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
  - (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.
  - (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.

## Extracts from the Planning Act 2016 – Appeal Rights

Planning Act 2016  
Chapter 6 Dispute resolution

[s 229]

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

## 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

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- (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) 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—

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- (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, 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,



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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.