

Our Ref: HK:LM:DA/4509 AD2022/0010780

Your Ref: M7-22

24 November 2022

Robert & Grace Parker c/- U&i Town Plan

PO Box 657

Mareeba Qld 4880

E-mail: [ramon@uitownplan.com.au](mailto:ramon@uitownplan.com.au)

Attention: Ramon Samanes

Dear Mr Samanes

**Decision Notice - Approval**  
Given under section 63 of the *Planning Act 2016*

With reference to the abovementioned Development Application, please find attached the relevant Decision Notice, which was approved by Cook Shire Council in full, subject to conditions.

Details of the decision are as follows:

**Decision Details**

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Date of Decision: Council approved the Development Application at a Council meeting on 22 November 2022.

Approval Details: **Approved in full** with conditions. These conditions are set out in Attachment 1 and are clearly identified to indicate whether the assessment manager or concurrence agency imposed them.

**Variation approval details**

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Not Applicable

**Application Details**

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Application Number: DA/4509

Approval Sought: Development Permit for a Material Change of Use

Description of the Development: Multiple Dwelling (4 x Dwelling Units)

Category of Development: Assessable Development  
Category of Assessment: Code Assessment  
Planning Scheme: Cook Shire Council Planning Scheme 2017

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**Location Details**

Street Address: 35 May Street, COOKTOWN 4895  
Real Property Description: Lot 32 on C17949  
Local Government Area: Cook Shire

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**Assessment Manager Conditions**

This approval is subject to the conditions in Attachment 1.

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**Further Development Permits**

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

1. Development Permit for Plumbing and Drainage Work
2. Development Permit for Building Work

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**Properly Made Submissions**

Not applicable - no part of the application required public notification.

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**Referral Agencies**

Not applicable - no part of the application required referral.

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**Other requirements under section 43 of the *Planning Regulation 2017***

Not Applicable.

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**Approved Plans and Specifications**

Copies of the approved plans, specifications and/or drawings are enclosed in **Attachment 2**.

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**Currency Period for the Approval**

This approval lapses if the first change of use does not happen within *six (6) years*.

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**Lapsing of approval if development started but not completed**

In accordance with section 88(1) of the *Planning Act 2016*, a development approval, other than a variation approval, for development lapses to the extent the development is not completed within any period or periods required under a development condition.

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**Rights of Appeal**

You are entitled to appeal against this decision. A copy of the relevant appeal provisions from the *Planning Act 2016* are provided in Attachment 4 of this Decision Notice.

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**Other Details**

Council relies on the accuracy of information included in the application documentation when assessing and deciding applications.

If you find an inaccuracy in any of the information provided above, have a query, or need to seek clarification about any of these details, please contact Cook Shire Council's Planning and Environment Department on 07 4082 0500 or E-mail: [mail@cook.qld.gov.au](mailto:mail@cook.qld.gov.au).

Yours sincerely



Heather Kelly  
Director  
Organisational Business Services  
Cook Shire Council

enc: **Attachment 1 (A)** – Conditions imposed by the assessment manager  
**Attachment 2** – Approved Plans (D22/28595)  
**Attachment 3** – Notice of Decision – Statement of Reasons (AD2022/0010790)  
**Attachment 4** - Extract of Appeal Provisions (Chapter 6 part 1 of the *Planning Act 2016*)



**Attachment 1 (A) - Conditions imposed by the assessment manager (Cook Shire Council)**

A. Assessment Manager (Council) Conditions

| No.            | Condition  | Timing       |
|----------------|--|--------------|
| <b>GENERAL</b> |  |              |
| 1.             | <b>COMPLIANCE WITH CONDITIONS</b><br>The Developer is responsible for ensuring compliance with this development approval and the conditions of the approval by an employee, agent, contractor, or invitee of the Developer.  | At all times |
| 2.             | <b>WORKS – DEVELOPER’S EXPENSE</b><br>The cost of all works associated with the development and construction of the development, including services, facilities and/or public utility alterations required are met at no cost to the Council or relevant utility provider, unless otherwise stated in a development condition.       | At all times |
| 3.             | <b>WORKS - DAMAGE TO INFRASTRUCTURE</b><br>The Developer must repair any damage to existing infrastructure (e.g. kerb and channel, footpath, or roadway) that may have occurred during any works undertaken as part of the development. Any damage that is deemed to create a hazard to the community, must be repaired immediately. | At all times |
| 4.             | <b>WORKS – DESIGN &amp; STANDARD</b><br>Unless otherwise stated, all works must be designed, constructed, and maintained in accordance with the relevant Council policies, guidelines, and standards.  | At all times |
| 5.             | <b>WORKS – SPECIFICATION &amp; CONSTRUCTION</b><br>All engineering drawings/specifications, design and construction works must comply with the requirements of the relevant Australian Standards and must be approved, supervised, and certified by a Registered Professional Engineer of Queensland (RPEQ).                         | At all times |
| 6.             | <b>COMMENCEMENT OF USE</b><br>The use must not commence until all conditions of this approval have been complied with.   | At all times |
| 7.             | <b>INFRASTRUCTURE CONDITIONS</b><br>All development conditions contained in this development approval about infrastructure under Chapter 4 of the <i>Planning Act 2016</i> (the Act), should be read as being non-trunk infrastructure conditioned under section 145 of the Act, unless otherwise stated.                            | At all times |





| APPROVED PLANS & DOCUMENTS |  |                    |           |                    |      |             |           |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                   |      |   |           |            |              |
|----------------------------|--|--------------------|-----------|--------------------|------|-------------|-----------|------|---|-----------|------------|------------------|------|---|-----------|------------|------------------|------|---|-----------|------------|------------------|------|---|-----------|------------|-------------------|------|---|-----------|------------|--------------|
| 8.                         | <p><b>APPROVED PLANS &amp; DOCUMENTS</b></p> <p>Undertake the approved development generally in accordance with the approved plans and documents, including any amendments made in red on the approved plan(s) or document(s):</p> <table border="1"><thead><tr><th>Title</th><th>Sheet No.</th><th>Revision / Amended</th><th>Date</th><th>Prepared By</th></tr></thead><tbody><tr><td>Site Plan</td><td>sk01</td><td>1</td><td>1/10/2022</td><td>A. Ballard</td></tr><tr><td>Unit Plan Layout</td><td>sk02</td><td>-</td><td>1/10/2022</td><td>A. Ballard</td></tr><tr><td>Elevations 1 &amp; 2</td><td>sk03</td><td>-</td><td>1/10/2022</td><td>A. Ballard</td></tr><tr><td>Elevations 3 &amp; 4</td><td>sk04</td><td>-</td><td>1/10/2022</td><td>A. Ballard</td></tr><tr><td>Rendered 3D views</td><td>sk05</td><td>-</td><td>1/10/2022</td><td>A. Ballard</td></tr></tbody></table> | Title              | Sheet No. | Revision / Amended | Date | Prepared By | Site Plan | sk01 | 1 | 1/10/2022 | A. Ballard | Unit Plan Layout | sk02 | - | 1/10/2022 | A. Ballard | Elevations 1 & 2 | sk03 | - | 1/10/2022 | A. Ballard | Elevations 3 & 4 | sk04 | - | 1/10/2022 | A. Ballard | Rendered 3D views | sk05 | - | 1/10/2022 | A. Ballard | At all times |
| Title                      | Sheet No.  | Revision / Amended | Date      | Prepared By        |      |             |           |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                   |      |   |           |            |              |
| Site Plan                  | sk01   | 1                  | 1/10/2022 | A. Ballard         |      |             |           |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                   |      |   |           |            |              |
| Unit Plan Layout           | sk02   | -                  | 1/10/2022 | A. Ballard         |      |             |           |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                   |      |   |           |            |              |
| Elevations 1 & 2           | sk03   | -                  | 1/10/2022 | A. Ballard         |      |             |           |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                   |      |   |           |            |              |
| Elevations 3 & 4           | sk04   | -                  | 1/10/2022 | A. Ballard         |      |             |           |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                   |      |   |           |            |              |
| Rendered 3D views          | sk05   | -                  | 1/10/2022 | A. Ballard         |      |             |           |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                   |      |   |           |            |              |
| 9.                         | <p><b>CONDITIONS OF APPROVAL &amp; APPROVED PLANS</b></p> <p>Where there is a conflict between the conditions of this approval and the details shown on the approved plans and documents, the conditions of approval take precedence.</p>  | At all times       |           |                    |      |             |           |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                   |      |   |           |            |              |
| VEHICULAR ACCESS           |  |                    |           |                    |      |             |           |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                   |      |   |           |            |              |
| 10.                        | Access to the proposed development must be provided in accordance with the approved plans of development.  | At all times       |           |                    |      |             |           |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                   |      |   |           |            |              |
| 11.                        | Access from the property boundary to the road pavement must be 3.5 metres wide, sealed with concrete or bitumen and be constructed to the requirements of the FNQROC Development Manual Drawing S1015E (commercial/industrial standard), and Design Manual D1, Road Geometry, section D1.17 and subject to a Local Laws Permit 'Make Alterations or Improvements to a Road'.   | At all times       |           |                    |      |             |           |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                   |      |   |           |            |              |
| CAR PARKING                |  |                    |           |                    |      |             |           |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                   |      |   |           |            |              |
| 12.                        | <p><b>NUMBER OF PARKING SPACES</b></p> <p>A minimum of five (5) car parking spaces must be provided on site (4 resident spaces and 1 visitor space).</p>   | At all times       |           |                    |      |             |           |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                  |      |   |           |            |                   |      |   |           |            |              |



|                                  |   |                              |
|----------------------------------|---|------------------------------|
| 13.                              | <b>SEALING</b><br>Car parking spaces and internal driveways must be located as per the approved plan of development and be concrete or bitumen sealed and comply with the Australian Standard 2890.1 – Parking Facilities – off-street parking and be constructed to the requirements of the FNQROC Development Manual. | Prior to commencement of use |
| <b>SERVICES</b>                  |   |                              |
| 14.                              | <b>RETICULATED ELECTRICITY SUPPLY</b><br>The development must be connected to the reticulated electricity supply network in accordance with the standards and requirements of the relevant service provider.<br><br>Internal reticulation between the dwelling units must be via underground distribution.              | Prior to commencement of use |
| 15.                              | <b>TELECOMMUNICATIONS</b><br>Telecommunications must be provided to the premises to the standards and requirements of the relevant service provider.  | Prior to commencement of use |
| 16.                              | <b>RETICULATED WATER SUPPLY</b><br>The development must be connected to the reticulated water supply with a 32mm water service connection. The developer will be responsible for sub metering.  | Prior to commencement of use |
| 17.                              | <b>RETICULATED SEWERAGE SUPPLY</b><br>The development must be connected to the reticulated sewerage network. Plans must be submitted as part of a plumbing application for approval by Council's Plumbing Inspector prior to works commencing.  | Prior to commencement of use |
| <b>FENCING &amp; LANDSCAPING</b> |   |                              |
| 18.                              | Fencing must be provided in accordance with approved plan of development.   | At all times                 |
| 19.                              | Landscaping must be provided and maintained in the landscaped gardens identified on the approved plan of development. The landscaping must include a selection of species that enhance the visual amenity of the site.  | At all times                 |

| <b>WASTE DISPOSAL</b>                 |   |              |
|---------------------------------------|---|--------------|
| 20.                                   | <b>WASTE STORAGE</b><br>All bins and waste storage areas must be located on site and screened so they are not visible from the street or neighbouring properties.                                 | At all times |
| <b>STORMWATER</b>                     |   |              |
| 21.                                   | <b>LAWFUL POINT OF DISCHARGE</b><br>Stormwater drainage must be directed to a lawful point of discharge being May Street.   | At all times |
| 22.                                   | <b>DRAINAGE</b><br>Site works must not adversely affect flooding or drainage characterises of properties that are upstream, downstream, or adjacent to the development site.                      | At all times |
| <b>EROSION &amp; SEDIMENT CONTROL</b> |   |              |
| 23.                                   | The applicant must ensure that no sand, soil or silt runoff occurs from the site during the construction and operational phase of the development and erosion and sediment controls are in place. | At all times |
| <b>ENVIRONMENTAL</b>                  |   |              |
| 24.                                   | <b>PEST MANAGEMENT</b><br>No State declared or environmental pest, plants, and animals are to be introduced onto the property.  | At all times |
| <b>AMENITY</b>                        |   |              |
| 25.                                   | <b>EXTERNAL IMPACTS</b><br>The development shall have no adverse impact on the amenity of the surrounding area by way of light nuisance, dust or noise.   | At all times |

#### **B. Assessment Manager (Council) Advice**

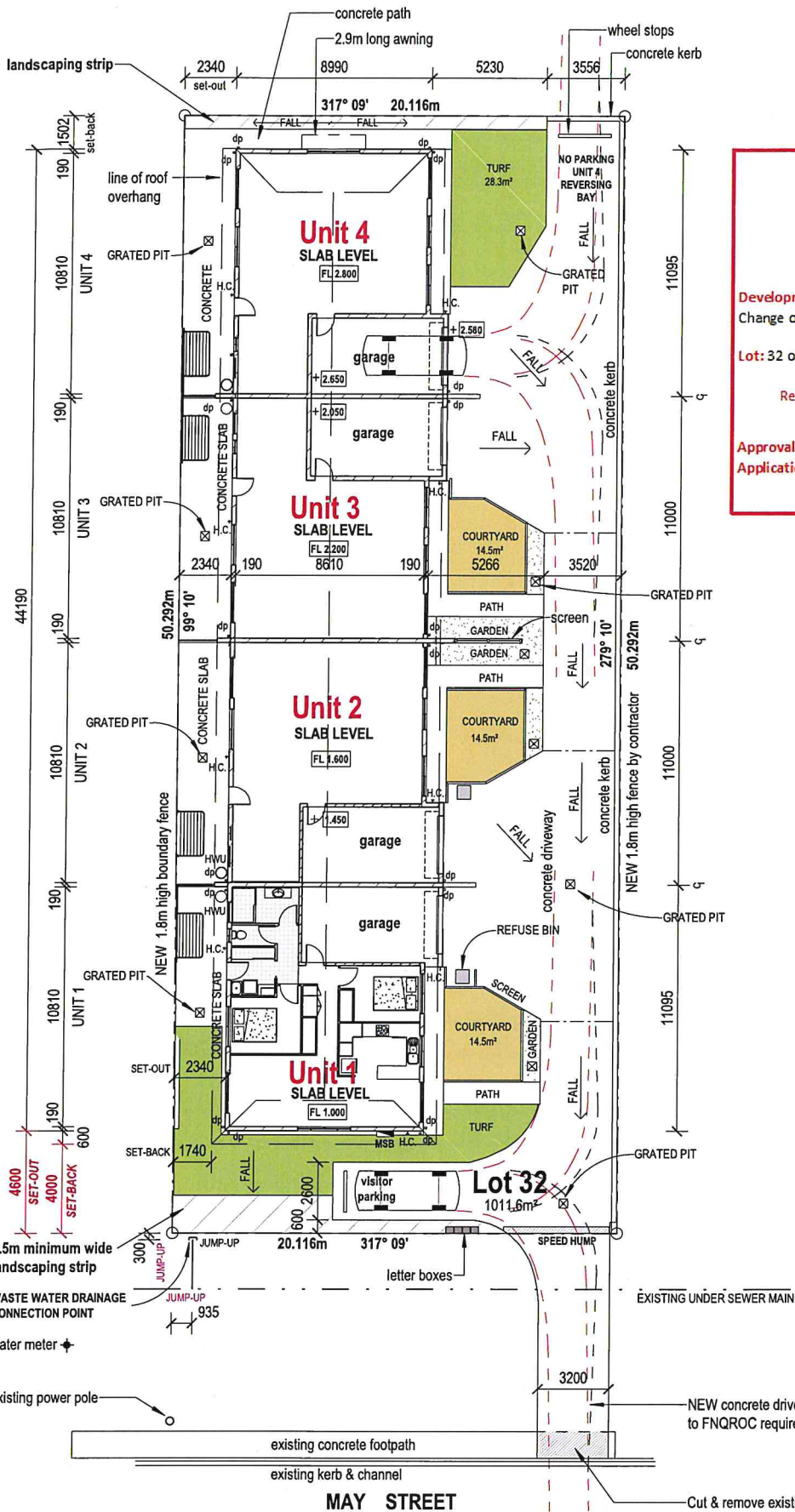
1. A development permit is required for carrying out Building Works, and a Plumbing and Drainage Approval/compliance permit is required for Plumbing and Drainage Works prior to construction of any buildings associated with this development.



2. The currency period for this application is six (6) years. Should the approved use not commence within this time, the approval shall lapse.
3. Infrastructure charges must be paid to Council prior to the commencement of use of the new dwelling houses as indicated on the attached Adopted Infrastructure Charges Notice at the rate applicable at the time of payment.
4. The applicant/owner must notify Council their intention to commence the use after acceptable of and compliance with these conditions or negotiated conditions (or court determined conditions) and prior to the commencement of the use. This will allow a check for compliance with conditions to be carried out by Council officers.
5. The applicant/owner is to ensure compliance with the requirements of the *Aboriginal Cultural Heritage Act* and in particular 'the duty of care' that it imposes on all landowners.



Attachment 2 – Approved Plans (D22/28595)



**COOK SHIRE COUNCIL**  
**DIGITALLY STAMPED**  
**APPROVED PLAN**

**Development Application:** Development Permit for Material Change of Use — Multiple Dwelling (4 x dwelling units)

**Lot:** 32 on C17949

Referred to in Cook Shire Council's Decision Notice

**Approval Date:** 22 November 2022  
**Application Number:** DA/4509

| GROSS FLOOR AREA m <sup>2</sup> |                           |
|---------------------------------|---------------------------|
| UNIT 1                          | 102.7                     |
| UNIT 2                          | 101.9                     |
| UNIT 3                          | 101.9                     |
| UNIT 4                          | 102.7                     |
| <b>TOTAL</b>                    | <b>409.2m<sup>2</sup></b> |

**SITE COVERAGE % -**  
 Site Area = 1011.6 m<sup>2</sup>  
 Gross Floor Area units = 409.2 m<sup>2</sup>  
 Site Coverage % = 40.45 %

**REFER TO SHEET sk02 for TYPICAL Plan Layout**  
 UNIT 1 and UNIT 2 are mirror reversed.  
 UNIT 3 and UNIT 4 are mirror reversed with UNIT 1 and 2.

**PROPERTY DESCRIPTION**

Lot 32 on C17949  
 Area = 1011.6m<sup>2</sup>  
 Local Authority - Cook Shire Council  
 C? - wind classification  
 SOIL CLASSIFICATION - 'TBC'

**P R E L I M I N A R Y**



**1** Site Plan  
 sk03 1 : 200 @ A3

- FH Fire Hydrant
- + 0.000 Existing Site Level
- 0.000 NEW Level
- MSB Main Switch Board

© copyright

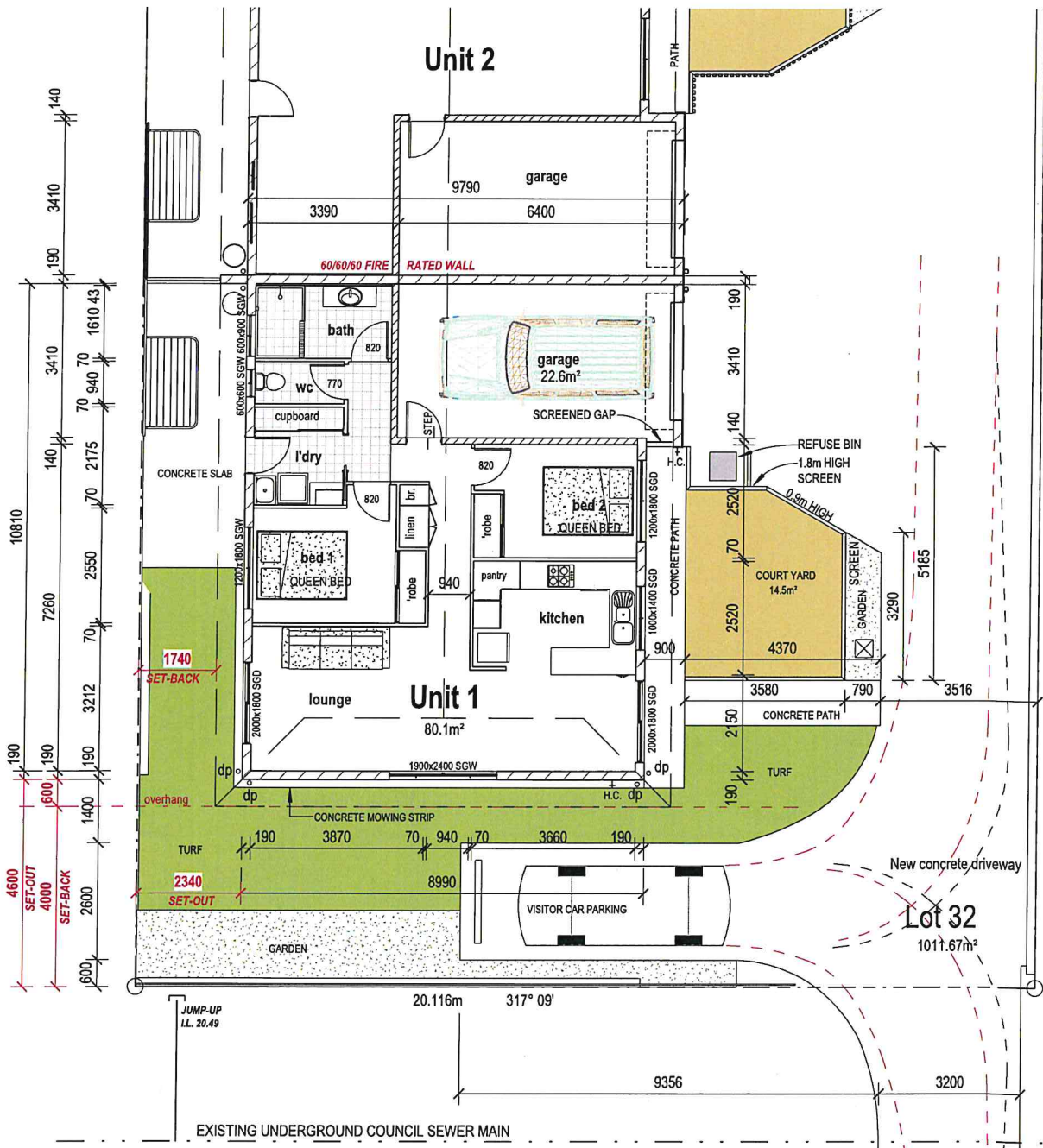
**Proposed 4 x 2 Bed Unit Development for**  
**Mr. R. & Mrs. G. Parker**  
**35 May street. COOKTOWN**

drawing  
**Site Plan**

| REVISION |          |                  |
|----------|----------|------------------|
| 1        | 04.10.22 | general revision |

|              |                       |                |            |        |        |
|--------------|-----------------------|----------------|------------|--------|--------|
| plotted      | 1/10/2022 10:22:28 AM | drawn by       | A. Ballard | QBCC # | 621922 |
| sheet number | sk01                  | project number | 22-05      | sheet  | 1 of 5 |
| revision     |                       |                |            |        | 1      |

PRELIMINARY



**COOK SHIRE COUNCIL**  
**DIGITALLY STAMPED**  
**APPROVED PLAN**

**Development Application:** Development Permit for Material Change of Use — Multiple Dwelling (4 x dwelling units)  
 Lot: 32 on C17949

Referred to in Cook Shire Council's Decision Notice

**Approval Date:** 22 November 2022  
**Application Number:** DA/4509

**MAY STREET**

1 Floor Plan - Unit 1  
 sk03 1:100 @ A3

**Unit layout option #1**

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Proposed 4 x 2 Bed Unit Development for  
 Mr. R. & Mrs. G. Parker  
 35 May street. COOKTOWN

| REVISION |          |                  |
|----------|----------|------------------|
| 1        | 04.10.22 | general revision |
|          |          |                  |
|          |          |                  |

| Unit Plan Layout      |                |                |
|-----------------------|----------------|----------------|
| plot date             | drawn by       | CBCC #         |
| 1/10/2022 10:22:31 AM | A. Ballard     | 621922         |
| sheet number          | project number | sheet revision |
| sk02                  | 22-05          | 2 of 5 1       |





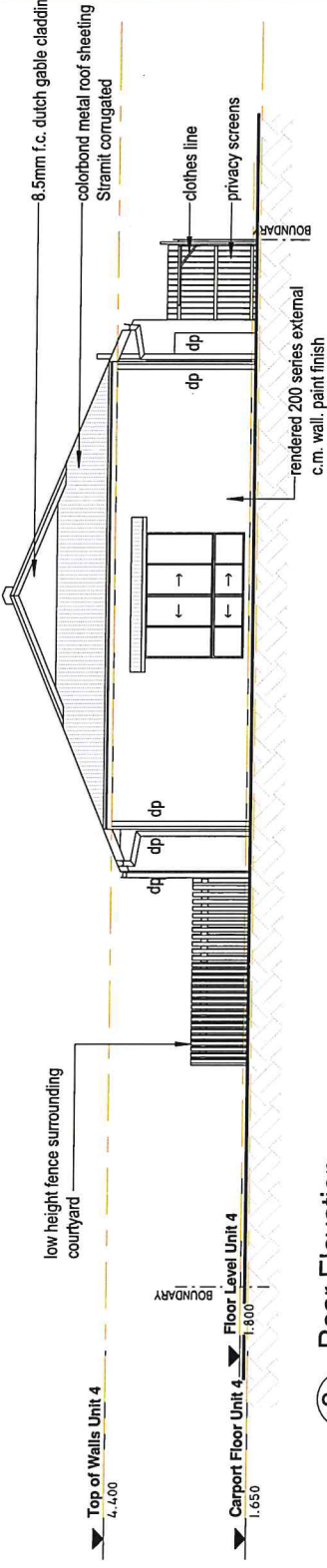
**COOK SHIRE COUNCIL**  
**DIGITALLY STAMPED**  
**APPROVED PLAN**

**Development Application:** Development Permit for Material Change of Use — Multiple Dwelling (4 x dwelling units)  
**Lot:** 32 on C17949

Referred to in Cook Shire Council's Decision Notice

**Approval Date:** 22 November 2022  
**Application Number:** DA/4509

**P R E L I M I N A R Y**

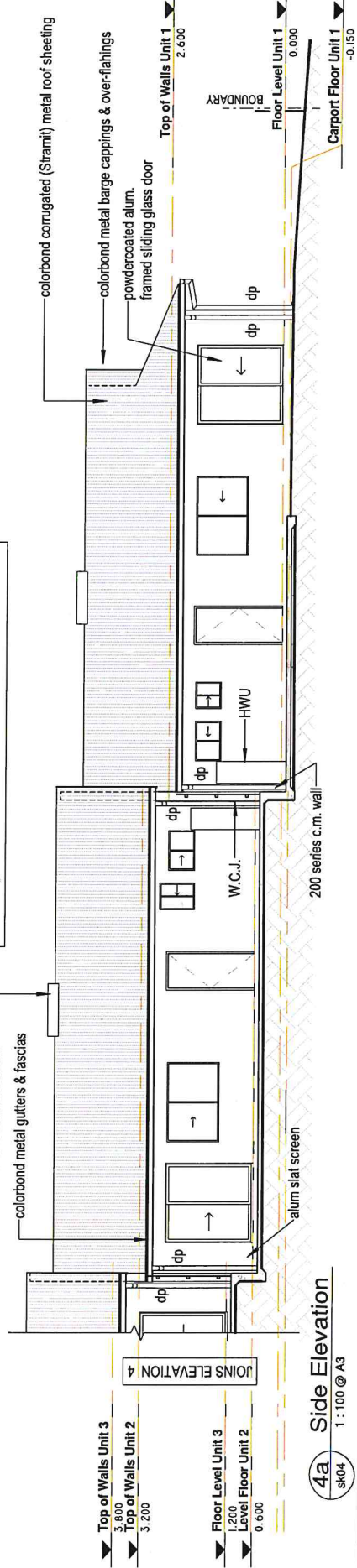


**3** Rear Elevation  
 1 : 100 @ A3



**4** Side Elevation  
 1 : 100 @ A3

Make provision for ALL windows & doors to be security screened.  
 Screens by client



**4a** Side Elevation  
 1 : 100 @ A3

**Proposed 4 x 2 Bed Unit Development for**  
**Mr. R. & Mrs. G. Parker**  
**35 May street, COOKTOWN**

REVISION

drawing Elevations 3 & 4

plot date 1/10/2022 10:24:36 AM  
 sheet number sk04  
 drawing A. Ballard  
 project number 22-05  
 sheet 4 of 5  
 CBCC # 621922  
 revision





3D front view with main roof overhang  
1:1 @ A3

TYPICAL ROOF OVERHANG TO MAIN ROOF CONTINUING ACROSS FRONT  
4.0m SET-BACK FROM FRONT BDRY TO ROOF OVERHANG

**COOK SHIRE COUNCIL**  
**DIGITALLY STAMPED**  
**APPROVED PLAN**

Development Application: Development Permit for Material Change of Use — Multiple Dwelling (4 x dwelling units)

Lot: 32 on CI17949

Referred to in Cook Shire Council's Decision Notice

Approval Date: 22 November 2022

Application Number: DA/4509



3D View front unit roof overhang  
1:1 @ A3 NO VEHICLE GATE

P R E L I M I N A R Y

Proposed 4 x 2 Bed Unit Development for  
Mr. R. & Mrs. G. Parker  
35 May street. COOKTOWN

REVISION

| NO. | REVISION |
|-----|----------|
|     |          |
|     |          |
|     |          |
|     |          |
|     |          |

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drawing rendered 3D views

plot date 1/10/2022 10:24:58 AM  
drawn A. Ballard  
project number sk05  
sheet number 22-05  
revision 5 of 5



**Attachment 3 – Notice of Decision – Statement of Reasons (AD2022/0010790)**



## NOTICE ABOUT DECISION – STATEMENT OF REASONS

*This Notice is prepared in accordance with s63(5) and s83(9) of the Planning Act 2016 to provide information about a decision that has been made in relation to a development application. The purpose of the Notice is to enable a public understanding of the reasons for the planning decision, specifically having regard to:*

- the relevant parts of the Planning Scheme and Assessment Benchmarks against which the application was assessed; and*
- any other information, documents or other material Council was either required to, or able to, consider in its assessment.*

*All terms used in this Notice have the meanings given them in the Planning Act 2016 or otherwise their ordinary meaning.*

### APPLICATION DETAILS

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|                                 |   |
|---------------------------------|---|
| Application No:                 | DA/4509   |
| Applicant:                      | Robert and Grace Parker c/- U&I Town Plan       |
| Proposal:                       | Development Permit for a Material Change of Use |
| Description of the Development: | Multiple Dwelling (4 x Dwelling Units)          |
| Street Address:                 | 35 May Street, Cooktown 4895                    |
| Real Property Description:      | Lot 32 on C17949                                |
| Planning Scheme:                | Cook Shire Council Planning Scheme 2017         |
| Land Zoning:                    | Medium Density Residential                      |
| Assessment Type:                | Code Assessment                                 |

### DECISION DETAILS

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|                   |  |
|-------------------|--|
| Type of Decision: | Approval with Conditions                 |
| Type of Approval: | Development Permit for Multiple Dwelling |
| Date of Decision: | 22 November 2022                         |

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## **ASSESSMENT BENCHMARKS**

The following Assessment Benchmarks applied to the development from the following Categorising Instruments:

| <b>Assessment Benchmarks</b>                  | <b>Comment</b>   |
|---|--|
| <i>Planning Regulation 2017</i> (Schedule 9)  | Schedule 9 is not applicable as the application is not for building work under the Building Act.   |
| <i>Planning Regulation 2017</i> (Schedule 10) | The application has not triggered a referral under Schedule 10.  |
| Regional Plan                                 | Section 2.2 of the Planning Scheme identifies that the Cape York Regional Plan has been adequately reflected in the Planning Scheme. A separate assessment against the Regional Plan is not required.  |
| State Planning Policy (SPP), Part E           | Section 2.1 of the Planning Scheme identifies that the superseded version of the <i>State Planning Policy</i> is integrated in the Planning Scheme.<br><br>A review of the current version of the SPP (July 2017) and assessment benchmark mapping applicable to Part E has determined that the state interests are reflected in the Planning Scheme and no additional assessment provisions in the current SPP (part E) or updated mapping are applicable requiring further assessment against the SPP. |
| Temporary State Planning Policy               | There are no Temporary State Planning Policies   |

### **Local Categorising Instrument (Cook Shire Council Planning Scheme 2017):**

- Medium Density Residential Zone Code
- Biodiversity Overlay Code
- Parking and Access Code
- Works, Services and Infrastructure Code
- Residential Use Code

### **Local Categorising Instrument (Variation Approval)**

Not Applicable

### **Local Categorising Instrument (Temporary Local Planning Instrument)**

Not Applicable

**PUBLIC NOTIFICATION**

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Not Applicable

**REASONS FOR THE DECISION**

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The application is **approved** on the following grounds:

- a. An assessment was made against the applicable assessment benchmarks and the proposed development demonstrated compliance.
- b. The proposed development for Material Change of Use for Multiple dwelling is an appropriate use to be located on the site and will have no adverse impact on the established residential character and amenity of the locality and adjoining lots.
- c. That an Infrastructure Charges Notice be issued for the amount of \$15,600 in relation to the development approval for a Development Permit for Material Change of Use – Multiple Dwelling at 35 May Street, Cooktown, formally described as Lot 32 on C17949.
- d. That Cook Shire Council refuse the request to waive the Infrastructure Charges associated with the Development Approval for Material Change of Use for Multiple Dwelling (4 dwelling units) on land located at 35 May Street, Cooktown, formally described as Lot 32 on C17949.
- e. That the applicant be advised that Council is currently considering the development of a policy to support and encourage development within the Shire and the waiver or reduction of Infrastructure Charges may be considered in the development of the policy. Should Council adopt a policy that provides for the opportunity to apply for a waiver or reduction of Infrastructure Charges it is recommended you apply in accordance with the policy prior to the payment of the applicable charges.

**REASONS FOR APPROVAL DESPITE NON-COMPLIANCE WITH ASSESSMENT BENCHMARKS**

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Not Applicable

**ADDITIONAL RELEVANT MATTERS FOR IMPACT ASSESSMENT**

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Not Applicable

**OTHER MATTERS PRESCRIBED BY THE PLANNING REGULATION 2017**

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Not Applicable

**OTHER DETAILS**

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If you wish to obtain more information about Council's decision, including a copy of Council's Decision Notice and any conditions or plans relating to the development, please refer to Council's webpage.



**Attachment 4 - Extract of Appeal Provisions (Chapter 6 part 1 of the *Planning Act 2016*)**



## 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 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) for an appeal against a failure to make a decision about an application or other matter under the *Plumbing and Drainage Act 2018*—at anytime after the period within which the application or matter was required to be decided ends; or
  - (iv) 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.

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##### 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
- (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.

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##### 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.