

16 November 2017

Noel & Nyleve Morris
PO Box 2611
MAREEBA QLD 4880

Officer: Brian Millard
Direct Telephone: 4086 4657
Our Reference: BM:nj
Your Reference: RAL/17/0006

Dear Sir/Madam

Decision Notice

Planning Act 2016

I refer to your application and advise that on 15 November 2017, Council decided to approve the application in full subject to conditions.

Details of the decision are as follows:

APPLICATION DETAILS

Application No: RAL/17/0006
Street Address: 215 Malone Road MAREEBA QLD 4880
Real Property Description: Lot 3 on RP733075
Planning Scheme: Mareeba Shire Council Planning Scheme 2016

DECISION DETAILS

Type of Decision: Approval
Type of Approval: Development Permit for Reconfiguring a Lot - Subdivision (1 into 2 lots)
Date of Decision: 15 November 2017

The assessment manager does consider that the assessment manager's decision conflicts with a relevant instrument.

Details of the conflict with the relevant instrument	Reason for the decision, including a statement about the sufficient grounds to justify the decision despite the conflict
<p>1. The proposed development is in conflict with Performance Outcomes PO1, PO2, PO3 and PO6 of the Agricultural Land Overlay Code:</p> <p>PO1 <i>The fragmentation or loss of productive capacity of land within the 'Class A' area or 'Class B' area identified on the Agricultural land overlay maps (OM-001a-n) is avoided unless:</i></p>	<p>The subject site and immediately surrounding allotments are already developed for rural residential living, notwithstanding the underlying agricultural land classification.</p> <p>Proposed Lot 9, the vacant lot, is considerably buffered from nearby intensive rural uses by distance and established vegetation along the</p>

<p>(a) <i>an overriding need exists for the development in terms of public benefit;</i></p> <p>(b) <i>no suitable alternative site exists; and</i></p> <p>(c) <i>loss or fragmentation is minimised to the extent possible.</i></p> <p>PO2 Sensitive land uses in the 'Class A' area, 'Class B' area or the 'Broadhectare rural' area identified on the Agricultural land overlay maps (OM-001a-n) are designed and located to:</p> <p>(a) <i>avoid land use conflict;</i></p> <p>(b) <i>manage impacts from agricultural activities, including chemical spray drift, odour, noise, dust, smoke and ash;</i></p> <p>(c) <i>avoid reducing primary production potential; and</i></p> <p>(d) <i>not adversely affect public health, safety and amenity.</i></p> <p>PO3 Development in the 'Class A' area or 'Class B' area identified on the Agricultural land overlay maps (OM-001a-n):</p> <p>(a) <i>ensures that agricultural land is not permanently alienated;</i></p> <p>(b) <i>ensures that agricultural land is preserved for agricultural purposes; and</i></p> <p>(c) <i>does not constrain the viability or use of agricultural land.</i></p> <p>PO6 Any Reconfiguring a lot in the 'Class A' area, 'Class B' area or the 'Broadhectare rural' area identified on the Agricultural land overlay maps (OM-001a-n), including boundary realignments, only occurs where it:</p> <p>(a) <i>improves agricultural efficiency;</i></p> <p>(b) <i>facilitates agricultural activity; or</i></p> <p>(d) <i>facilitates conservation outcomes; or</i></p> <p>(d) <i>resolves boundary issues where a structure is built over the boundary line of two lots.</i></p> <p>2. The proposed development is in conflict with Performance Outcome PO1 and Acceptable Outcome AO1 of the Reconfiguring a Lot Code:</p> <p>PO1 Lots include an area and frontage that:</p> <p>(a) <i>is consistent with the design of lots in the surrounding area;</i></p> <p>(b) <i>allows the desired amenity of the zone to be achieved;</i></p> <p>(c) <i>is able to accommodate all buildings, structures and works associated with the intended land use;</i></p> <p>(d) <i>allow the site to be provided with sufficient access;</i></p> <p>(e) <i>considers the proximity of the land to:</i></p> <p>(i) <i>centres;</i></p> <p>(ii) <i>public transport services; and</i></p> <p>(iii) <i>open space; and</i></p> <p>(f) <i>allows for the protection of environmental features; and</i></p> <p>(g) <i>accommodates site constraints.</i></p> <p>AO1.1 Lots provide a minimum area and frontage in accordance with Table 9.4.4.3B.</p>	<p>banks of Levison Creek. The proposed subdivision does not result in a lessening of future rural opportunities or any further alienation of quality agricultural land.</p> <p>The proposed development is considered to represent the highest and best use of the subject land.</p>
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CURRENCY PERIOD OF APPROVAL

The currency period for this development approval is four (4) years starting the day that this development approval takes effect. (Refer to Section 85 "Lapsing of approval at end of currency period" of the *Planning Act 2016*.)

INFRASTRUCTURE

Where conditions relate to the provision of infrastructure, these are non-trunk infrastructure conditions unless specifically nominated as a "**necessary infrastructure condition**" for the provision of trunk infrastructure as defined under Chapter 4 of the *Planning Act 2016*.

ASSESSMENT MANAGER CONDITIONS**(A) ASSESSMENT MANAGER'S CONDITIONS (COUNCIL)****(a) Development assessable against the Planning Scheme**

1. Development must be carried out substantially in accordance with the approved plans and the facts and circumstances of the use as submitted with the application, subject to any alterations:
 - found necessary by Council's delegated officer at the time of examination of the engineering plans or during construction of the development because of particular engineering requirements; and
 - to ensure compliance with the following conditions of approval.
2. Timing of Effect
 - 2.1 The conditions of the development permit must be complied with to the satisfaction of Council's delegated officer prior to the endorsement of the plan of survey, except where specified otherwise in these conditions of approval.
3. General
 - 3.1 The development approval would not have been issued if not for the conditions requiring the construction of infrastructure or the payment of infrastructure charges within the conditions of approval.
 - 3.2 The applicant/developer is responsible for the cost of necessary alterations to existing public utility mains, services or installations required by works in relation to the proposed development or any works required by condition(s) of this approval.
 - 3.3 All payments or bonds required to be made to the Council pursuant to any condition of this approval must be made prior to the endorsement of the plan of survey and at the rate applicable at the time of payment.
 - 3.4 The developer must relocate (in accordance with FNQROC standards) any services such as water, sewer, drainage, telecommunications and electricity that are not wholly located within the lots that are being created/serviced where required by the relevant authority unless approved by Council's delegated officer.
 - 3.5 Where utilities (such as sewers on non-standard alignments) traverse lots to service another lot, easements must be created in favour of Council for access and maintenance purposes. The developer is to pay all costs (including Council's legal expenses) to prepare and register the easement documents.

3.6 Any existing buildings or structures (pools/tennis courts or fences) and/or incidental works that straddle the new boundaries must be altered, demolished or removed, as required, to align with the new property boundaries and/or be wholly contained within a new allotment, unless approved by Council's delegated officer.

3.7 All works must be designed, constructed and carried out in accordance with FNQROC Development Manual requirements and to the satisfaction of Council's delegated officer.

3.8 Charges

All outstanding rates, charges and expenses pertaining to the land are to be paid in full.

3.9 Rural Addressing

The applicant must pay a contribution per additional lot for provision of rural addressing at the rate identified in the Fees and Charges Schedule at the time of payment.

4. Infrastructure Services and Standards

4.1 Access

An access crossover for each allotment, must be constructed from the edge of the road pavement, to the property boundary of each respective allotment, in accordance with the FNQROC Development Manual, to the satisfaction of Council's delegated officer.

A bitumen sealed or reinforced concrete driveway shall be provided within any battleaxe lot access handle. The driveway will:

- have a minimum formation width of 3 metres
- be constructed for the full length of the access handle
- be formed with one-way crossfall to cater for stormwater drainage such that any stormwater runoff is contained within the access strip
- service and utility conduits are to be provided for the full length of the concrete or sealed driveway constructed within the access handle of the battle axe allotment(s).

4.2 Stormwater Drainage

The applicant must ensure a non-worsening effect on surrounding land as a consequence of the development and must take all reasonable and practicable measures to ensure discharge occurs in compliance with the Queensland Urban Drainage Manual (QUDM) and the FNQROC Development Manual.

4.3 Water Supply

Proposed Lot 8 must be provided with a water supply via:

- (a) a bore or bores are provided in accordance with the Design Guidelines set out in the Planning Scheme Policy 4 – FNQROC Regional Development Manual; or
- (b) A minimum 2 megalitre water allocation from SunWater's irrigation supply network; or
- (c) on-site water storage tank/s:
 - (i) with a minimum capacity of 90,000L;
 - (ii) fitted with a 50mm ball valve with a camlock fitting;
 - (iii) which are installed and connected prior to the occupation or use of the development.

At the time of construction of a dwelling on proposed Lot 9, a water supply must be provided via:

- (a) a bore or bores are provided in accordance with the Design Guidelines set out in the Planning Scheme Policy 4 – FNQROC Regional Development Manual; or
- (b) A minimum 2 megalitre water allocation from SunWater's irrigation supply network; or
- (c) on-site water storage tank/s:
 - (i) with a minimum capacity of 90,000L;
 - (ii) fitted with a 50mm ball valve with a camlock fitting;
 - (iii) which are installed and connected prior to the occupation or use of the development.

4.4 On-Site Wastewater Management

At the time of construction of a new dwelling on proposed Lot 9, any associated on-site effluent disposal system must be constructed in compliance with the latest version On-Site Domestic Wastewater Management Standard (AS/NZS 1547) to the satisfaction of the Council's delegated officer.

4.5 Electricity provision/supply

The applicant/developer must ensure that an appropriate level of electricity supply is provided to each allotment in accordance with FNQROC Development Manual standards (as amended) to the satisfaction of Council's delegated officer.

Written advice from an Electricity Service Provider is to be provided to Council indicating that an agreement has been made for the provision of power reticulation.

4.6 Telecommunications

The applicant/developer must demonstrate that a connection to the national broadband network is available for each allotment, or alternatively, enter into an agreement with a telecommunication carrier to provide telecommunication services to each lot and arrange provision of necessary conduits and enveloping pipes.

5. Additional Payment Condition/s (section 650 of the Sustainable Planning Act 2009)

5.1 The additional payment condition has been imposed as the development will create additional demand on trunk infrastructure which will create additional trunk infrastructure costs for council.

5.2 The developer must pay \$4,500.00 per additional lot as a contribution toward trunk infrastructure with the amount of the contribution increased on 1 July each year in accordance with the increase for the PPI index for the period starting on the day the development approval takes effect, adjusted by reference to the 3-yearly PPI index average to the date of payment.

5.3 The trunk infrastructure for which the payment is required is:

- The trunk transport network servicing the land (\$4,425.00 per additional allotment)

5.4 The developer may elect to provide part of the trunk infrastructure instead of making the payment.

5.5 If the developer elects to provide part of the trunk infrastructure the developer must:

- Discuss with Council's delegated officer the part of the works to be undertaken;
- Obtain the necessary approvals for the part of the works;
- Indemnify the Council in relation to any actions, suits or demands relating to or arising from the works;
- Take out joint insurance in the name of the Council and the developer in the sum of \$20,000,000 in relation to the undertaking of the works;
- Comply with the reasonable direction of Council officers in relation to the completion of the works;
- Complete the works to the standards required by the Council; and
- Complete the works prior to endorsement of the plan of subdivision.

(B) ASSESSMENT MANAGER'S ADVICE

- (a) A number of other charges or payments may be payable as conditions of approval. The applicable fee is set out in Council's Fees & Charges Schedule for each respective financial year.

(b) Easement Documents

Council has developed standard easement documentation to assist in the drafting of formal easement documents for Council easements. Please contact the Planning Section for more information regarding the drafting of easement documents for Council easements.

(c) Endorsement Fees

Council charges a fee for the endorsement of a Survey Plan, Community Management Statements, easement documents, and covenants. The fee is set out in Council's Fees & Charges Schedule applicable for each respective financial year.

(d) Compliance with applicable codes/policies

The development must be carried out to ensure compliance with the provisions of Council's Local Laws, Planning Scheme Policies, Planning Scheme and Planning Scheme Codes to the extent they have not been varied by a condition of this approval.

(e) Notation on Rates Record

A notation will be placed on Council's Rate record with respect to each lot regarding the following conditions:

- conditions regarding on-site wastewater disposal system design (at time of dwelling construction)
- an approved source of water supply via bore/perennial watercourse

(f) Environmental Protection and Biodiversity Conservation Act 1999

The applicant is advised that referral may be required under the *Environmental Protection and Biodiversity Conservation Act 1999* if the proposed activities are likely to have a significant impact on a matter of national environmental significance. Further information on these matters can be obtained from www.environment.gov.au.

(g) Cultural Heritage

In carrying out the activity the applicant must take all reasonable and practicable measures to ensure that no harm is done to Aboriginal cultural heritage (the "cultural heritage duty of care"). The applicant will comply with the cultural heritage duty of care if the applicant acts in accordance with gazetted cultural heritage duty of care guidelines. An assessment of the proposed activity against the

duty of care guidelines will determine whether or to what extent Aboriginal cultural heritage may be harmed by the activity. Further information on cultural heritage, together with a copy of the duty of care guidelines and cultural heritage search forms, may be obtained from www.datsip.qld.gov.au.

REFERRAL AGENCIES

Not Applicable.

APPROVED PLANS

The following plans are Approved plans for the development:

Plan/Document Number	Plan/Document Title	Prepared by	Dated
421_01	Proposed Reconfiguration Lot 3 on RP733075	Robin Trotter Cadastral Surveyor	12/7/17

REFERENCED DOCUMENTS

Not Applicable.

ADVISORY NOTES

The following notes are included for guidance and information purposes only and do not form part of the assessment manager conditions:

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PROPERTY NOTES

Not Applicable.

VARIATION APPROVAL

Not Applicable.

FURTHER DEVELOPMENT PERMITS REQUIRED

- Access approval arising from condition number 4.1 (Please contact Planning Section to obtain application form and applicable fee)

SUBMISSIONS

Not Applicable

RIGHTS OF APPEAL

You are entitled to appeal against this decision. A copy of the relevant appeal provisions from the *Planning Act 2016* is attached.

During the appeal period, you as the applicant may suspend your appeal period and make written representations to council about the conditions contained within the development approval. If council agrees or agrees in part with the representations, a “negotiated decision notice” will be issued. Only one “negotiated decision notice” may be given. Taking this step will defer your appeal period, which will commence again from the start the day after you receive a “negotiated decision notice”.

OTHER DETAILS

If you wish to obtain more information about Council’s decision, electronic copies are available on line at www.msc.qld.gov.au, or at Council Offices.

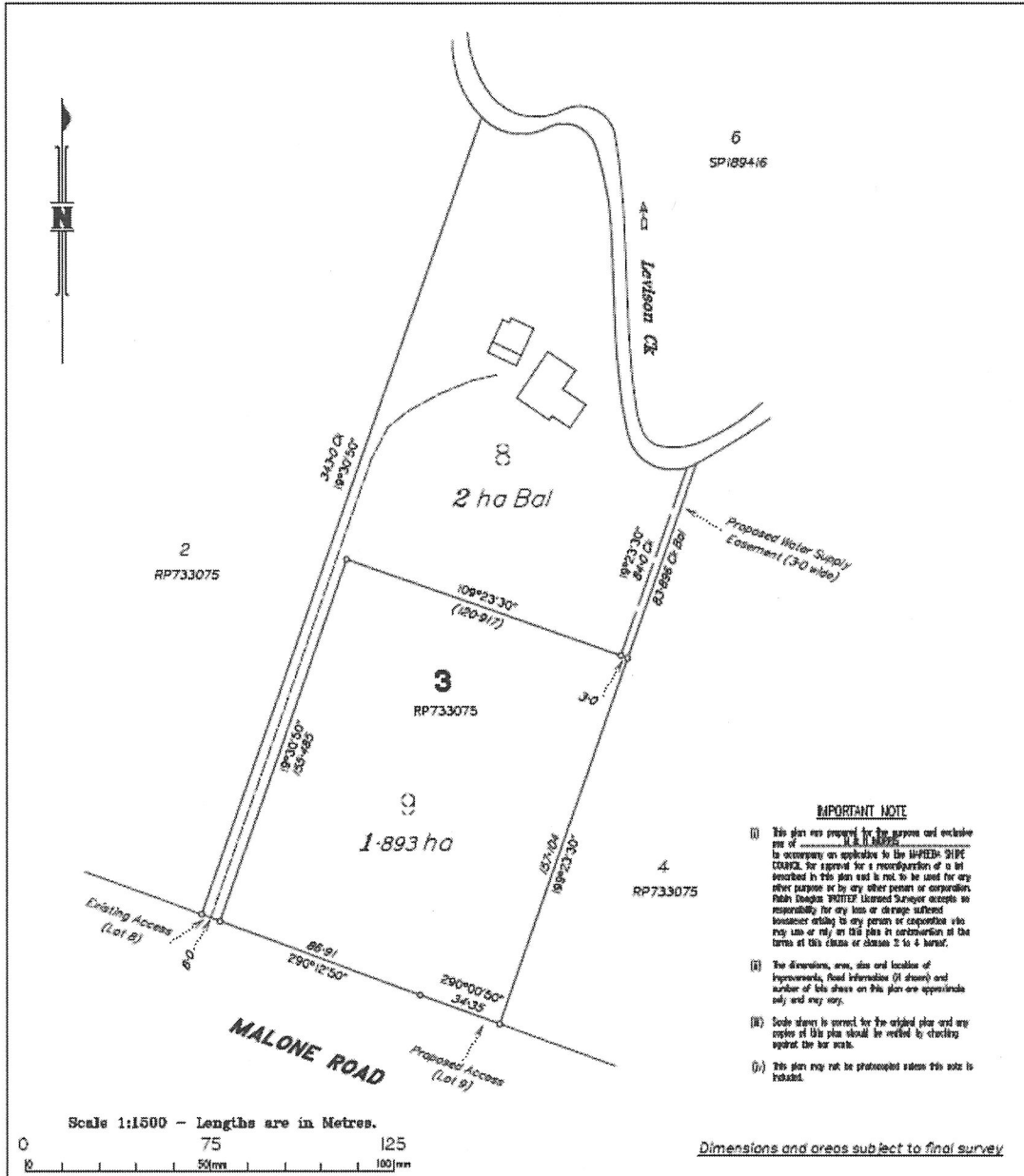
Yours faithfully



BRIAN MILLARD
SENIOR PLANNER

Enc: Approved Plans
Appeal Rights

Approved Plans/Documents



IMPORTANT NOTE

(i) This plan was prepared for the purpose and exclusive use of W. J. MORRIS to accompany an application to the MAREEBA SHIRE COUNCIL for approval for a reconfiguration of a lot described in this plan and is not to be used for any other purpose or by any other person or corporation. Robin Trotter Licensed Surveyor accepts no responsibility for any loss or damage suffered whatsoever arising to any person or corporation who may rely on this plan in connection with the terms of this clause or clause 2 to 4 hereof.

(ii) The dimensions, area, site and location of improvements, road intersections (if shown) and number of lots shown on this plan are approximate only and may vary.

(iii) Scale sheets is correct for the original plan and any copies of this plan should be checked by checking against the bar scale.

(iv) This plan may not be photocopied unless this note is read.

<p>ROBIN TROTTER Cadastral Surveyor PO Box 481 Mareeba Qld 4880 email: robtnt@ledonet.com.au mobile 0408 080017</p>	<p>N & N MORRIS</p>	<p>Scale : 1:1500</p>
<p>Surveyed by : <i>RDY</i> Date : 12/7/17 Designed by : <i>RDY</i> Date : 12/7/17 Checked by : <i>RDY</i> Date : 12/7/17</p>	<p>PROPOSED RECONFIGURATION LOT 3 on RP733075 215 MALONE ROAD MAREEBA</p>	<p>Sheet Size : A3 FB Ref : RP733075 Meridian : Level Datum : Origin of Co-ords : Digital Data Ref : Sheet Number :</p>
<p>Notes : Amendments :</p>		<p>Drawing No : 421_01 Issue :</p>

16/11/2017

Appeal Rights

PLANNING ACT 2016 & THE PLANNING REGULATION 2017

Chapter 6 Dispute resolution

Part 1 Appeal rights

229 Appeals to tribunal or P&E Court

(1) Schedule 1 of the *Planning Act 2016* 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.

(Refer to Schedule 1 of the Planning Act 2016)

(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 has 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.

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 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, a tribunal or another entity; and
- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a 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 the rules of the P&E Court.