

25 January 2018

Enquiries: Jenny Elphinstone 07 4099 9482 SC
Our Ref: 43/2381/2017 (Doc ID 841121)
Your Ref: J000650

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S F Loughnan & S K Hull & B F Gleeson
C/- Gilvear Planning PL
PO Box 228
BABINDA QLD 4861

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Dear Sir/Madam

**DEVELOPMENT APPLICATION FOR MCU - CODE (CARETAKERS RESIDENCE)
AT 4990R CAPTAIN COOK HIGHWAY OAK BEACH
LOT 1 ON RP744764**

Council refers to the above Development Application lodged with Council on 22 November 2017.

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

Please quote Council's application number: MCUC 2381/2017 (43.2017.2381.1) 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.

Yours faithfully


PAUL HOYE
Manager Sustainable Communities

encl.

- Decision Notice
- Approved and Proposed Plans

**DOUGLAS SHIRE COUNCIL
DECISION NOTICE —PRELIMINARY APPROVAL ONLY (WITH CONDITIONS)
(GIVEN UNDER SECTION 63 OF THE PLANNING ACT 2016)**

Thank you for your development application detailed below which was properly made on 24 November 2017. Please be aware that Douglas Shire Council has assessed your application and decided it as follows:

1. Applicant's details

Name: S F Loughnan & S K Hull & B F Gleeson

Postal Address: C/- Gilvear Planning PL
PO Box 228
BABINDA QLD 4861

2. Location details

Street Address: 4990R Captain Cook Highway, Oak Beach

Real Property Description: Lot 1 on RP744764

Local Government Area: Douglas Shire Council

3. Details of proposed development

Material Change of Use for a Caretakers Residence

4. Decision

Date of decision: 30 January 2018

Decision details: Approved as a Preliminary Approval with conditions. These conditions are set out in Schedule 1.

5. Approved drawings(s) and / or document(s)

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

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

Drawing or Document	Reference	Date
Existing Building	RECS Consulting Engineers & Building Designers, Project No.31-2013. SK1 Revision A	Undated, as submitted to Council on 29 November 2017 (Council electronic document D#835666)

Drawing or Document	Reference	Date
Existing Site Plan	RECS Consulting Engineers & Building Designers, Project No. 31-2013, Sheet 1, Revision A, Undated, as submitted to Council on 22 November 2017 (Council electronic document D#834678) and as amended by Condition 2.	Undetermined

6. Conditions

This approval is subject to the conditions in Schedule 1.

7. Further development permits

The following Development Permits are required to be obtained before the development can be carried out:

- a. Development Permit for the Caretaker's Residence; and
- b. Development Permit for Building Work for the carport.

8. Properly made submissions

None, no part of the application required public notification.

9. Referral Agencies for the application

None, no part of the application required a referral.

10. Currency period for the approval

Under section 85(1)(a)(i) of the Planning Act 2016, the relevant period for the Preliminary Approval is to be two (2) years starting from the day the approval takes effect.

11. Reasons for Decision

The reasons for this decision are:

1. Section 60 of the *Planning Act 2016*:
 - a. Conditions and advices as per B Above; and

- b. to ensure the development satisfies the following benchmarks of the 2006 Douglas Shire Planning Scheme (as amended);
 - c. to ensure compliance with the *Planning Act 2016* and the 2018 Douglas Shire Planning Scheme for non-residential use of the land.
2. Findings on material questions of fact:
- a. the development application was properly lodged to the Douglas Shire Council on 24 November 2017 under section 51 of the *Planning Act 2016* and Part 1 of the Development Assessment Rules; and
 - b. The development application contained a report, a response to Council's request for information and further advice from the applicant which Council reviewed together with Council's own investigation 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 Areas and Rural Settlements Locality, 2006 Douglas Shire Planning Scheme (as amended);
 - b. Council undertook an assessment in accordance with the provisions of section 60 of the *Planning Act 2016*; and
 - c. the applicant's reasons have been considered and the following findings are made:
 - i. The Planning Scheme definition requires a caretaker's residence to care take or manage a non-residential use. No non-residential use has as yet been established. Non-residential uses are not supported under the 2018 Douglas Shire Council Planning Scheme that came into effect on 2 January 2018;
 - ii. The application is relies on an orchard being established and will be limited by the intended future residence. The applicant has advised that no details are as yet available for these other uses on the land. The applicant has suggested the caretaker's residence could be operated in conjunction with a non-residential use of the land;
 - iii. No application has been made nor has any lawful approval been issued for: the proposed orchard; or for any alternative non-residential use, on which the caretaker / manager is to be responsible; nor for a use for a House;
 - iv. The use of the land for a non-residential purpose and/or for House will constrain the use of the available developable land; and
 - v. The issue of a Preliminary Approval conditions the development to being associated with a lawfully established non-residential use and ensures the Caretaker's Residence is afforded appropriate amenity and privacy.

12. Rights to make representations and rights of appeal

A copy of the relevant appeal provisions are included in Schedule 2.

END DECISION NOTICE

SCHEDULE 1 – ASSESSMENT CONDITIONS AND ADVICE

The approval is subject to the following conditions and advices

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; and
 - 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 Preliminary Approval must be effected prior to the lodgement of an application for a Development Permit, except where specified otherwise in these conditions of approval.

Currency Period

3. The currency period for the Preliminary Approval is to be two (2) years starting from the day the approval takes effect.

Amended Plan

4. The proposed development must be generally in accordance with the Existing Site Plan, prepared by RECS Consulting Engineers & Building Designers, Project No. 31-2013, Sheet 1, Revision A, Undated, as submitted to Council on 22 November 2017 (Council electronic document D#834678) and as amended to accommodate the following:
 - a. Provision of a private yard area:
 - i. Being of a minimum area of 35m²;
 - ii. That is suitably screened to provide to enable private enjoyment of this area by the caretaker's household;
 - iii. That is for the exclusive use by the Caretaker and the Caretaker's Household;
 - iv. That is directly accessible from the residence;
 - v. That has a minimum dimension of 3 metres;
 - vi. That is be suitably landscaped in accordance with the Planning Scheme General 4.6.3 Landscaping Code;
 - vii. The area of the yard does not impact in any loss of remnant vegetation; and

- viii. The land used as the private yard must be allocated so as to limit any impact on Good Quality Agricultural Land.
- b. The car parking space must be of suitable dimensions for a disabled car parking space with suitable all abilities access between the car parking space and the building;
- c. The indicative location and extent of curtilage for the proposed House, including any onsite waste water treatment area;
- e. A landscape plan to the curtilage for the proposed Caretaker's Residence;
- d. The indicative location and area for the proposed orchard and any ancillary buildings;
- e. The extent of existing vegetation and cleared areas on the land; and
- f. Provide a suitable setback from natural vegetation and provide firebreaks as necessary for any additional buildings nominated under (c) and/or (d) above having regard to the Natural Hazards Overlay Code.

Details of the above amendments must be included in the subsequent application for a Development Permit.

Approved Use

- 5. Prior to the lodgement of an application for a Development Permit, a non-residential use (e.g., cropping) must be lawfully established on the land. (The issue of the approval for a Caretaker's Residence does not entitle the development of a non-residential use on the land. Any application for non-residential use will be considered on its merits as required by the *Planning Act 2016*.)

Continued Use

- 6. The continued use of the Caretaker's Residence must only be in association with a lawfully established and continued use of the land as required by the Planning Scheme definition for Caretaker's Residence, that being a non-residential use of the land.

Advices

- 1. 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 cyclone watch and that relevant emergency telephone contacts are provided to Council officers, prior to commencement of works.
- 2. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.
- 3. For information relating to the *Planning Act 2016* log on to www.dilgp.qld.gov.au. To access the *FNQROC Development Manual*, Local Laws and other applicable Policies, log on to www.douglas.qld.gov.au.

4. Council takes no responsibility or liability for the Commonwealth Government's taxation implication on the use of land for non-residential purposes. Council recommends land owners seek legal advice regarding this issue.

Advice Statement for Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).

You are advised that the EPBC Act applies to action that has, will have, or is likely to have, a significant impact on matters of national environmental significance.

Further information on the EPBC Act can be obtained from the Department of the Environment's website www.environment.gov.au/epbc EPBC Act Policy Statement 1.1 *Significant Impact Guidelines Matters of National Environmental Significance* (Oct 2009).

LAND USE DEFINITIONS*

In accordance with the *Douglas Shire Planning Scheme 2006*, the approved land use of Caretakers' Residence is defined as follows.

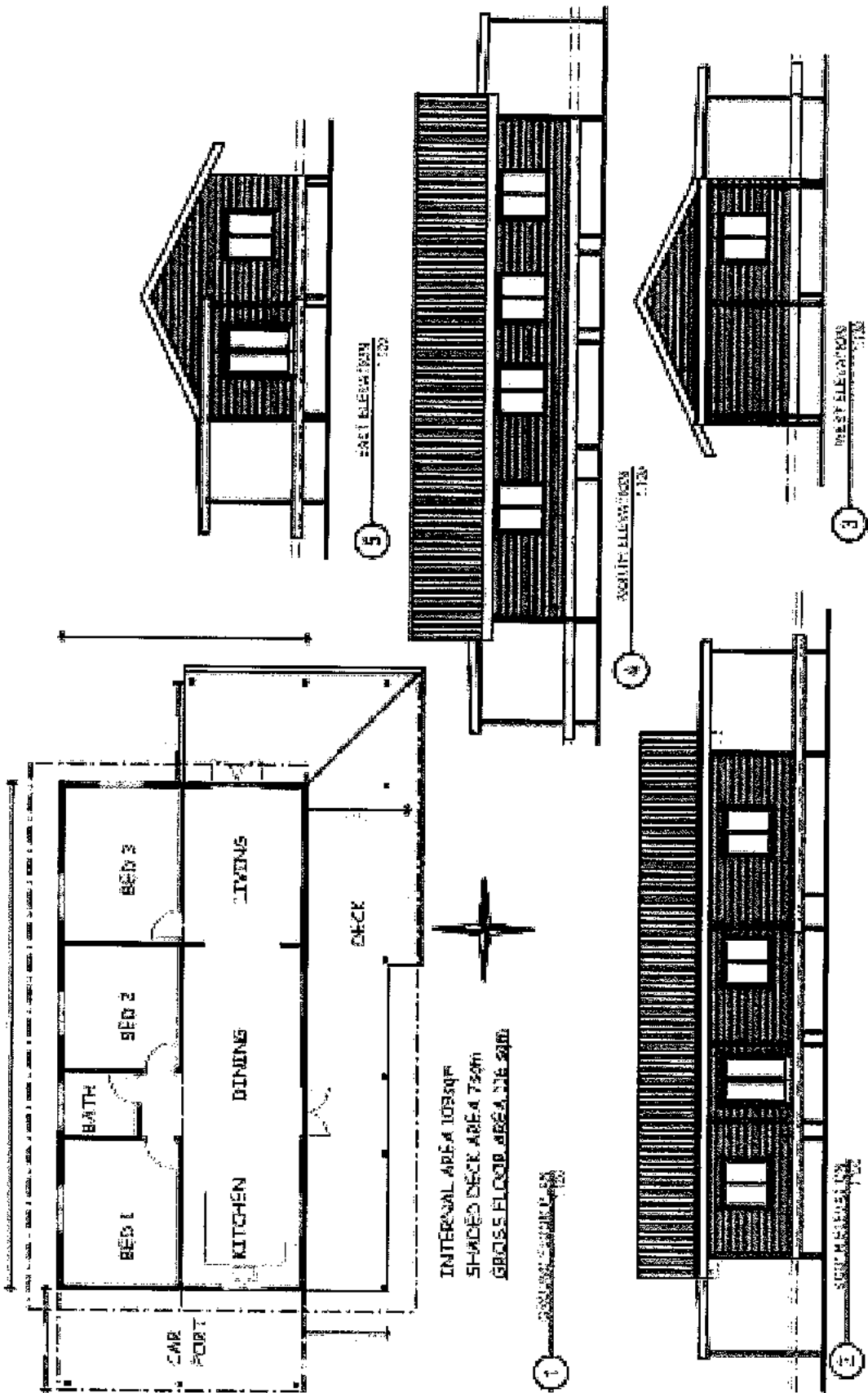
Means the use of premises comprising one Dwelling Unit for the use by a caretaker or manager, including their Household, who is employed for care taking or management purposes in connection with a commercial, industrial, recreational or other non-residential use conducted on the premises.

The use does not include:

- a manager's unit located within Multi-Unit Housing; Holiday Accommodation; or Short term Accommodation.

*This definition is provided for convenience only. This Development Permit is limited to the specifications, facts and circumstances as set out in the application submitted to Council and is subject to the abovementioned conditions of approval and the requirements of Council's Planning Scheme and the FNQROC Development Manual.

[illegible][illegible]



S. LOUGHNAN
 LET 1 OAK BEACH
 TOWNSEND ST

**CONSULTING ENGINEERS
& BUILDING DESIGNERS**

EXISTING BUILDING	SHEET	SK 1
SECTION A		

SCHEDULE 2 – PLANNING ACT EXTRACT ON APPEAL RIGHTS

Sustainable Planning Act 2009
Chapter 8 Integrated development assessment system (IDAS)

[s 260]

- (a) on the day the referral agency's response for the missed referral agency is received by the assessment manager; or
- (b) if the missed referral agency does not give a referral agency's response—on the day the referral agency's assessment period of the missed referral agency ends.

Part 8 Dealing with decision notices and approvals

Division 1 Changing decision notices and approvals during applicant's appeal period

360 Application of div 1

This division applies only during the applicant's appeal period.

361 Applicant may make representations about decision

- (1) The applicant may make written representations to the assessment manager about—
 - (a) a matter stated in the decision notice, other than a refusal or a matter about which a concurrence agency told the assessment manager under section 287(1) or (5); or
 - (b) the standard conditions applying to a deemed approval.
- (2) However, the applicant can not make representations under subsection (1)(a) about a condition attached to an approval under the direction of the Minister.

362 Assessment manager to consider representations

The assessment manager must consider any representations made to the assessment manager under section 361.

363 Decision about representations

- (1) If the assessment manager agrees with any of the representations about a decision notice or a deemed approval, the assessment manager must give a new decision notice (the *negotiated decision notice*) to—
 - (a) the applicant; and
 - (b) each principal submitter; and
 - (c) each referral agency; and
 - (d) if the assessment manager is not the local government and the development is in a local government area—the local government.
- (2) Before the assessment manager agrees to a change under this section, the assessment manager must consider the matters the assessment manager was required to consider in assessing the application, to the extent the matters are relevant.
- (3) Only 1 negotiated decision notice may be given.
- (4) The negotiated decision notice
 - (a) must be given within 5 business days after the day the assessment manager agrees with the representations; and
 - (b) must comply with section 335; and
 - (c) must state the nature of the changes; and
 - (d) replaces—
 - (i) the decision notice previously given; or
 - (ii) if a decision notice was not previously given and the negotiated decision notice relates to a deemed approval—the standard conditions applying to the deemed approval.

- (5) If the assessment manager does not agree with any of the representations, the assessment manager must, within 5 business days after the day the assessment manager decides not to agree with any of the representations, give written notice to the applicant stating the decision about the representations.

364 Giving new notice about charges for infrastructure

- (1) This section applies if the development approved by the negotiated decision notice is different from the development approved in the decision notice or deemed approval in a way that affects the amount of a levied charge.
- (2) The local government may give the applicant a new infrastructure charges notice to replace the original notice.

366 Applicant may suspend applicant's appeal period

- (1) If the applicant needs more time to make the representations, the applicant may, by written notice given to the assessment manager, suspend the applicant's appeal period.
- (2) The applicant may act under subsection (1) only once.
- (3) If the representations are not made within 20 business days after the day written notice was given to the assessment manager, the balance of the applicant's appeal period restarts.
- (4) If the representations are made within 20 business days after the day written notice was given to the assessment manager
- (a) if the applicant gives the assessment manager a notice withdrawing the notice under subsection (1)—the balance of the applicant's appeal period restarts the day after the assessment manager receives the notice of withdrawal; or
 - (b) if the assessment manager gives the applicant a notice under section 363(5)—the balance of the applicant's appeal period restarts the day after the applicant receives the notice; or

- (c) if the assessment manager gives the applicant a negotiated decision notice, the applicant's appeal period starts again the day after the applicant receives the negotiated decision notice.

Division 2 Changing approvals—request for change after applicant's appeal period ends

Subdivision 1 Preliminary

367 What is a *permissible change* for a development approval

- (1) A *permissible change*, for a development approval, is a change to the approval that would not, because of the change:
 - (a) result in a substantially different development; or
 - (b) if the application for the approval were remade including the change:
 - (i) require referral to additional concurrence agencies; or
 - (ii) for an approval for assessable development that previously did not require impact assessment—require impact assessment; or
 - (c) for an approval for assessable development that previously required impact assessment, be likely, in the responsible entity's opinion, to cause a person to make a properly made submission objecting to the proposed change, if the circumstances allowed; or
 - (d) cause development to which the approval relates to include any prohibited development.
- (2) For deciding whether a change is a permissible change under subsection (1)(b) or (d), the planning instruments or law in force at the time the request for the change was made apply.

- (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 1901* 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.

