

Date : 8/02/2016 3:10:33 PM
From : "CAVICCHIOLO Mark"
To : "OFFNER Sarah" , "QUICK Calvin"
Subject : FW: Sea Wall at Webber Esplanade Cooktown
Attachment : 20160205 EHP Sea Wall Status.pdf;
[For review and any appropriate action](#)

From: Karen Nicolaou [mailto:KNicolaou@cook.qld.gov.au]
Sent: Monday, 8 February 2016 10:38 AM
To: CAVICCHIOLO Mark
Cc: Tim Cronin
Subject: Sea Wall at Webber Esplanade Cooktown

Good morning Mark

Letter on the status of the Sea Wall,

Sent on behalf of Tim Cronin

Regards,

Karen Nicolaou | Executive Assistant | Executive Services
Cook Shire Council

Phone | 07 4069 5444 **Fax** | 07 4069 5423
Email | knicolaou@cook.qld.gov.au **Website** | www.cook.qld.gov.au
Address | 10 Fumeaux Street (PO Box 3), Cooktown, Qld, 4895

This email transmission is intended only for the use of the person or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure by law. If you are not the intended recipient, any dissemination, distribution or copying of this transaction is strictly prohibited. The sender accepts no responsibility for any malware, grey ware, spy ware, viral applications or code accompanying this transmission. The person or entity in receipt of this transmission indemnifies the sender (be they individual or corporation) against any loss incurred through the receipt/acceptance/clearance/opening of this transmission. If you have received this transmission in error, please notify us immediately by email, facsimile or telephone and disregard the email.

Published on DES Disclosure Log
RTI Act 2009

4th February 2016

Department of Environment and Heritage Protection

Level 3

5b Sheridan Street, Cairns

PO Box 7230, Cairns

Queensland 4870 Australia

Via email

Attention:

Mark Cavicchiolo

Compliance Delivery Manager

Environmental Services and Regulation

SEA WALL AT WEBBER ESPLANADE COOKTOWN

EHP has raised concerns in respect of the sea wall at Webber Esplanade with Cook Shire Council in letters 2 December 2015 and 23 December 2015. Council has provided detailed responses to EHP in respect of these letters.

I requested a meeting with EHP to discuss matters raised in a number of letters received by the EHP in recent months, including the sea wall. I thank you for affording Council the opportunity to meet on the 4 February 2016.

As discussed and agreed at the meeting, I am providing a current status of the actions Council committed to in December 2015.

Status Report - Council's Response and Actions in Progress

EHP's letters raise a number of serious issues, each of which requires a thorough investigation.

Since receiving EHP's letters 2 December 2015 and 23 December 2015, Council has engaged GHD, and put in place the program of actions as outlined in Council's response to the EHP 12 December 2015 and 6 January 2016.

The status of these actions is as follows:-

- (a) Council surveyor has completed a full survey of the 'as constructed' sea wall and this has been forwarded to GHD 19 January 2016;

Status - Complete

- (b) GHD will continue to review available information and records in respect of the approval and construction of the sea wall, including correspondence between Council and EHP leading up to the issue of the Changed Approval dated 26 May 2014;

Status - Complete

- (c) GHD are in the process of completing a forensic investigation into the construction of the wall, including:-
 - (i) review and analysis of an 'as constructed' survey of the sea wall by Council's surveyor against the drawings listed in the Changed Approval;
Status - In progress
 - (ii) proposed pre-site meeting with EHP, GHD and Council in Cairns 17 February 2016
Status – Seeking confirmation of availability of EHP
 - (iii) proposed site inspection to confirm the construction extent, condition and workmanship of the sea wall; and
Status – Scheduled 18 & 19 February 2016
 - (iv) at locations where any uncertainty exists, intrusive 'peel-backs' of the revetment wall will be conducted
Status - Scheduled 18-19 February 2016
 - (v) any additional procedures arising from pre-site meeting with EHP proposed for 17 February 2016
Status – Subject to EHP meeting 17 February 2016
- (d) GHD will prepare a final report outlining its findings. It is anticipated that it may be of benefit for Council, GHD and EHP to meet at this time for a formal presentation of the final report.
Status – To be confirmed

As set out above, Council would like a meeting with EHP and GHD prior to the site visit scheduled for 18 & 19 February 2016. Ideally this would take place on site in Cooktown on 17 February 2016. Alternatively, the meeting could take place in Cairns at the EHP offices. Council consider a face to face meeting with GHD, EHP and Council will facilitate a better understanding of EHP's outcomes and enhance the process.

It is anticipated that GHD will forward an interim report to Council. Once this has been received and reviewed by Council it will be forwarded to EHP prior to 17 February 2016. This will enable time for EHP to review issues raised and for an informed discussion at this time.

Council is also seeking confirmation of the proposed GHD scope. Any additional EHP requirements or concerns in relation to the construction of the seawall should be advised as soon as practical to enable Council to adequately scope GHD's review. An example is the reference in our meeting to potential environmental impacts. Further investigation may be required by GHD and Council would like to provide an adequate onsite investigation scope to all parties.

It would be appreciated if EHP could confirm availability for a pre-site meeting with Council and GHD as soon as practical. This will allow travel arrangements to be confirmed.

As discussed in the meeting, Council would like the opportunity for GHD to complete their review prior to any further action from EHP. Until such time as this work is completed, it would be difficult for Council to respond in a meaningful way to a show cause notice. Council has responded in a timely manner to the matters raised and set out a clear response. The status above confirms that the proposed actions are being conducted. Accordingly, Council requests EHP refrain from taking any further action against Council in respect of the matters raised while it continues with its agreed investigations and program of actions.

Should you wish to discuss the matters raised in this letter, I can be contacted on CTPI 49-Sch4 or at tcronin@cook.qld.gov.au. As I will be travelling within Cook Shire from 8 – 12 February 2016, I may not be contactable. For any urgent matters please contact Michael Czarnecki Director Infrastructure Services on CTPI 49-Sch4 or mczarnecki@cook.qld.gov.au

Yours faithfully

CTPI 49-Sch4

Tim Cronin
Chief Executive Officer
Cook Shire Council

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Date : 12/02/2016 5:43:20 PM
From : "Tim Cronin"
To : "OFFNER Sarah"
Cc : "QUICK Calvin"
Subject : RE: Show Cause Notice - Webber Esplanade
Attachment : image001.png;image003.png;image005.png;

Sarah
I will be attending the meeting on Wednesday I Cairns but was keen to meet Scott given all that is happening with Cook Shire Council at present. I discussed this with Mark at our meeting last week and Mark thought it was a good idea. Would Scott be free Thursday afternoon?

Thanks

Timothy Cronin | CEO |
Cook Shire Council

Phone | 07 4082 0524
Mobile | [CTPI 49-Sch4](tel:0740820524)
Email | tcronin@cook.qld.gov.au **Website** | www.cook.qld.gov.au
Address | 10 Furneaux Street (PO Box 3), Cooktown, Qld, 4895

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From: OFFNER Sarah [<mailto:Sarah.Offner@ehp.qld.gov.au>]
Sent: Friday, 12 February 2016 5:30 PM
To: Tim Cronin
Cc: QUICK Calvin
Subject: RE: Show Cause Notice - Webber Esplanade

Tim,
We already have a tentative meeting time set up for Am on Wednesday. This includes the delegate and our engineer from Brisbane. Is this OK from your end? Scott is not available in the afternoon and on Thursday morning sorry.

Cheers,



Sarah Offner
A/Team Leader (Compliance)
Minerals and North Queensland Compliance | Environmental Services and Regulation
Department of Environment and Heritage Protection
P 07 4222 5438
Level 3, 5b Sheridan St, Cairns QLD 4870
PO Box 7230, Cairns QLD 4870

From: Tim Cronin [<mailto:TCronin@cook.qld.gov.au>]
Sent: Friday, 12 February 2016 4:50 PM
To: OFFNER Sarah
Subject: FW: Show Cause Notice - Webber Esplanade

Sarah
Would it be possible to arrange a time to meet with Scott Sullivan next week? Late Wednesday afternoon (say 4pm) or Thursday morning would work best for me.

Regards

Timothy Cronin | CEO |
Cook Shire Council

Phone | 07 4082 0524
Mobile | [CTPI 49-Sch4](tel:0740820524)
Email | tcronin@cook.qld.gov.au **Website** | www.cook.qld.gov.au
Address | 10 Furneaux Street (PO Box 3), Cooktown, Qld, 4895

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From: QUICK Calvin [<mailto:Calvin.Quick@ehp.qld.gov.au>]
Sent: Friday, 12 February 2016 9:45 AM
To: Tim Cronin
Cc: CAVICCHIOLO Mark; OFFNER Sarah

Subject: Show Cause Notice - Webber Esplanade

Hi Tim,

As discussed in the meeting held on 4 February 2016, please find attached a Show Cause Notice with regard to the Webber Esplanade development. A hard copy will be sent via registered post.

If you have any questions please feel free to contact me.

Regards,
Calvin.



**Queensland
Government**

network.

Calvin Quick

Senior Environmental Officer (Compliance)

North Queensland Compliance | Environmental Services and Regulation

Department of Environment and Heritage Protection

P 07 4222 5161 E calvin.quick@ehp.qld.gov.au W www.ehp.qld.gov.au

Level 3, 5B Sheridan Street, Cairns QLD 4870

PO Box 7230, Cairns QLD 4870

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Date : 10/03/2016 12:55:59 PM

From : "CAVICCHIOLO Mark"

To : "Tim Cronin"

Cc : "QUICK Calvin" , "OFFNER Sarah"

Subject : due date for response to show cause notice under SPA

Hi Tim, I'm just touching base with you regarding the upcoming due date for submission of a response to the SPA show cause notice issued on 12 February 2016. I recall in our recent meeting you indicated that Council was seeking an extension of time for the submission of a response (which is due by 14 March 2016), however we haven't received anything formal following that meeting.

Mark Cavicchiolo

Compliance Delivery Manager, North Queensland Compliance

Environmental Services and Regulation

Department of Environment and Heritage Protection

Ph: 07 42225322

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Date : 11/03/2016 1:52:20 PM

From : "Michael Czarnecki"

To : "CAVICCHIOLO Mark" , "QUICK Calvin" , "OFFNER Sarah"

Cc : "Tim Cronin" , CTPI 49-Sch4 , "Michael Quirk" , "Robert Uebergang"

Subject : Cook Shire Council Extension to Show Cause

Attachment : DEHP11032016 Cook Shire Council Show Cause Extension.pdf;image001.jpg;

Hi Mark

As per your conversation with Tim Cronin (CEO) Cook Shire Council, please see attached Extension request.

Regards

Michael Czarnecki | Assets Manager | Corporate Services

Cook Shire Council

Phone | 07 4069 5444 **Fax** | 07 4069 5423 | **Direct** 07 40820552 | **Mobile** CTPI 49-Sch4

Email | mczarnecki@cook.qld.gov.au **Website** | www.cook.qld.gov.au

Address | 10 Furneaux Street (PO Box 3), Cooktown, Qld, 4895

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Your ref: CR70795

Our ref: D16/ _____

Department of Environment and Heritage Protection
Level 10
Verde Tower
445 Flinders Street
TOWNSVILLE QLD 4810

Attention: Mark Cavicchiolo

SEA WALL AT WEBBER ESPLANADE COOKTOWN – SHOW CAUSE NOTICE

Council refers to the show cause notice issued by the Department on 12 February 2016, requiring Council's written representations by 14 March 2016.

Council also refers to the settled minutes of the 17 February 2016 meeting, provided by your office on 10 March 2016.

Consistent with the minutes, Council understands that the Department will give reasonable consideration to a request to extend the due date for the written representations to 31 March 2016 to allow:-

- (a) Council's consultants, GHD, to continue their investigations into the construction of the sea wall, including rock suitability testing;
- (b) GHD to prepare a report outlining their findings and recommendations for any necessary remediation works; and
- (c) detailed written representations to be prepared in response to the show cause notice based upon the information provided by GHD.

This letter represents Council's formal request that the due date for written representations be extended from 14 March 2016 to 31 March 2016.

Council confirms its commitment to ceasing all works on the sea wall and restricting access to this part of the Esplanade until issues are resolved.

Could the Department please confirm its acceptance of the request for the extension at its earliest convenience.

Yours faithfully

CTPI 49-Sch4

Tim Cronin
Chief Executive Officer
Cook Shire Council



Your ref: CR70795

Our ref: D16/4056

Date: 22 March 2016

Department of Environment and Heritage Protection
Level 10
Verde Tower
445 Flinders Street
TOWNSVILLE QLD 4810

Attention: Mark Cavicchiolo

SEA WALL AT WEBBER ESPLANADE COOKTOWN – SHOW CAUSE NOTICE

Council refers to its letter of 11 March 2016 and advises that it has suffered an unexpected delay with its ongoing investigations into the construction of the sea wall.

As indicated in Council's letter of 11 March 2016, the investigations by its consultants, GHD, included rock suitability testing. As discussed at the meeting at your office on 17 February 2016, the testing would be carried out by an independent third party, Cardno. Council is able to confirm that the following suites of tests were arranged to be carried out to determine the durability risk of the insitu rock within the existing rock wall structure:-

1. saturated surface – dry relative density;
2. water absorption;
3. Los Angeles abrasion test;
4. sodium sulphate soundness test; and
5. crushing resistance.

Council has now been advised that the Cardno Rockhampton laboratory has had to send samples to Western Australia for further testing, and that the results of this testing cannot be available until after the Easter long weekend.

Whereas Council had previously hoped to be in receipt of GHD's report sometime this week, and to be briefed by GHD on the report before the written representations to the show cause notice could be prepared and finalised by 31 March 2016, this delay means that these targets will not be met.

Council has sought to reschedule its target dates and can advise that the earliest date on which representatives are available for the briefing by GHD is 14 April 2016. With the local government elections drawing to a conclusion, Council's representatives will also need to brief the new Council on the results of the investigations and proposed course of action.

Because of the above circumstances, Council requires a further month to complete its written representations to the show cause notice. A further indulgence is therefore sought from the Department to extend the time for providing the written representations from 31 March 2016 to 29 April 2016.

R

Council reiterates that it fully appreciates the seriousness of the matter and the need to urgently respond to the Department's show cause notice. Council also confirms that it remains committed to properly investigating the issues raised by the Department with a view to presenting a workable solution.

Council looks forward to your response.

Yours faithfully

CTPI 49-Sch4

Tim Cronin
Chief Executive Officer
Cook Shire Council

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Ref CR70795
File Ref 070/0000576; SRDA00429914 / SPD-0414-006809



Department of
**Environment and
Heritage Protection**

30 March 2016

Mr Timothy Cronin
Chief Executive Officer
Cook Shire Council
10 Furneaux Street (PO Box 3)
COOKTOWN QLD 4895

Dear Mr Cronin,

Subject: Show cause notice issued to Cook Shire Council on 12 February 2016

I refer to your letter on behalf of Cook Shire Council dated 22 March 2016 and a meeting held with officers of the Department of Environment and Heritage Protection on 24 March 2016. The letter refers to the show cause notice issued by the Department of Environment and Heritage Protection (the department) on 12 February 2016 under sections 588 and 589 of the *Sustainable Planning Act 2009*.

Your advice that additional time is requested to allow consultants to complete the necessary investigations and reporting is noted and your request to extend the due date by which representations must be made from 31 March 2016 to 29 April 2016 is approved.

Should you wish to discuss any of the matters raised in this letter, please contact Calvin Quick of the Department on telephone (07) 4222 5161 or at calvin.quick@ehp.qld.gov.au.

Yours sincerely,

CTPI 49-Sch4

Tim Brain
Manager (Compliance)
Industry, Development & South Queensland Compliance
Environmental Services and Regulation
Department of Environment and Heritage Protection

Date : 31/03/2016 3:05:16 PM
From : "OFFNER Sarah"
To : "Tim Cronin (TCronin@cook.qld.gov.au)"
Cc : "CAVICCHIOLO Mark" , "QUICK Calvin" , "ESTownsville"
Subject : Extension request for written representations to show cause notice
Attachment : Letter_toCSC_2016_03_30.pdf;image001.png;image002.png;

Tim,

For your records, I have attached an electronic version of a letter in response to your request for an extension to the response date for the show cause notice. The original will be posted.

Don't hesitate to contact me if you have any queries.

Kind regards,



Sarah Offner

A/Team Leader (Compliance)

Minerals and North Queensland Compliance | Environmental Services and Regulation

Department of Environment and Heritage Protection

P 07 4222 5438

Level 3, 5b Sheridan St, Cairns QLD 4870

PO Box 7230, Cairns QLD 4870

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Ref CR70795
File Ref 070/0000576; SRDA00429914 / SPD-0414-006809



Department of
**Environment and
Heritage Protection**

30 March 2016

Mr Timothy Cronin
Chief Executive Officer
Cook Shire Council
10 Furneaux Street (PO Box 3)
COOKTOWN QLD 4895

Dear Mr Cronin,

Subject: Show cause notice issued to Cook Shire Council on 12 February 2016

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Your advice that additional time is requested to allow consultants to complete the necessary investigations and reporting is noted and your request to extend the due date by which representations must be made from 31 March 2016 to 29 April 2016 is approved.

Should you wish to discuss any of the matters raised in this letter, please contact Calvin Quick of the Department on telephone (07) 4222 5161 or at calvin.quick@ehp.qld.gov.au.

Yours sincerely,

CTPI 49-Sch4

Tim Brain
Manager (Compliance)
Industry, Development & South Queensland Compliance
Environmental Services and Regulation
Department of Environment and Heritage Protection

Date : 25/05/2016 12:50:08 PM
From : "CAVICCHIOLO Mark"
To : "OFFNER Sarah"
Cc : "SULLIVAN Scott"
Subject : FW: Webber Esplanade Cooktown Lagoon and Marina

Hi Sarah, attached is a link to a third GHD report which we have been waiting for – this one relates to the marina and lagoon sheet piling. I've sent it to Paul Prenzler who will review it and provide commentary back, hopefully tomorrow morning. Can you pass on to Calvin so that he can have a read of it? I'm not after comments from him, as Paul can provide those.

PS – Can you also arrange for an ESR alert to be drafted regarding this issue (I'd probably grab the previous one and update it). I'll come and have a chat about the content of that.

Tim Cronin [mailto:TCronin@cook.qld.gov.au]
Wednesday, 25 May 2016 12:43 PM
CAVICCHIOLO Mark
FW: Webber Esplanade Cooktown Lagoon and Marina

Mark
As discussed, please find attached the GHD Structures report for download.

Could you confirm receipt of email and download of file.

Regards

Tim Cronin | CEO |
Member of the
Public
Administration
Commission
07 4082 0524
CTPI 49-Sch4
tcronin@cook.qld.gov.au | www.cook.qld.gov.au
10 Furneaux Street (PO Box 3), Cooktown, Qld, 4895

Files@ghd.sendthisfile.com [mailto:files@ghd.sendthisfile.com]
Monday, 23 May 2016 6:01 PM
Tim Cronin
Webber Esplanade Cooktown Lagoon and Marina

□

Sender: CTPI 49-Sch4@ghd.com
Recipient: TCronin@cook.qld.gov.au
Upload Date: 2016-05-23 03:00:23.0

Subject: Webber Esplanade Cooktown Lagoon and Marina
Message: Rev. 0 of Report

Use the following links to download your file(s).

<https://ghd.sendthisfile.com/H1ymIdaU51eCChN2uEbV93pl>

Note: These files will expire in 6 days from the time this email was generated.

Date : 4/07/2016 9:59:17 AM

From : "OFFNER Sarah"

To : "QUICK Calvin"

Subject : FW: Report of Independent Peer Review GHD Reports

Attachment : 20160630 CTPI 49-Sch4 Independent Review.pdf; ATT00001.htm; image001.png; image002.png;

FYI



Sarah Offner

A/Team Leader (Compliance)

Minerals and North Queensland Compliance | Environmental Services and Regulation

Department of Environment and Heritage Protection

P 07 4222 5438

Level 3, 5b Sheridan St, Cairns QLD 4870

PO Box 7230, Cairns QLD 4870

From: SULLIVAN Scott

Sent: Monday, 4 July 2016 9:40 AM

To: PRENZLER Paul

Cc: OFFNER Sarah; BRAIN Tim (EHP)

Subject: Fwd: Report of Independent Peer Review GHD Reports

FYI

Sent from my iPhone

Begin forwarded message:

From: "Tim Cronin" <TCronin@cook.qld.gov.au>

To: "CAVICCHIOLO Mark" <Mark.Cavicchiolo@ehp.qld.gov.au>, "david.murray@dilgp.qld.gov.au" <david.murray@dilgp.qld.gov.au>, "Maree Parker" <Maree.Parker@dsd.qld.gov.au> (Maree.Parker@dsd.qld.gov.au)" <Maree.Parker@dsd.qld.gov.au>

Cc: "SULLIVAN Scott" <Scott.Sullivan@ehp.qld.gov.au>

Subject: Report of Independent Peer Review GHD Reports

Dear All

Please find attached the report prepared by the independent expert following review of GHD reports and site visit to Cooktown.

Regards

Timothy Cronin | CEO |
Cook Shire Council

Phone | 07 4082 0524

Mobile | CTPI 49-Sch4

Email | tcronin@cook.qld.gov.au <<mailto:tcronin@cook.qld.gov.au>> Website | www.cook.qld.gov.au

Address | 10 Fumeaux Street (PO Box 3), Cooktown, Qld, 4895

Date : 5/07/2016 3:01:58 PM
From : "CAVICCHIOLO Mark"
To : "PRENZLER Paul"
Cc : "SULLIVAN Scott" , "OFFNER Sarah"
Subject : FW: Report of Independent Peer Review GHD Reports
Attachment : 20160630 CTPI 49-Sch4 Independent Review.pdf;

Hi Paul, just spoke to Tim Cronin, Cook CEO. I've attached his email address here. He is happy for Council to arrange to pick you up at the airport, escort you around the site and drop you off at the airport – can you please forward to him your itinerary, and he'll take it from there.

Tim Cronin [mailto:TCronin@cook.qld.gov.au]

hy 5 Friday, 1 July 2016 4:03 PM

rnt CAVICCHIOLO Mark; david.murray@dilgp.qld.gov.au; Maree Parker <Maree.Parker@dsd.qld.gov.au> (Maree.Parker@dsd.qld.gov.au)

nkt SULLIVAN Scott

hSeuyk Report of Independent Peer Review GHD Reports

Dear All

Please find attached the report prepared by the independent expert following review of GHD reports and site visit to Cooktown.

Regards

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so AE | tcronin@cook.qld.gov.au d yeFcy | www.cook.qld.gov.au

: jjiyFF | 10 Furneaux Street (PO Box 3), Cooktown, Qld, 4895

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Department of
**Environment and
Heritage Protection**

File Ref 070/0000576
Ref CR70795

4 August 2016

Cook Shire Council
10 Furneaux Street
PO Box 3
COOKTOWN QLD 4895

Attention: Mr Tim Cronin
Email: t.cronin@cook.qld.gov.au

Dear Tim,

Webber Esplanade Seawall, Cooktown

I refer to investigations undertaken by GHD and CTPI 49-Sch4 on behalf of Cook Shire Council regarding the construction of the Webber Esplanade seawall (the seawall).

It is acknowledged that Council has invested significant resources in assessing the status of the sea wall, and it is appreciated that potential remedies can involve significant costs and logistical difficulties, when dealing with an already built structure.

The department has reviewed the reports and it is noted that CTPI 49-Sch4 report in particular, includes recommendations regarding works that could be undertaken to satisfactorily improve stability and safety of the seawall. The department is supportive of the approach identified in his report.

In order to move this matter forward, could you please arrange for a detailed program of works to be forwarded to the department, that addresses how the Council intends to progress this matter. The program of works should address:

- A description of each action item;
- Start and completion timeframes for each action;
- Measures to be taken to address public safety risks while the works are being completed, and for storm events;
- Assessment of the sea wall's construction regarding a design storm event prior to, and after the proposed remedial works.

- Actions to be taken to achieve consistency with the department's *Operational Policy - Building and Engineering Standards for Tidal Works*, including proposed design storm event criteria and likely maintenance requirements following the design storm event.
- Advice regarding certification by a Registered Professional Engineer of Queensland regarding any proposed works.

I also advise that any modifications to the seawall may trigger either an amendment to the Development Approval or a Material Change of Use application, pursuant to the *Sustainable Planning Act 2009*. It is recommended that you examine if any such action is required, to lawfully undertake any modifications to the seawall. I am happy for departmental officers to assist you in any pre-lodgement discussions regarding this process.

To assist the department in progressing this matter, please provide a response to this correspondence by 19 August 2016. We would also be happy to meet with you to discuss this matter to further discuss the scope of works and any additional studies that Council proposes to undertake.

Should you wish to discuss any of the matters raised in this letter, please contact Mr Mark Cavicchiolo, Compliance Delivery Manager of the department on telephone (07) 4222 5322 or at mark.cavicchiolo@ehp.qld.gov.au.

Yours sincerely,
CTPI 49-Sch4

Per
Rob Lawrence
Executive Director
Environmental Services and Regulation
Department of Environment and Heritage Protection



Department of
Environment and
Heritage Protection

File Ref 070/0000576
Ref CR70795

4 August 2016

Cook Shire Council
10 Furneaux Street
PO Box 3
COOKTOWN QLD 4895

Attention: Mr Tim Cronin
Email: t.cronin@cook.qld.gov.au

Dear Tim,

Webber Esplanade Seawall, Cooktown

I refer to investigations undertaken by GHD and Mr Tony Byrne on behalf of Cook Shire Council regarding the construction of the Webber Esplanade seawall (the seawall).

It is acknowledged that Council has invested significant resources in assessing the status of the sea wall, and it is appreciated that potential remedies can involve significant costs and logistical difficulties, when dealing with an already built structure.

The department has reviewed the reports and it is noted that Mr Byrne's report in particular, includes recommendations regarding works that could be undertaken to satisfactorily improve stability and safety of the seawall. The department is supportive of the approach identified in his report.

In order to move this matter forward, could you please arrange for a detailed program of works to be forwarded to the department, that addresses how the Council intends to progress this matter. The program of works should address:

- 1 • A description of each action item;
- 2 • Start and completion timeframes for each action;
- 3 • Measures to be taken to address public safety risks while the works are being completed, and for storm events;
- 4 • Assessment of the sea wall's construction regarding a design storm event prior to, and after the proposed remedial works.

R

5B Sheridan Street
PO Box 7230 Cairns
Queensland 4870 Australia
Telephone + 61 7 4222 5161
Facsimile + 61 7 4222 5070
Website www.ehp.qld.gov.au
ABN 46 64224685

- 5 • Actions to be taken to achieve consistency with the department's *Operational Policy - Building and Engineering Standards for Tidal Works*, including proposed design storm event criteria and likely maintenance requirements following the design storm event.
- 6 • Advice regarding certification by a Registered Professional Engineer of Queensland regarding any proposed works.

I also advise that any modifications to the seawall may trigger either an amendment to the Development Approval or a Material Change of Use application, pursuant to the *Sustainable Planning Act 2009*. It is recommended that you examine if any such action is required, to lawfully undertake any modifications to the seawall. I am happy for departmental officers to assist you in any pre-lodgement discussions regarding this process.

To assist the department in progressing this matter, please provide a response to this correspondence by 19 August 2016. We would also be happy to meet with you to discuss this matter to further discuss the scope of works and any additional studies that Council proposes to undertake.

Should you wish to discuss any of the matters raised in this letter, please contact Mr Mark Cavicchiolo, Compliance Delivery Manager of the department on telephone (07) 4222 5322 or at mark.cavicchiolo@ehp.qld.gov.au.

Yours sincerely,
CTPI 49-Sch4

Per
Rob Lawrence
Executive Director
Environmental Services and Regulation
Department of Environment and Heritage Protection

(➡ Andy Samaras = Royce HASIKAWING)

Date : 19/08/2016 11:10:59 AM

From : "CAVICCHIOLO Mark"

To : "QUICK Calvin" , "OFFNER Sarah"

Cc : "SULLIVAN Scott" , "PRENZLER Paul"

Subject : FW: Webber Esplanade Seawall

Attachment : Signed Reply to EHP Letter - ref CR70795 -- Proposed Program for works relating to the Webber Esplanade Seawall Remediation - 20160818.pdf;18082016113857-0001.pdf;18082016113857-0001.pdf;image001.jpg;

Fyi Council's response

From: Kate Dagge [mailto:KDagge@cook.qld.gov.au]

Sent: Friday, 19 August 2016 11:09 AM

To: LAWRENCE Rob; CAVICCHIOLO Mark

Cc: Martin Cookson; Tim Cronin; Robert Uebergang

Subject: Webber Esplanade Seawall

Rob,

CC. Mark Cavivvhiolo

In response to your letter dated 4th August 2016 (attached) and the meeting with your team in Cairns on 17th August, please refer to the attached letter.

Note: The signed original will also be forwarded to you via the mail.

Kind Regards,

Kate Dagge | Administration Officer | Infrastructure Services
Cook Shire Council

Phone | 07 4069 5444 **Fax** | 07 4069 5423

Email | kdagge@cook.qld.gov.au **Website** | www.cook.qld.gov.au

Address | 10 Furneaux Street (PO Box 3), Cooktown, Qld 4895



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Our ref: RU:kd; D16/9682
Your ref: CR70795
Your file ref: 070/0000576)

August 18, 2016

Mr. Rob Lawrence
Executive Director
Environmental Services and Regulations
Department of Environment and Heritage Protection
PO Box 7230
CAIRNS QLD 4870

Dear Rob,

RE: WEBBER ESPLANADE SEAWALL, COOKTOWN

I refer to your letter dated 4 August 2016, and further to Tim Cronin and myself meeting with you and your team in Cairns on Wednesday 17 August 2016, wish to provide the following response.

The current and proposed program of works relating to the Webber Esplanade Seawall Remediation is as follows:

1. Royal Haskonning (consultant firm) to complete wave modelling report by 24 August 2016
2. CTPI 49-Sch4 to review wave modelling report and complete final report on the wall by 7 September 2016
3. CTPI 49-Sch4 report (when finalised) along with Council's outline of measures to address public safety risks during construction and a program for proposed seawall remediation works to be forwarded to EHP by 14 September 2016.

As noted at our meeting, we look forward to working through any modifications to the Development Approval with the relevant departments and personnel at a time to be arranged in coming weeks.

I wish to thank you for the time provided Wednesday to discuss both seawall and landfill management issues, and confirm that further discussions in this matter are best directed to myself ruebergang@cook.qld.gov.au during the coming four weeks whilst Tim is on leave.

Yours sincerely

CTPI 49-Sch4

Robert Uebergang
Director – Infrastructure Services

Cc. Martin Cookson, Acting CEO and Director – Corporate Services
Tim Cronin, CEO, Cook Shire Council



Department of
Environment and
Heritage Protection

File Ref 070/0000576
Ref CR70795

4 August 2016

Cook Shire Council
10 Furneaux Street
PO Box 3
COOKTOWN QLD 4895

Attention: Mr Tim Cronin
Email: t.cronin@cook.qld.gov.au

Dear Tim,

Webber Esplanade Seawall, Cooktown

I refer to investigations undertaken by GHD and Mr Tony Byrne on behalf of Cook Shire Council regarding the construction of the Webber Esplanade seawall (the seawall).

It is acknowledged that Council has invested significant resources in assessing the status of the sea wall, and it is appreciated that potential remedies can involve significant costs and logistical difficulties, when dealing with an already built structure.

The department has reviewed the reports and it is noted that Mr Byrne's report in particular, includes recommendations regarding works that could be undertaken to satisfactorily improve stability and safety of the seawall. The department is supportive of the approach identified in his report.

In order to move this matter forward, could you please arrange for a detailed program of works to be forwarded to the department, that addresses how the Council intends to progress this matter. The program of works should address:

- 1 • A description of each action item;
- 2 • Start and completion timeframes for each action;
- 3 • Measures to be taken to address public safety risks while the works are being completed, and for storm events;
- 4 • Assessment of the sea wall's construction regarding a design storm event prior to, and after the proposed remedial works.

- 5 • Actions to be taken to achieve consistency with the department's *Operational Policy - Building and Engineering Standards for Tidal Works*, including proposed design storm event criteria and likely maintenance requirements following the design storm event.
- 6 • Advice regarding certification by a Registered Professional Engineer of Queensland regarding any proposed works.

I also advise that any modifications to the seawall may trigger either an amendment to the Development Approval or a Material Change of Use application, pursuant to the *Sustainable Planning Act 2009*. It is recommended that you examine if any such action is required, to lawfully undertake any modifications to the seawall. I am happy for departmental officers to assist you in any pre-lodgement discussions regarding this process.

To assist the department in progressing this matter, please provide a response to this correspondence by 19 August 2016. We would also be happy to meet with you to discuss this matter to further discuss the scope of works and any additional studies that Council proposes to undertake.

Should you wish to discuss any of the matters raised in this letter, please contact Mr Mark Cavicchiolo, Compliance Delivery Manager of the department on telephone (07) 4222 5322 or at mark.cavicchiolo@ehp.qld.gov.au.

Yours sincerely,
CTPI 49-Sch4

Per
Rob Lawrence
Executive Director
Environmental Services and Regulation
Department of Environment and Heritage Protection

(➡ Andy Samaras = Royce HASIKAWING)

Date : 15/09/2016 9:15:11 AM
From : "CAVICCHIOLO Mark"
To : "Robert Uebergang"
Cc : "WAKE Chris", "OFFNER Sarah"
Subject : RE: CTPI 49-Sch4 final report
Ok thanks Robert.

From: Robert Uebergang [mailto:RUebergang@cook.qld.gov.au]
Sent: Wednesday, 14 September 2016 4:59 PM
To: CAVICCHIOLO Mark; Tim Cronin
Cc: Martin Cookson
Subject: RE: Tony Byrne's final report

Hi Mark,

73(2)Irrelevant

CTPI 49-Sch4 draft final report was provided to Cook Shire on 11 September. There has been additional work above that originally anticipated getting the report together, including additional information requested by CTPI 49-Sch4 with the Wave Modelling from Royal Haskoning, and revision to information provided. There is still some liaison required between Royal Haskoning, Cook Shire and CTPI 49-Sch4 to finalise the report. We are planning that the final report be provided to EHP late this week/ early next week.

Regards,

Robert Uebergang | Director | Infrastructure Services
Cook Shire Council

Phone | 07 4069 5444 **Fax** | 07 4069 5423
Email | RUebergang@cook.qld.gov.au **Website** | www.cook.qld.gov.au
Address | 10 Furneaux Street (PO Box 3), Cooktown, Qld, 4895

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From: CAVICCHIOLO Mark [mailto:Mark.Cavicchiolo@ehp.qld.gov.au]
Sent: Wednesday, 14 September 2016 1:42 PM
To: Tim Cronin <TCronin@cook.qld.gov.au>
Cc: Robert Uebergang <RUebergang@cook.qld.gov.au>
Subject: CTPI 49-Sch4 final report

Hi Tim, I'm not sure if you are back from leave as yet, but just wanted to check in regarding CTPI 49-Sch4 final report, which was going to be done after he had reviewed the wave modelling report. I think the timeframe you indicated for submission to EHP was mid September 2016. Can you advise if it will be forwarded to EHP this week?

Mark Cavicchiolo
Compliance Delivery Manager, North Queensland Compliance
Environmental Services and Regulation
Department of Environment and Heritage Protection
Ph: 07 42225322

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Date : 4/10/2016 3:35:34 PM
From : "Tony Croke"
To : "OFFNER Sarah" , "CAVICCHIOLO Mark"
Cc : "Brett Nancarrow" , "PRENZLER Paul" , "BIRCH Kerynne"
Subject : Emergency Work Query for Cooktown Sea Wall
Attachment : image001.jpg;
Hi Sarah, Mark and others

Thank you for your input into this morning's pre-lodgement meeting for the Cooktown sea wall.

Robert Uebergang from Cook Shire Council asked if emergency works could be carried out in parallel with the assessment process. That is proceed with the remediation of the sea wall as a risk management approach prior to the risk of storm events in the wet season. We gave an undertaking to look into this aspect. I did not want to provide comments during the meeting without appropriately considering the options and DEHP's views.

There are several potential avenues in the *Sustainable Planning Act 2009* (SPA) for carrying out emergency works or repairs / rectification if the works are dangerous.

1. Section 585 of SPA provides for an Coastal emergency exemption for operational work that is tidal works. The circumstances include emergency work to ensure the structural safety of an existing structure for which there is a development permit or the operation or safety of community infrastructure. Section 585 also requires a safety management plan and a development application. The risk with this avenue is that if the application is refused, the exemption ceases to apply and the person must remove the emergency work as soon as practicable.
2. Section 584 of SPA provides for a General exemption for emergency development or use. This does not apply to work that is not tidal works ie section 585 applies.
3. An enforcement notice issued under section 590 of SPA may require that works are rectified or repaired if the assessing authority reasonably believes that the work is dangerous. An enforcement notice may also require a person to apply for a development permit, amongst other things. An assessing authority need not give a show cause notice if it reasonably considers it is not appropriate in the circumstances eg go straight to an enforcement notice instead. An example is urgent action is necessary to address a danger to public health or safety.

Nothing in the material that I have indicates that DEHP has issued a show cause notice or an enforcement notice. Could you confirm this is the case?

4. Section 604 of SPA also provides for the planning and environment court to make an enforcement order. This matter seems able to be resolved without recourse to the courts.
5. Section 599 provides for the Magistrates Court to make an order, in relation to a development offence. I presume that a prosecution has not been initiated for this matter?

Of the above options, section 585 Coastal emergency works appears to be the most relevant avenue to consider. A key question is whether this is an emergency and if it may lead to a perceived precedent. This is something that State agencies need to consider. There is also the risk that council may have to redo the work if the application is refused. This is a risk that council would need to consider in its decision making.

Could you please provide comments from DEHP about the above options, in particular with regards to option 1, in conjunction with the technical agency comments for the pre-lodgement minutes (draft to follow). Any other comments are welcome.

Kind regards

Tony Croke
Principal Planning Officer
(Monday 10am – 4:45pm, Tuesday 8:45am – 4.15pm, Wednesday 9.15am to 12:30pm and Friday 9am – 4.15pm)
Far North Queensland Regional Office
Planning and Development Services
Department of Infrastructure Local Government and Planning
Queensland Government

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post PO Box 2358 Cairns QLD 4870

visit Cnr Grafton and Hartley St, Cairns

E: Tony.Croke@dilgp.qld.gov.au or CairnsSARA@dilgp.qld.gov.au

Web: www.dilgp.qld.gov.au

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RTI Act 2009

Date : 4/10/2016 5:02:28 PM

From : "OFFNER Sarah"

To : "Tony Croke"

Cc : "CAVICCHIOLO Mark"

Subject : RE: Emergency Work Query for Cooktown Sea Wall

Attachment : image001.png;image002.png;image005.png;image006.jpg;

Sorry Tony, just to confirm, we will update you for a pre-lodgement response. We are meeting tomorrow to discuss internally.

Cheers,



Sarah Offner

A/Team Leader (Compliance)

Minerals and North Queensland Compliance | Environmental Services and Regulation
Department of Environment and Heritage Protection

P 07 4222 5438

Level 3, 5b Sheridan St, Cairns QLD 4870

PO Box 7230, Cairns QLD 4870

From: OFFNER Sarah

Sent: Tuesday, 4 October 2016 4:42 PM

To: 'Tony Croke'

Cc: CAVICCHIOLO Mark

Subject: RE: Emergency Work Query for Cooktown Sea Wall

Tony,

Thanks for the info below. I can confirm a Show Cause Notice was issued by the department in relation to non-compliance with DA conditions. The various reports provided by council have been in response to this. An enforcement notice has not been issued to date, and is under consideration based on the information provided in the final CTPI 49-Sc report (dated 19 September 2016).

We will review the suggested emergency exemptions below and update you if we decide to progress down this path.

Kind regards,



Sarah Offner

A/Team Leader (Compliance)

Minerals and North Queensland Compliance | Environmental Services and Regulation
Department of Environment and Heritage Protection

P 07 4222 5438

Level 3, 5b Sheridan St, Cairns QLD 4870

PO Box 7230, Cairns QLD 4870

From: Tony Croke [<mailto:Tony.Croke@dilgp.qld.gov.au>]

Sent: Tuesday, 4 October 2016 3:36 PM

To: OFFNER Sarah; CAVICCHIOLO Mark

Cc: Brett Nancarrow; PRENZLER Paul; BIRCH Kerynne

Subject: Emergency Work Query for Cooktown Sea Wall

Hi Sarah, Mark and others

Thank you for your input into this morning's pre-lodgement meeting for the Cooktown sea wall.

Robert Uebergang from Cook Shire Council asked if emergency works could be carried out in parallel with the assessment process. That is proceed with the remediation of the sea wall as a risk management approach prior to the risk of storm events in the wet season. We gave an undertaking to look into this aspect. I did not want to provide comments during the meeting without appropriately considering the options and DEHP's views.

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2. Section 584 of SPA provides for a General exemption for emergency development or use. This does not apply to work that is not tidal works ie section 585 applies.
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Nothing in the material that I have indicates that DEHP has issued a show cause notice or an enforcement notice. Could you confirm this is the case?

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Of the above options, section 585 Coastal emergency works appears to be the most relevant avenue to consider. A key question is whether this is an emergency and if it may lead to a perceived precedent. This is something that State agencies need to consider. There is also the risk that council may have to redo the work if the application is refused. This is a risk that council would need to consider in its decision making.

Could you please provide comments from DEHP about the above options, in particular with regards to option 1, in conjunction with the technical agency comments for the pre-lodgement minutes (draft to follow). Any other comments are welcome.

Kind regards

Tony Croke
Principal Planning Officer
(Monday 10am – 4:45pm, Tuesday 8:45am – 4.15pm, Wednesday 9.15am to 12:30pm and Friday 9am – 4.15pm)
Far North Queensland Regional Office
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Date : 7/10/2016 4:32:15 PM

From : "Tony Croke"

To : "Brett Nancarrow" , "Sara-EHP" , "CAVICCHIOLO Mark" , "BIRCH Kerynne" , "SIMMONS Anthony" , "PRENZLER Paul" , "OFFNER Sarah" , "WOODWARD Andrew" , "ROWE Charles" , "MOSS Marianne" , "BRAIN Tim (EHP)" , "michael.a.barnett@msq.qld.gov.au"

Cc : "STEWART Richard" , "MSQ_IDAS_Cairns@msq.qld.gov.au" , "Planning Services North DA"

Subject : SPL-0916-033716 - DRAFT Pre-lodgement meeting record - Cooktown Sea Wall

Attachment : SPL-0916-033716 - N6-T2-Pre-lodgement meeting record.docx;image001.jpg;

Dear EHP and MSQ

My apologies for the delay in sending the draft pre-lodgement minutes for the Cooktown sea wall. Unfortunately, I was not at work on Thursday. The issues were also somewhat involved.

Many thanks to those who have provided further advice in advance. DEHP, I understand that advice about excluded works has been provided separately to Cook Shire Council?

Could you please review the draft pre-lodgement minutes and further advice and provide any feedback (via track changes and comments). The SLA specifies within three (3) business days. That is by COB Wednesday 12 October 2016. However, given the urgency of this issue, could you please provide any comments and additional advice with one (1) working day or by **COB Monday 10 October 2016**.

DAF and DNRM, the draft minutes are for your information and any further advice if you think it is relevant.

Many thanks

Tony Croke

Principal Planning Officer

(Monday 10am – 4:45pm, Tuesday 8:45am – 4.15pm, Wednesday 9.15am to 12:30pm and Friday 9am – 4.15pm)

Far North Queensland Regional Office

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Department of Infrastructure,
Local Government and Planning

Our reference: SPL-0916-033716
Your reference:

10 October 2016

Cook Shire Council
PO Box 3
Cooktown QLD 4895

Att: Mr Robert Uebergang

Dear Robert

Pre-lodgement meeting record—proposed development

9 Webber Esplanade and 27 Webber Esplanade, Cooktown, QLD 4895 – Adjacent to and including Lot 82 on BS246 and Lot 83 on BS161

This pre-lodgement record provides a summary of the matters discussed at the pre-lodgement meeting in addition to providing further advice prepared subsequent to the meeting. This record provides initial advice regarding the likely major issues relevant to the development proposal to assist in the timely processing of a development application. While this pre-lodgement advice is provided in good faith, if the proposal is changed to that which was discussed with the department during the pre-lodgement meeting, this advice is not binding.

Reference information

Departmental role Assessment manager or Responsible Entity

Jurisdiction: Schedule 6, Table 3, Item 6 – Tidal works or works within a coastal management district
AND
Schedule 6, Table 3, Item 7 – Development on Queensland heritage place
OR
Schedule 6, Table 4, Item 1 – Applications involving multiple jurisdictions (Tidal works or works within a coastal management district and Queensland Heritage Place)
AND

Reference information

Schedule 7, Table 2, Item 15— Tidal works or works within a coastal management district (maritime safety)

Pre-lodgement meeting date: 04 October 2016

Meeting attendees:

Name	Position	Organisation
Tim Cronin	CEO	Cook Shire Council
Robert Uebergang	Director, Infrastructure Services	Cook Shire Council
Brett Nancarrow	Manager, Planning	Department of Infrastructure Local Government and Planning (DILGP)
Tony Croke	Principal Planner	DILGP
Mark Cavicchiolo	Compliance Delivery Manager	Department of Environment and Heritage (DEHP)
Sarah Offner	A/Team Leader Compliance	DEHP
Kerryne Byrch (teleconference)	Manager, Coastal and Marine Assessment	DEHP
Paul Prenzler (teleconference)	Principal Coastal Management Officer	DEHP
Marianne Moss (teleconference)	Principal Heritage Officer	DEHP
Captain Michael Barnett	Cairns Harbourmaster	Maritime Safety Queensland (MSQ)

Site details

Street address: 9 Webber Esplanade, Cooktown, QLD 4895
27 Webber Esplanade, Cooktown, QLD 4895

Real property description: Adjacent to and including Lot 82 on BS246 and Lot 1 on SP287194 (previously Lot 82 on Plan BS246)
Lot 2 on SP287194
Lot 83 on BS161

Site details

Local government area:	Cook Shire Council
Local government zone:	Unzoned
Existing use:	Webber Esplanade Sea Wall
Relevant site history:	<p>On 15 August 2006 tidal works for the construction of a sea wall was approved by the Environmental Protection Agency. Maritime Safety Queensland was an advice agency. Port Corporation Queensland provided written comment.</p> <p>On 26 May 2014, the Department of State Development, Infrastructure and Planning issued a notice of decision for a changed approval as responsible entity.</p> <p>On 2 December 2015 the Department of Environment and Heritage Protection (DEHP) wrote to Cook Shire Council (CSC) regarding an investigation into non-compliance with conditions.</p> <p>On 12 February 2016 a show cause notice was issued by DEHP.</p> <p>On 4 August 2016, DEHP wrote to CSC requesting a detailed program of works to improve safety and stability of the sea wall. Advice was also provided that modifications to the sea wall may trigger either an amendment to the development permit or a new application. Pre-lodgement discussions were offered to assist CSC.</p>

Proposed development details

Development type:	Operational work
Development description:	Tidal works or works within a coastal management district to improve safety and stability of the Webber Esplanade sea wall.

Supporting information

Plan / Report title	Author	Reference no.	Version and date
Notice of Decision – Development Approval	Environmental Protection Agency	FN300179	15-Aug-2006
Notice of decision - changed approval	Department of State Development Infrastructure and Planning (DSDIP)	SPD-0414-006809	26 May 2014
Sea wall at Webber Esplanade (letter)	Department of Environment and		2 December 2015

Plan / Report title	Author	Reference no.	Version and date
	Heritage Protection (DEHP)		
Webber Esplanade Seawall, Cooktown	DEHP	070/0000576 CR70795	4 August 2016
Re: Cooktown Foreshore Development – Technical Review – Final Report	CTPI 49-Sch4 Specialist Consultant, Innovative Expertise		19 September 2016

Meeting minutes

Item	Discussion and advice
Preliminaries	
1.	The meeting started at 10:00 am and introductions were made.
2.	The Department of Agriculture and Fisheries (DAF) was invited to the meeting but is not attending. Department of Natural Resources and Mines (DNRM) were not invited to the meeting as it was not a concurrence agency for the approval.
3.	
Tenure	
4.	The Department of Environment and Heritage Protection (DEHP) advised that there are owner's consent and tenure issues. Cook Shire Council (CSC) advised that: <ul style="list-style-type: none"> it is working with DNRM to create a reserve and there was provisional approval a survey had been completed there had been a meeting with TOs (traditional owners) six weeks ago in relation to Native title the Bluewater club had decided to surrender its lease to DNRM on 21 August 2016. The intention is for DNRM to lease the area to CSC who would sub-lease to Bluewater Club. the tenure matters would be resolved in two stages <ul style="list-style-type: none"> Stage 1 – Bluewater Club Stage 2 – subdivision plan to create the reserve
Overview of Proposal	
5.	The sea wall does not conform with the current approval and remediation works

Item	Discussion and advice
	<p>(such as reinforcing) are required.</p> <p>The reference to the approved plans in the approval need to change to reflect what is in place and the remediation works.</p> <p>CSC advised that:</p> <ul style="list-style-type: none"> the remediation works will achieve a standard of 1:50 storm event with 5 – 10% damage, rather than the DEHP standard of 0 – 5 % there will be a yearly review to see how the sea wall is performing and a review after each event and ongoing maintenance.
Approval Processes	
6.	<p>There are two options to make the existing and remedial works lawful:</p> <ol style="list-style-type: none"> Request a permissible change to the current 2014 development approval Lodge a new development application seeking a new approval. <p>The fee for a permissible change is \$1511.00. The fee for a new development application would be in the thousands.</p> <p><i>Action: DILGP to provide further advice about:</i></p> <ul style="list-style-type: none"> <i>whether it would be accepted as a permissible change or whether a new development application would be required</i> <i>the fees for the request or the application.</i>
3.	<p>CSC asked for an indication of the timeframes for the two processes.</p> <p>DILGP advised that this depends on the quality of the application. A good application could indicatively take:</p> <ul style="list-style-type: none"> Six to eight weeks for a permissible change Two to three months for a new development Approximately four weeks should also be added for native title notification <p>CSC asked for a worst case scenario. DILGP advised that if it was a poor quality development application, an information request may be required and the process could take longer.</p> <p>CSC was concerned that this could mean that it could take five to six months to complete the works.</p> <p><i>Action: DILGP to provide further advice about:</i></p> <ul style="list-style-type: none"> <i>Timeframes for a permissible change request</i> <i>Native title procedural rights (notification).</i>
Maritime safety	
4.	<p>Maritime Safety Queensland (MSQ) advised that its concerns were about the stability of the structure and its influence on access to the channel</p> <p>A general discussion then took place about the CTPI 49-Sch4 report.</p> <p>CSC advised that:</p>

Item	Discussion and advice
	<ul style="list-style-type: none"> the remediation works will achieve a standard of 1:50 storm event with 5 – 10% damage there is a low risk of catastrophic failure, it will be slow and can be dealt with the sea wall has been there for two years and been through two cyclones there is no piping or failure <p>MSQ observed that there had been a breach into the tidal lagoon.</p> <p>CSC advised that the sea wall would be shored up by replacing small rocks with big rocks, which would not be as easily dislodged by waves.</p> <p>MSQ advised that substantial rocks had been dislodged in Mackay and that this was unexpected.</p> <p>CSC advised that:</p> <ul style="list-style-type: none"> wave modelling had been done and the waves were smaller (1.7 – 2.1 m) than originally thought (2.7m) the wind fetch was from the north and north-east (???) the water was shallow which dissipated the wave energy <p>A general discussion took place about the boating community's expectations, dredging of the channel and boat ramps.</p> <p>MSQ advised that the channel had recently been surveyed.</p> <p><i>Action: MSQ to send CSC a copy of the channel survey.</i></p> <p><i>Action: DILGP to send CSC email to MSQ</i></p>
Heritage	
5.	<p>DEHP advised that:</p> <ul style="list-style-type: none"> The powder magazine is a Queensland Heritage Place. Any works with Lot 83 on BS161 (220 m²) will trigger Heritage assessment. Works on the magazine were assessed in 2004 (conservation work) and 2008 (limewash). Reference was made in the 2014 permissible change to the Pilot's Jetty. This is not currently a Queensland Heritage Place. There is a notification process if anything of an archaeological nature is discovered. <p>CSC advised that:</p> <ul style="list-style-type: none"> The history of the sea wall was that the road was being eroded and there was a risk of losing the magazine It was not sure of the lot boundary. There may be roadworks within it. However, the rock wall was quite a distance from the magazine. <p>DEHP advised that:</p> <ul style="list-style-type: none"> Heritage assessment will be triggered if there are works in Lot 83. This

Item	Discussion and advice
	<p>could either be:</p> <ul style="list-style-type: none"> o a permissible change or a new development application or o an exemption certificate <ul style="list-style-type: none"> • The cumulative effect of increased traffic on the heritage place may need to be considered. • CSC include all of the works in a permissible change request or a development application. <p>A general discussion took place about the heritage place description of the northern boundary being the high water mark. This description may now need to change. Lot 83 on BS161 may still be relied on as the boundary of the heritage place.</p>
Coastal	
6.	<p>The current condition for the development to be generally in accordance with the approved plans and drawings needs to be changed to reflect</p> <ul style="list-style-type: none"> • the as constructed sea wall • the remediation works that need to be undertaken.
7.	<p>The RPEQ (Registered Professional Engineer of Queensland) certification of the sea wall construction is not possible to do retrospectively.</p> <p>In light of this situation, DEHP suggest that a risk management plan be provided that details such things as monitoring, maintenance and public access and safety. This could be based on the recommendations of the CTPI 49-Sch4 report.</p> <p>A general discussion took place about who would prepare this plan and what its contents would be.</p> <p><i>Action: DEHP to provide CSC with more details about the contents of such a risk management plan.</i></p> <p>CSC advised that these matters could also be included in the local disaster management plan.</p>
8.	<p>A general discussion took place that CTPI 49-Sch4 is a Chartered Professional Engineer on the National Engineering Register administered by Engineers Australia but not a RPEQ.</p>
9.	<p>DEHP recommended that the application material provide details about:</p> <ul style="list-style-type: none"> • stormwater and drainage to avoid overtopping the wall • the source of the armour rocks and details of its durability and suitability for the purpose. For example, the previous work done by GHD. <p>A general discussion took place about the road and drainage design and a previous on-site meeting. DEHP requested that details of this be provided with the application.</p> <p>CSC advised that the old Mount Carbine mine was being considered as a source of rock. This rock was apparently used in the Port Douglas sea wall. DEHP</p>

Item	Discussion and advice
	advised that details of the geochemistry of the rock be also provided:
10.	A general discussion also took place about the erosion prone area remaining as it is despite the construction of the sea wall.
11.	<p>DEHP asked for a program of works, when CSC intended to commence works and details of engineering supervision.</p> <p>CSC advised that:</p> <ul style="list-style-type: none"> • it wanted to start work tomorrow • that it had identified the rock and the contractor and was ready to go • that this was subject to getting the necessary approvals • that the works is anticipated to take a couple of months • that a 20 metre section would be done per day • that works would shut down in a storm event • that there would be close engineering supervision early in the process. The engineer is yet to be confirmed. It is unlikely to be CTPI 49-Sch4 and may be Royal Haskonning • that Council resolved in September 2016 to fill the lagoon. This would include excavation to repair the geotextile. <p>DEHP advised that filling in the lagoon would not be tidal works, even though there is piping through the wall.</p> <p>DEHP suggested that the program of works details what CSC planned to do and the timing (duration) for those works. This could include:</p> <ul style="list-style-type: none"> • work that could happen under the existing approval • work that could wait until after an approval is obtained.
12.	<p>DEHP requested a new survey plan for the sea wall.</p> <p>CSC advised there was no change from the survey plan of January 2016.</p> <p>Reference was made to the GHD final report of April 2016.</p> <p><i>Action: DILGP to check if it has a copy of the final GHD report and if not CSC to provide a copy.</i></p>
13.	
General Business	
14.	<p>A general discussion took place about the process from here including:</p> <ul style="list-style-type: none"> • DILGP to send written pre-lodgement advice within one to two weeks • CSC to prepare development application and expedite the lodgement
15.	<p>CSC again raised concerns:</p> <ul style="list-style-type: none"> • about the timing of the approval and works being delayed • the benefits of doing the works when the wind s were calmer before they start blowing in April and May

Item	Discussion and advice
	<ul style="list-style-type: none"> the potential impacts of the wet season and cyclones the need to shore up the sea wall as part of risk mitigation. <p>CSC advised that it was critical that the works be done soon and asked if something could be done to accelerate the process.</p> <p>CSC questioned whether it could proceed with remediation as emergency works in the short term, in parallel with an application. CSC considered that this was a pragmatic approach.</p> <p>ADILGP advised that it would examine what options were available with regard to carrying out emergency works.</p> <p><i>Action: DILGP to provide further advice in the pre-lodgement minutes about emergency works.</i></p>

It is considered that the above summary is an accurate record of the matters discussed at the pre-lodgement meeting.

The following information is provided as further advice prepared subsequent to the meeting.

Further advice

Item	Further advice
Emergency Works	
1.	<p>The potential avenues in the <i>Sustainable Planning Act 2009</i> (SPA) for carrying out emergency works include:</p> <ul style="list-style-type: none"> Section 585 of SPA provides for a Coastal emergency exemption for operational work that is tidal works. <p>The circumstances include emergency work to ensure the structural safety of an existing structure for which there is a development permit or the operation or safety of community infrastructure.</p> <p>Section 585 also requires a safety management plan and a development application be submitted as soon as possible.</p> <p>A risk with this avenue is that if the application is refused, the exemption ceases to apply and the person must remove the emergency work as soon as practicable.</p> <ul style="list-style-type: none"> Section 584 of SPA provides for a General exemption for emergency development or use. <p>This does not apply to work that is tidal works ie section 585 applies. Conversely, only section 584 applies (not 585) if it is not tidal works.</p> <p>It is up to the person considering the use of sections 584 and 585 to satisfy themselves that the situation is an emergency and meets the other criteria in these sections.</p>

Item	Further advice
	DILGP recommends that CSC seek its own independent advice about meeting the criteria of these sections before deciding whether or not to rely on these provisions.
Changes to Approval	
2.	<p>DILGP considers that the proposed changes:</p> <ul style="list-style-type: none"> • do not result in a substantially different development • does not require referral to additional concurrence agencies • does not require impact assessment • does not include any prohibited development. <p>Therefore, the changes, as currently described, are considered to be a permissible change to the current development approval.</p> <p>A permissible change request must be lodged with DILGP as the responsible entity.</p> <p>Requests may be lodged electronically through MyDAS. More information about MyDAS is available at: http://www.dilgp.qld.gov.au/planning/development-assessment/electronic-lodgement.html</p> <p>The fee for a permissible change request is \$1511.00.</p>
3.	<p>If the proposed changes, when lodged, are <u>not</u> a permissible change then DILGP is the assessment manager under Schedule 6, Table 4, Item 1 – Applications involving multiple jurisdictions (Tidal works or works within a coastal management district and Queensland Heritage Place) of the SPR.</p> <p>Schedule 7, Table 2, Item 15 also applies in relation to maritime safety.</p> <p>The fees for a new development application and referral are:</p> <ul style="list-style-type: none"> • \$3024.00 for tidal works • \$3024.00 for Queensland heritage place • \$12,095.00 for maritime safety.
Coastal	
4.	<p><u>Risk Management Plan</u></p> <p>Given the history of the seawall it is considered appropriate to condition compliance with a Risk Management Plan for the seawall and reclaimed area. The Plan should at a minimum address:</p> <ul style="list-style-type: none"> • Procedures for managing the site to reduce risk to the public in the lead up to and during an extreme weather event • Detailed description of an Engineering Inspection program, including timing of regular inspections and inspections following extreme weather events. Inspection program should include, armour rock condition, seawall stability and stability of the reclaimed area. The condition of the armour rock may be determined through monitoring of identified rocks to estimate damage to the armour layer, or another suitable method. The stability may be

Item	Further advice
	<p>determined through comparison of survey data (e.g. cross-sections of the reclaimed area and seawall).</p> <ul style="list-style-type: none"> Description of the proposed maintenance program and how this will be adapted should an inspection identify any issues.
5.	<p><u>Registered Professional Engineer Queensland (RPEQ)</u></p> <p>The Council has engaged CTPI 49-Sch4 to provide an assessment of the works that could be undertaken to remediate the wall appropriately for the expected design wave and water level conditions at the site.</p> <p>It is noted that CTPI 49-Sch4 is a Chartered Professional Engineer on the National Engineering Register administered by Engineers Australia.</p> <p>The <i>Professional Engineers Act 2002</i> requires engineers providing engineering services in Queensland to be registered with the Board of Professional Engineers (www.bpeq.qld.gov.au). A preliminary search of the register has not identified Tony Byrne as being registered with the Queensland board.</p> <p>It is suggested that Council confirm the engineer's registration status prior to lodging any application or permissible change application.</p>
Heritage	
6.	<p>The State heritage register boundary for the Cooktown Powder Magazine (Queensland heritage register number 600425) is Lot 83 BS161.</p> <p>The New Revetment Wall General Arrangement Plan, prepared by GHD, dated 12/09/05, Drawing No: 42-12740-C001 Rev: 0 documents the location of Lot 83 BS161 in relation to the seawall. The plan indicates that part of Lot 83 is within the wall's construction zone.</p> <p>If any works associated with the permissible change to the seawall fall within Lot 83, including works to any of the reclaimed area enclosed by the wall, the <i>Sustainable Planning Regulation 2009</i> will be triggered, requiring referral for development on a State heritage place.</p>
Tenure	
7.	<p><u>Tenure</u></p> <p>Lot 1 on SP287194 - is now reserve for park and recreation purposes with Cook Shire Council (CSC) as trustee (previously Lot 82 on Plan BS246). The special lease was surrendered to allow for the dedication of the area as a reserve.</p> <p>Lot 2 on SP287194 – the area of reclamation/revetment works is a reserve for Strategic Land Management Purposes with Cook Shire Council as trustee (previously USL).</p> <p>A fresh offer has been made to council to amend the purpose of the SLM reserve to park and recreation and buffer (rock wall) purposes subject to survey and Cook Shire Council addressing native title.</p> <p>Lot 83 on Plan BS161 should be excluded from the works. This is a deed of grant in trust for museum purposes under the ownership of Cook Shire Council and will</p>

Item	Further advice
	<p>remain as such. (No approval under the <i>Land Act 1994</i> is required).</p> <p>Owners consent will need to be provided by the Department of Natural Resources and Mines (DNRM) for any material change of use or operational works on land below high-water mark.</p>
8.	<p><u>Advice for proponents where owner's consent is required</u></p> <p>Owner's consent from the Department of Natural Resources and Mines is required to lodge a "properly made" development proposal for:</p> <ul style="list-style-type: none"> • A material change of use or reconfiguring a lot on state land, or, • Work on land below high-water and outside a canal. <p>No fee is applicable and the forms to apply for owner's consent can be found on the Department of Natural Resources and Mines website:</p> <p>Application form Contact and Land Details Part A: www.dnrm.qld.gov.au/data/assets/pdf_file/0018/101781/state-land-form-la00.pdf</p> <p>Application for owners consent to development applications Part B: www.dnrm.qld.gov.au/data/assets/pdf_file/0008/101789/state-land-form-la08.pdf</p> <p>The application for owner's consent should also include:</p> <ul style="list-style-type: none"> • Original application details—the IDAS Form 1 with all necessary other forms or attachments including sketches/plans of existing and proposed improvements proposed to be lodged with the assessment manager • If acting on a person's behalf, a letter from the person advising that you are acting on their behalf • A letter from the leaseholder or trustee, if the development proposal relates to a secondary interest in the land (e.g. sublease, trustee lease); and, • Any additional attachments, as requested. <p>Further information can be found at: www.qld.gov.au/environment/land/state/owner-consent/</p> <p>or at: http://www.dilgp.qld.gov.au/resources/factsheet/planning/da-owners-consent.pdf</p> <p>You can lodge your application by email to: SLAMlodgement@dnrm.qld.gov.au or post it to the Department of Natural Resources and Mines, PO Box 5318, Townsville QLD 4810.</p> <p>You can track the progress of your lodged land application on the DNRM webpage - https://dashboard.dnrm.qld.gov.au/#/services</p>

If you require any further information, please contact Tony Croke, Principal Planning Officer, on 4037 3205, or tony.croke@dilgp.qld.gov.au who will be pleased to assist.

Yours sincerely

*Signature
placeholder*

Brett Nancarrow
Manager (Planning)

Published on DES Disclosure Log
RTI Act 2009

Date : 7/10/2016 1:24:23 PM

From : "OFFNER Sarah"

To : "Tony Croke"

Cc : "CAVICCHIOLO Mark"

Subject : RE: Emergency Work Query for Cooktown Sea Wall

Attachment : Signed Show Cause Notice.pdf;image001.png;image002.png;image005.png;image007.png;image008.jpg;

Tony as requested.

Please note that we will progress any further enforcement response separately from the SARA process.

Kind regards,



Sarah Offner

A/Team Leader (Compliance)

Minerals and North Queensland Compliance | Environmental Services and Regulation

Department of Environment and Heritage Protection

P 07 4222 5438

Level 3, 5b Sheridan St, Cairns QLD 4870

PO Box 7230, Cairns QLD 4870

From: Tony Croke [mailto:Tony.Croke@dilgp.qld.gov.au]

Sent: Wednesday, 5 October 2016 9:35 AM

To: OFFNER Sarah

Subject: RE: Emergency Work Query for Cooktown Sea Wall

Hi Sarah

Could I have a copy of the show cause notice please?

Many thanks

Tony Croke

Principal Planning Officer

(Monday 10am – 4:45pm, Tuesday 8:45am – 4.15pm, Wednesday 9.15am to 12:30pm and Friday 9am – 4.15pm)

Far North Queensland Regional Office - Ph: 4037 3205

Department of Infrastructure Local Government and Planning

From: OFFNER Sarah [mailto:Sarah.Offner@ehp.qld.gov.au]

Sent: Tuesday, 4 October 2016 5:02 PM

To: Tony Croke

Cc: CAVICCHIOLO Mark

Subject: RE: Emergency Work Query for Cooktown Sea Wall

Sorry Tony, just to confirm, we will update you for a pre-lodgement response. We are meeting tomorrow to discuss internally.

Cheers,



Sarah Offner

A/Team Leader (Compliance)

Minerals and North Queensland Compliance | Environmental Services and Regulation

Department of Environment and Heritage Protection

P 07 4222 5438

Level 3, 5b Sheridan St, Cairns QLD 4870

PO Box 7230, Cairns QLD 4870

From: OFFNER Sarah

Sent: Tuesday, 4 October 2016 4:42 PM

To: 'Tony Croke'

Cc: CAVICCHIOLO Mark

Subject: RE: Emergency Work Query for Cooktown Sea Wall

Tony,

Thanks for the info below. I can confirm a Show Cause Notice was issued by the department in relation to non-compliance with DA conditions. The various reports provided by council have been in response to this. An enforcement notice has not been issued to date, and is under consideration based on the information provided in the final CTPI 49-Sc report (dated 19 September 2016).

We will review the suggested emergency exemptions below and update you if we decide to progress down this path.

Kind regards,



Sarah Offner

A/Team Leader (Compliance)

Minerals and North Queensland Compliance | Environmental Services and Regulation

Department of Environment and Heritage Protection

P 07 4222 5438

Level 3, 5b Sheridan St, Cairns QLD 4870

PO Box 7230, Cairns QLD 4870

From: Tony Croke [<mailto:Tony.Croke@dilgp.qld.gov.au>]

Sent: Tuesday, 4 October 2016 3:36 PM

To: OFFNER Sarah; CAVICCHIOLO Mark

Cc: Brett Nancarrow; PRENZLER Paul; BIRCH Kerynne

Subject: Emergency Work Query for Cooktown Sea Wall

Hi Sarah, Mark and others

Thank you for your input into this morning's pre-lodgement meeting for the Cooktown sea wall.

Robert Uebergang from Cook Shire Council asked if emergency works could be carried out in parallel with the assessment process. That is proceed with the remediation of the sea wall as a risk management approach prior to the risk of storm events in the wet season. We gave an undertaking to look into this aspect. I did not want to provide comments during the meeting without appropriately considering the options and DEHP's views.

There are several potential avenues in the *Sustainable Planning Act 2009* (SPA) for carrying out emergency works or repairs / rectification if the works are dangerous.

1. Section 585 of SPA provides for an Coastal emergency exemption for operational work that is tidal works. The circumstances include emergency work to ensure the structural safety of an existing structure for which there is a development permit or the operation or safety of community infrastructure. Section 585 also requires a safety management plan and a development application. The risk with this avenue is that if the application is refused, the exemption ceases to apply and the person must remove the emergency work as soon as practicable.
2. Section 584 of SPA provides for a General exemption for emergency development or use. This does not apply to work that is not tidal works ie section 585 applies.
3. An enforcement notice issued under section 590 of SPA may require that works are rectified or repaired if the assessing authority reasonably believes that the work is dangerous. An enforcement notice may also require a person to apply for a development permit, amongst other things. An assessing authority need not give a show cause notice if it reasonably considers it is not appropriate in the circumstances eg go straight to an enforcement notice instead. An example is urgent action is necessary to address a danger to public health or safety.

Nothing in the material that I have indicates that DEHP has issued a show cause notice or an enforcement notice. Could you confirm this is the case?

4. Section 604 of SPA also provides for the planning and environment court to make an enforcement order. This matter seems able to be resolved without recourse to the courts.
5. Section 599 provides for the Magistrates Court to make an order, in relation to a development offence. I presume that a prosecution has not been initiated for this matter?

Of the above options, section 585 Coastal emergency works appears to be the most relevant avenue to consider. A key question is whether this is an emergency and if it may lead to a perceived precedent. This is something that State agencies need to consider. There is also the risk that council may have to redo the work if the application is refused. This is a risk that council would need to consider in its decision making.

Could you please provide comments from DEHP about the above options, in particular with regards to option 1, in conjunction with the technical agency comments for the pre-lodgement minutes (draft to follow). Any other comments are welcome.

Kind regards

Tony Croke

Principal Planning Officer

(Monday 10am – 4:45pm, Tuesday 8:45am – 4.15pm, Wednesday 9.15am to 12:30pm and Friday 9am – 4.15pm)

Far North Queensland Regional Office

Planning and Development Services

Department of Infrastructure Local Government and Planning

Queensland Government

NEW tel +61 7 403 73205

fax +61 7 4048 1122

post PO Box 2358 Cairns QLD 4870

visit Cnr Grafton and Hartley St, Cairns

E: Tony.Croke@dilgp.qld.gov.au or CairnsSARA@dilgp.qld.gov.au

Web: www.dilgp.qld.gov.au

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Notice

Sustainable Planning Act 2009

Show cause notice

This show cause notice is issued by the administering authority pursuant to sections 588 and 589 of the Sustainable Planning Act 2009.

Cook Shire Council
10 Furneaux Street
PO Box 3
Cooktown, QLD 4895

Attention: Mr Tim Cronin
Email: t.cronin@cook.qld.gov.au

Your reference: SRDA00429914 / SPD-0414-006809

Our reference: CR70795

12 February 2016

Dear Mr Cronin

Note: that under the *Sustainable Planning Act 2009* (the Act) a show cause notice is issued to Cook Shire Council (you) by the administering authority. The administering authority is the Chief Executive of the Department of Environment and Heritage Protection (the department).

The show cause notice is issued in respect to your activities at the Webber Esplanade development on land described as lot numbers 82 on BS246 and Lot 83 on BS161, and adjacent waters of the Endeavour River, situated at Webber Esplanade (the site) for which you are responsible (the premises).

A. Grounds

The show cause notice is issued because the department has a reasonable belief that you have committed a development offence based on the following grounds:

- The department has formed a reasonable belief that you have committed an offence against section 580 of the *Sustainable Planning Act 2009*.
- It is alleged that a *number* of conditions of Development Approval SPD-0414-006809 have been breached including conditions 1, 2 and 13.

The facts and circumstances forming the basis for these grounds are:

- On 26 October 2015 the department received a complaint alleging the structures built by Cook Shire Council on the site, were not built in accordance with development approval plans and conditions.

- The department investigated the complaint in November and December 2015, and the investigations revealed that the complaint appears to be substantiated. . In particular, the slope of the constructed seawall is of a steeper grade in some places than approved, the geotextile lining appears not to have been installed behind the wall in all or some areas and the as-constructed footprint of the seawall does not align with the approved drawings.
- This represents a contravention of conditions 1, 2, and 13 of development approval SPD-0414-006809
- It is an offence to contravene a condition of a development approval pursuant to section 580 of the *Sustainable Planning Act 2009*.
- The department reasonably believes that a person has committed, or is committing, a development offence and the department intends to issue an enforcement notice under section 588 of the *Sustainable Planning Act 2009*.

B. Requirements

Note: that prior to the department giving you an enforcement notice you are invited to show cause why an enforcement notice should not be given to you. You may make representations to the department about the show cause notice as follows:

- The representations must be made in writing.
- The representations must be sent to:
Department of Environment and Heritage Protection
Level 3, 5B Sheridan Street
PO Box 7230
CAIRNS QLD 4870 or
ESTownsville@ehp.qld.gov.au
- The representations must be made by 14 March 2016

Note:

- The requirements of the show cause notice take effect immediately upon service of the notice.
- This notice remains in force until further notice from the administering authority.

Should you have any queries in relation to this notice, please contact Calvin Quick of the department on telephone number (07) 4222 5161

Show cause notice

CTPI 49-Sch4

Signature

12 February 2016

Date

Enquiries:

Department of Environment and Heritage
Protection

5B Sheridan Street,

Cairns QLD 4870

Ph: (07) 4222 5161

Email: calvin.quick@ehp.qld.gov.au

Tim Brain

Manager Compliance

Department of Environment and Heritage Protection

Coastal Protection and Management Act 1995

Published on DES Disclosure Log
RTI Act 2009

Our ref: TC:kn
Your ref: D16/12984

21 October 2016

Mr Rob Lawrence
Executive Director
Environmental Services and Regulation
Department of Environment and Heritage Protection
PO Box 7230
Cairns QLD 4870

Dear Rob

Webber Esplanade Seawall, Cooktown

I refer to your letter 4 August 2016 in respect of this matter.

You advised:

"that any modifications to the seawall may trigger either an amendment to the Development Approval or a Material Change of Use application, pursuant to the Sustainable Planning Act 2009."

I, along with Cook Shire Council Director Infrastructure Services, had a pre-lodgement meeting with Planning and Development Services officers 4 October 2016. EHP departmental officers attended the meeting.

During the course of the meeting, Council was advised that the minimum timeframes for approval of a permissible change to the current development approval would be four months. Concern was raised by Council in respect of these timeframes. Specifically, Council was concerned by the risks associated with the rock wall in the impending storm season. The Australian Tropical Cyclone Outlook for 2016-17 is that:

"an average to above average number of cyclones are expected for the 2016-17 Australian tropical cyclone season."

In addition, the optimal time for the proposed remediation work is in the coming months when winds are lighter as opposed to the conditions from May on where strong south-easterly winds prevail.

Council advised at the meeting that it was in a position to commence remediation immediately based on the Innovative Expertise CTPI 49-Sch4 Final Report and sought advice as to whether the SPA provided any mechanism to allow this to occur.

Subsequent meetings with EHP and formal advice from ILGP advised that Council could potentially proceed under section 585 of the SPA which provides for emergency works.



Council has sought planning and legal advice in respect of the application of Section 585 of the SPA. Reel Planning advised Council:

We wish to draw Council's attention to Section 585 of the SPA dealing with Coastal Emergency Exemption for Operational Work That is Tidal Work. The provision provides for a person (in this case, the Council) to undertake emergency work, being operational work involving tidal work, subject to certain circumstances applying and prerequisites being met as outlined in the provision.

In support of this exemption being applied to the proposed Webber Esplanade sea wall rectification works recommended by CTPI 49-Sch, we note that with the impending cyclone season (which is forecast to have an average to above-average number of cyclones) ¹, the emergency work on the seawall is likely to be necessary to ensure the following elements are not likely to be endangered by a coastal emergency:

(i) the structural safety of existing structures not least being the existing sea wall;

(ii) the structural safety of existing buildings in the foreshore project which have been developed at considerable cost to the community; and

(iii) the safety of community infrastructure which has been developed at considerable cost to the community.

Council is cognisant of the legislative requirement in respect of proceeding with works under Section 585 of the SPA. These include:

- Preparation of, and compliance with a safety management plan
- Ensuring that emergency works and related structures are in a safe condition
- Involvement of an RPEQ
- Preparation of a development application for a development permit for operational works (tidal works) as soon as practical after commencing emergency works

At a special meeting of the Cook Shire Council held 14 October 2016, the following resolution was passed:

Council proceed to adopt a resolution to undertake the necessary works in accordance with the recommendations of CTPI 49-Sch subject to all necessary preliminary steps being undertaken as outlined below and as required by the Department in communications to and meetings with Council.

Council is now proceeding to engage relevant engineering consultants, project management resources, and contractors to commence the works.

The immediate works/ actions proposed and associated timing follows:

Engagement of Royal Haskonning DHV to complete site inspection and review of the Webber Esplanade revetment wall and associated structures, including Mt Amos quarry visit (revetment wall rock source) and discussion with the proposed contractor for rock placement works to the revetment wall. This has been scheduled for 27-28 October 2016.

- Engagement of Royal Haskonning DHV (RPEQ) to complete a safety management plan for emergency works and provide additional design, plans (including a risk management plan and stormwater/ drainage plan) and information required (including detail of armour rocks to be used) to complete application for a permissible change to the current development approval. These items are to be submitted to the assessment manager as soon as reasonably practical. These works are scheduled for October/ November 2016.
- Engagement of Royal Haskonning to undertake required supervision necessary to provide RPEQ certification of the revetment wall remediation works, and sheet pile marina (if required). These works are scheduled to run concurrent with the construction works.
- Engagement of contractors to supply appropriate rock to site and undertake construction emergency works to remediate the revetment wall, and sheet pile marina (if required). Specific construction works include (1) remediation of the revetment wall by removing smaller armour rocks and replacing these with larger 1-3 tonne armour rocks along the length of the sea wall (refer CTPI 49-Sch4 Final Report); and (2) placing armour rock in front of the marina sheet pile wall (if required – refer CTPI 49-Sch4 Final Report). These construction works are scheduled for commencement in November 2016, with a works duration estimated at three months with completion February-March 2017.

I also wish to note that it is proposed to progress works on the Webber Esplanade site in coming months that are able to be completed under the current development approval including road works, profiling of finished levels to site, filling of the tidal pool, and remediation of a piping line at the corner of the tidal pool.

Based on the above outline Council seeks DEHP's in principal support to proceed as proposed with emergency works.

Should you wish to discuss any of the above matters, please contact me.

CTPI 49-Sch4

Tim Cronin

CEO Cook Shire Council

Cc

Mr Terry Reid NRM

Ms Maree Parker DSD

Mr John O'Halloran ILGP

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Appendix 1

Sustainable Planning Act 2009

Section 585

585 Coastal emergency exemption for operational work that is tidal works

(1) This section applies to operational work (the **emergency work**) if all of the following circumstances apply—

- (a) the emergency work is tidal works;
- (b) other than for this section, a development permit or compliance permit would have been required to carry out the emergency work;
- (c) the emergency work is necessary to ensure the following are not, or are not likely to be, endangered by a coastal emergency—
 - (i) the structural safety of an existing structure for which there is a development permit or compliance permit for operational work that is tidal works; or
 - (ii) the life or health of a person; or
 - (iii) the structural safety of a building; or
 - (iv) the operation or safety of community infrastructure that is not a building.

(2) Sections 575, 576, 578, 580 and 582 do not apply to a person who carries out the emergency work if—

- (a) the person has made a safety management plan for the emergency work, after having regard to the following matters—
 - (i) the long-term safety of members of the public who have access to the emergency work or any structure to which the emergency work relates;
 - (ii) if practicable, the advice of any registered professional engineer who has conducted an audit of any structure to which the emergency work relates; and
- (b) the person complies with the safety management plan; and
- (c) the person takes reasonable precautions and exercises proper diligence to ensure the emergency work, and any structure to which the emergency work relates, are in a safe condition; and
- (d) without limiting paragraph (c), the person commissions a registered professional engineer to conduct an audit of any structure to which the emergency work relates, to ensure the emergency work and the structure are in a safe condition; and
- (e) as soon as reasonably practicable after starting the emergency work, the person—
 - (i) makes a development application for any development permit, or a request for compliance assessment for any compliance permit, that would otherwise be required for the work; and
 - (ii) gives the assessment manager for the application, or the compliance assessor for the request, written notice of the work and a copy of the safety management plan.

(3) However, subsection (2) does not apply if the person is required by an enforcement notice or order to stop carrying out the emergency work.

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(4) Also, subsection (2) ceases to apply if the development application is refused.

(5) If, under subsection (4), subsection (2) ceases to apply, the person must remove the emergency work as soon as practicable.

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RTI Act 2009

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Date : 14/11/2016 3:50:15 PM

From : "Robert Uebergang"

To : "CAVICCHIOLO Mark"

Cc : "SULLIVAN Scott" , "BRAIN Tim (EHP)" , "OFFNER Sarah" , "Tim Cronin" , CTPI 49-Sch4

Subject : RE: cm-no-spa-enforcement-notice _FINAL 11-11-16 (3)_PP (3) (2)

Hi Mark,

Thanks for granting additional time as requested.

Royal Haskonning are undertaking preliminary design works and will respond to Cook Shire Council in regard particularly to B. Requirements 1. and 2.a. by Thursday morning. I will provide Cook Shire comment by COB Thursday.

Regards,

Robert Uebergang | Director | Infrastructure Services
Cook Shire Council

Phone | 07 4069 5444 **Fax** | 07 4069 5423

Email | RUebergang@cook.qld.gov.au **Website** | www.cook.qld.gov.au

Address | 10 Furneaux Street (PO Box 3), Cooktown, Qld, 4895

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From: CAVICCHIOLO Mark [mailto:Mark.Cavicchiolo@ehp.qld.gov.au]

Sent: Monday, 14 November 2016 2:30 PM

To: Robert Uebergang <RUebergang@cook.qld.gov.au>

Cc: SULLIVAN Scott <Scott.Sullivan@ehp.qld.gov.au>; BRAIN Tim (EHP) <Tim.Brain@ehp.qld.gov.au>; OFFNER Sarah <Sarah.Offner@ehp.qld.gov.au>

Subject: RE: cm-no-spa-enforcement-notice _FINAL 11-11-16 (3)_PP (3) (2)

Hi Robert, as discussed, just confirming that COB Thursday is satisfactory for providing comments on the draft enforcement notice. Please provide your comments by this date at the very latest.

From: Robert Uebergang [mailto:RUebergang@cook.qld.gov.au]

Sent: Monday, 14 November 2016 12:18 PM

To: Tim Cronin

Cc: CAVICCHIOLO Mark

Subject: FW: cm-no-spa-enforcement-notice _FINAL 11-11-16 (3)_PP (3) (2)

Tim,

Will require to COB Thursday to review draft in liaison with Royal Haskonning and then provide comment on same. Some of the issues in particular will be around timing of change in permissible use application and RPEQ deliverables,

Regards,

Robert Uebergang | Director | Infrastructure Services
Cook Shire Council

Phone | 07 4069 5444 **Fax** | 07 4069 5423

Email | RUebergang@cook.qld.gov.au **Website** | www.cook.qld.gov.au

Address | 10 Furneaux Street (PO Box 3), Cooktown, Qld, 4895

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From: Tim Cronin

Sent: Monday, 14 November 2016 7:55 AM

To: Robert Uebergang <RUebergang@cook.qld.gov.au>

Subject: FW: cm-no-spa-enforcement-notice _FINAL 11-11-16 (3)_PP (3) (2)

FYI. Can you review and provide comment.

Thanks

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so AE| tcronin@cook.qld.gov.au d yeFQy | www.cook.qld.gov.au
: jjiyFF | 10 Furneaux Street (PO Box 3), Cooktown, Qld, 4895

Ti no t CAVICCHIOLO Mark [mailto:Mark.Cavicchiolo@ehp.qld.gov.au]
hy & Friday, 11 November 2016 4:24 PM
rnt Tim Cronin
nkt SULLIVAN Scott; OFFNER Sarah
hSeuykG cm-no-spa-enforcement-notice_FINAL 11-11-16 (3)_PP (3) (2)

Hi Tim, please find attached a draft enforcement notice for the Webber Esplanade, for your review prior to its finalisation. It would be appreciated if you could provide any comments by COB Monday; please let me know if you need more time to review.

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RTI Act 2009

Date : 14/11/2016 2:29:38 PM
From : "CAVICCHIOLO Mark"
To : "Robert Uebergang"
Cc : "SULLIVAN Scott" , "BRAIN Tim (EHP)" , "OFFNER Sarah"
Subject : RE: cm-no-spa-enforcement-notice _FINAL 11-11-16 (3)_PP (3) (2)

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Tim
hy & Monday, 14 November 2016 12:18 PM
rnt Tim Cronin
nkt CAVICCHIOLO Mark
hSeuyk& FW: cm-no-spa-enforcement-notice _FINAL 11-11-16 (3)_PP (3) (2)

Tim,

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Regards,

Robert Uebergang | Director | Infrastructure Services
Cook Shire Council

Phone | 07 4069 5444 **Fax** | 07 4069 5423
Email | RUebergang@cook.qld.gov.au **Website** | www.cook.qld.gov.au
Address | 10 Furneaux Street (PO Box 3), Cooktown, Qld, 4895

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From: Tim Cronin
Sent: Monday, 14 November 2016 7:55 AM
To: Robert Uebergang <RUebergang@cook.qld.gov.au>
Subject: FW: cm-no-spa-enforcement-notice _FINAL 11-11-16 (3)_PP (3) (2)

FYI. Can you review and provide comment.

Thanks

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Tim & CAVICCHIOLO Mark [<mailto:Mark.Cavicchiolo@ehp.qld.gov.au>]
hy & Friday, 11 November 2016 4:24 PM
rnt Tim Cronin
nkt SULLIVAN Scott; OFFNER Sarah
hSeuyk& cm-no-spa-enforcement-notice _FINAL 11-11-16 (3)_PP (3) (2)

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Date : 17/11/2016 3:02:33 PM
From : "Tim Cronin"
To : "CAVICCHIOLO Mark"
Cc : "SULLIVAN Scott" , "OFFNER Sarah" , "Robert Uebergang"
Subject : RE: cm-no-spa-enforcement-notice _FINAL 11-11-16 (3)_PP (3) (2)
Attachment : cm-no-spa-enforcement-notice _FINAL 11-11-16 (3)_PP (3) (2) (002).RU rev....docx;
Mark,

Thank you for opportunity to provide comment on the draft enforcement notice. I have attached a suggested marked up version of the enforcement notice, refer section B. REQUIREMENTS in particular.

The changes are based around the following parameters:

1. Armour rock remediation in accord with the recommendations from the CTPI 49-S Final Report 19 Sep 2016
2. CTPI 49-S Final Report 19 Sep 2016 noting that *Analysis of those waves has established that it should be possible with an upgraded seawall to withstand a 50 year return period event with 5% to 10% damage.* With the empirical nature of the analysis it is not possible for Cook Shire Council definitive agreement to the requirement (as per the draft enforcement notice) for *the rock armour of the sea wall must be repaired to withstand a combined 1:50 average recurrence interval wave level and a 1:20 average recurrence interval water level with less than 10% damage*
3. Timeframes around deliverables as noted in the revised draft enforcement notice are dependent on defining what is to be delivered, and reaching agreement on same. The timeframes noted are based on reaching a swift agreement in accord with parameter 1. to enable Cook Shire Council to lock in definition of remediation and scheduling same with contractors and suppliers.

With the importance of these seawall issues to the Cook Shire community and a pending cyclone season, I request a meeting with DEHP to finalise enforcement notice requirements at earliest opportunity to enable the planned progression of works,

Regards

Timothy Cronin | CEO |
Cook Shire Council

Phone | 07 4082 0524
Mobile | CTPI 49-Sch
Email | tcronin@cook.qld.gov.au Website | www.cook.qld.gov.au
Address | 10 Furneaux Street (PO Box 3), Cooktown, Qld, 4895

From: CAVICCHIOLO Mark [mailto:Mark.Cavicchiolo@ehp.qld.gov.au]
Sent: Friday, 11 November 2016 4:24 PM
To: Tim Cronin
Cc: SULLIVAN Scott; OFFNER Sarah
Subject: cm-no-spa-enforcement-notice _FINAL 11-11-16 (3)_PP (3) (2)

Hi Tim, please find attached a draft enforcement notice for the Webber Esplanade, for your review prior to its finalisation. It would be appreciated if you could provide any comments by COB Monday; please let me know if you need more time to review.

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Notice

Sustainable Planning Act 2009

Enforcement notice

This enforcement notice is issued by the administering authority pursuant to section 590 of the Sustainable Planning Act 2009.

Chief Executive Officer
Cook Shire Council
10 Furneaux Street
COOKTOWN Q 4895

Your reference: IPDC00316505D11/ SPD-0414-006809

Our reference: CR70795, 070/0000576

11 November 2016

Dear Mr Cronin,

Note: that under the *Sustainable Planning Act 2009* (the Act) an enforcement notice is issued to Cook Shire Council (you) by the administering authority. The administering authority is the Chief Executive of the Department of Environment and Heritage Protection (the department).

The enforcement notice is issued in respect to the activities of Cook Shire Council at the Cooktown Foreshore and Webber Esplanade Revitalisation Project on land described as lots 1 and 2 on SP287194 (formerly lot 82 on BS246), and lot 83 BS161 at the Webber Esplanade, Cooktown (the premises).

A. Grounds

The enforcement notice is issued on the following grounds:

- The department has a reasonable belief that you have committed or are committing a development offence namely, that you are in breach of section 580 of the Act.
- A show cause notice was issued to you on 12 February 2016.
- The department has considered your representations and believes that it is appropriate to issue the enforcement notice in the circumstances.

The facts and circumstances forming the basis for these grounds are:

- Cook Shire Council is the holder of development approval IPDC00316505D11 as amended by permissible changes in SPD-0414-006809 (the development approval).
- The development approval is for *Operational Work (tidal works in, on, or above tidal waters – revetment wall)*, at former lot 82 on plan BS246 (now lots 1 and 2 on plan SP287194), and lot 83 on plan BS161; at the Webber Esplanade, Cooktown, Q 4871 (the works).
- A community complaint was received by the department on 25 October 2015 which alleged the works did not comply with conditions of the approval. The matters of concern were:

- that the seawall was not constructed as per the original design and was not in its designed location;
 - a geotechnical survey had not been undertaken;
 - the slope of the seabed where the seawall was constructed was steeper than shown in the design plans;
 - mud layers overlying the bedrock were not removed before construction of the seawall;
 - rock layers were not placed as per design or size and there is unknown packing density of the armour and filter layers;
 - there was lack of project supervision by consultants during construction; and
 - there was damage to the rock armouring after Cyclone Ita.
- Following further investigation, officers of the department formed a reasonable belief that there was a breach of conditions 1, 2 and 13 of the development approval.
- It is an offence to contravene a condition of a development approval pursuant to section 580 of the *Sustainable Planning Act 2009*.
- A show cause notice was issued to Cook Shire Council on 12 February 2016, pursuant to section 588 of the *Sustainable Planning Act 2009*, for a breach of conditions 1, 2 and 13 of the development approval, and invited representations about the alleged breaches.
- Cook Shire Council has engaged consultants GHD and CTPI 49-Sch4 to review the works and has provided the department the reports prepared by these consultants. The reviews confirmed the allegations that the works were not completed in accordance with conditions of the approval. The matters of concern noted were:
 - the seawall is not on the alignment in the approved “as built” plans;
 - the rock armouring is undersized and not well interlocked;
 - rock used for armouring varies and the material properties of some rock are unsuitable for this application;
 - the seawall is lower than originally designed with a risk of overtopping;
 - the sheet-piling at the marina and at the tidal lagoon has the potential to fail;
 - the geotextile fabric was not installed behind the seawall;
 - there is evidence of tidal connectivity through the seawall into the tidal lagoon;
 - there is evidence of piping, scour and sinkholes near the tidal lagoon; and
 - the structure does not comply with the departmental Operation Policy for Tidal Works.
- These reported findings confirm a breach of conditions 1, 2 and 13 of the development approval.
- In accordance with condition 3 of the development approval, Cook Shire Council engineer, Tony Lickiss (RPEQ), provided a statutory declaration to the department, signed on 24 June 2014, that: the works were constructed in accordance with the approved drawings; that the works are fit for purpose; and the works comply with the departmental Operational Policy for Tidal Works. It is alleged that this statement is false, based on the review findings.
- Cook Shire Council has proposed rectification works as presented in the final review report by CTPI 49-Sch4 dated 19 September 2016.
- Given the concerns identified by the consultants engaged by council to investigate the works, it seems reasonable to believe that under storm conditions the works may be regarded as dangerous.

- In accordance with section 592(h) of the Act, it is appropriate that Cook Shire Council be required to repair and rectify the works as specified in the *Requirements* below to make the works safe and to maintain the works in a safe condition.
- In accordance with section 592(f) of the Act, it is appropriate that Cook Shire Council be required to apply for a development permit for the repair and rectification works to ensure that works are undertaken in accordance with a properly certified design that is consistent with relevant engineering standards for tidal works.

B. Requirements

You are required to do the following:

1. By 31 ~~March~~ May 2017, the rock armour of the sea wall ~~must is to~~ be repaired ~~to withstand a combined 1:50 average recurrence interval wave level and a 1:20 average recurrence interval water level, with less than 10% damage in accord with the recommendations outlined in the report Cooktown Foreshore Development - Technical Review – Final Report prepared for Cook Shire Council by CTPI 49-Sch4 dated 19 September 2016.-~~
 2. By ~~7 April~~ 30 June 2017, you must provide written certification, from a suitably qualified Registered Professional Engineer of Queensland (RPEQ) that the following repair and rectification works have been completed as specified below:
 - a. The rock armour is repaired ~~in accord with the recommendations outlined in the report Cooktown Foreshore Development - Technical Review – Final Report prepared for Cook Shire Council by CTPI 49-Sch4 dated 19 September 2016.~~ ~~to withstand a combined 1:50 average recurrence interval wave level and a 1:20 average recurrence interval water level, with less than 10% damage.~~
 - b. The rock armouring and other aspects of the sheetpile walls and lagoon are repaired to address identified concerns in the report *Cooktown Foreshore Development - Technical Review – Final Report* prepared for Cook Shire Council by CTPI 49-Sch4 dated 19 September 2016. The concerns identified, and for which repair or rectification is required, include, but are not limited to:
 - i. rock interlocking, rock size, and rock type suitability;
 - ii. the seawall slope, which needs to meet a maximum slope of 1 horizontal to 2 vertical;
 - iii. the marina sheetpile wall to ensure the structure is made safe.
 - iv. the piping and overland scour of sediment, particularly in the area of the tidal lagoon so that the release of sediments does not occur.
- As-constructed plans of the seawall following completion of the works and construction certification by an RPEQ, must include that the repair works undertaken comply with the recommendations of the *Cooktown Foreshore Development - Technical Review – Final Report* prepared for Cook Shire Council by CTPI 49-Sch4 dated 19 September 2016.
3. By ~~1 December~~ 6 February 2017 ~~2016~~, Cook Shire Council must prepare and submit to EHP a procedure for managing the ongoing safety and integrity of the sea wall and must include at least:
 - a. An annual review of the sea wall.
 - b. A review following any extreme weather event.

- c. Annual and event-based reviews must be undertaken by a suitably qualified person. (The reviews must incorporate the collection of sufficient information to monitor and measure the structural integrity of the works; ensure that required repairs are identified and promptly undertaken; and that any potential impacts on coastal resources are identified and addressed.)
- d. A procedure for closing the site to access by people and managing public risk during and after an extreme weather event.
4. By ~~1 December 2016~~ 16 February 2017, you are required to submit a valid application, pursuant to the relevant provisions of the *Sustainable Planning Act 2009*, for the sea wall (including any works to repair or rectify the structure). The application must incorporate plans depicting the proposed works, signed by a suitably qualified RPEQ.
(Note that section 595 of the *Sustainable Planning Act 2009* is relevant to this requirement.)

Note:

- The requirements of the enforcement notice take effect immediately upon service of the notice.
- This notice remains in force until further notice from the administering authority.

C. Appeal rights

You may appeal the decision to issue the enforcement notice to either a building and development dispute resolution committee or the Planning and Environment Court within 20 business days after the day the enforcement notice is given to you.

This information regarding review and appeal under the Act is intended as a guide only. You may have other legal rights and obligations and should seek and be guided by your own legal advice.

D. Penalties

Failing to comply with an enforcement notice is an offence.

- The maximum penalty for an individual is 1665 penalty units, totalling \$202,963.50.
- The maximum penalty for a corporation is 8325 penalty units, totalling \$1,014,817.50.

Should you have any queries in relation to this notice, please contact Sarah Offner of the department on telephone number 07- 4222 5438.

Signature

Date

Tim Brain
Manager (Compliance)
Department of Environment and Heritage Protection
Sustainable Planning Act 2009

Enquiries:

Department of Environment and heritage
Protection
Attention: Sarah Offner
Ph: (07) 4222 5438
Email: Sarah.Offner@ehp.qld.gov.au

Published on DES Disclosure Log
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Date : 19/12/2016 4:44:16 PM

From : "BURLEY Kylie"

To : "OFFNER Sarah"

Subject : FW: Cook Shire Council Rock Revetment Wall

Attachment : Webber response.docx;image001.png;image002.png;image004.png;



Kylie Burley
Executive Assistant
Minerals and North Queensland Compliance
Department of Environment and Heritage Protection

P 07 4222 5326
Level 3, 5B Sheridan St, Cairns
PO Box 7230, Cairns QLD 4870

From: BURLEY Kylie **On Behalf Of** LAWRENCE Rob
Sent: Friday, 11 November 2016 3:07 PM
To: Tim Cronin <TCronin@cook.qld.gov.au>
Subject: RE: Cook Shire Council Rock Revetment Wall

Dear Mr Cronin

Please find attached letter from Rob Lawrence regarding your letter of 21 October 2016. The original letter has been posted to you.

Kind regards



Kylie Burley
Executive Assistant
Minerals and North Queensland Compliance
Department of Environment and Heritage Protection

P 07 4222 5326
Level 3, 5B Sheridan St, Cairns
PO Box 7230, Cairns QLD 4870

From: Tim Cronin [<mailto:TCronin@cook.qld.gov.au>]
Sent: Friday, 21 October 2016 3:32 PM
Subject: RE: LAWRENCE Rob
John O'Halloran (John.O'Halloran@dilgp.qld.gov.au); REID Terry; Maree Parker <Maree.Parker@dsd.qld.gov.au> (Maree.Parker@dsd.qld.gov.au)
Subject: Cook Shire Council Rock Revetment Wall

Rob

As discussed, please find attached an update on the current status of the rock revetment wall.

Please contact me should you wish to discuss any matters.

Regards

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al m yM 07 4082 0524
Wned yM CTPI 49-Sch4
so Ae | tcronin@cook.qld.gov.au | www.cook.qld.gov.au
: jji yFF | 10 Furneaux Street (PO Box 3), Cooktown, Qld, 4895



Department of
**Environment and
Heritage Protection**

Ref CA41069

11 November 2016

Mr Tim Cronin
CEO Cook Shire Council
PO Box 3
COOKTOWN QLD 4895

Dear Mr Cronin

Thank you for your letter dated 21 October concerning the Webber Esplanade Seawall, Cooktown.

I note the advice that you have provided in relation to the pre-lodgement meeting, minimum timeframes for approval and Council's concerns regarding the risks associated with the rock wall during the impending storm season.

I also acknowledge that you have subsequently received planning and legal advice in respect to the application of the Emergency Works provisions pursuant to Section 585 of the *Sustainable Planning Act 2009* (SPA).

In responding to your request seeking 'in principal support' from the Department of Environment and Heritage Protection (the department) to proceed as proposed, I can advise that the department raises no objection to the application of Section 585 of SPA under the current circumstances.

Notwithstanding this, it is important to recognise that the original matter of contravening multiple conditions of a development approval was brought to the department's attention as a compliance matter by way of complaint. The compliance matter and as a consequence, the SPA Show Cause Notice of 12 February 2016 are still open matters requiring final resolution.

As previously discussed in the Cairns Office on 17 August 2016, it is still the department's view that an Enforcement Notice under Section 588 of SPA is the most appropriate enforcement tool to bring transparent closure to the development offence.

To this end, the department is currently finalising an enforcement notice requiring Council to complete the proposed scope of works within a reasonable timeframe to ensure that despite

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any emergency or other approved work, that the matters identified in the grounds of the Show Cause Notice of 12 February 2016 are resolved to a final state of approved coastal development.

Should you have any further enquiries, please contact Mr Scott Sullivan, Program Manager Compliance of the department on telephone (07) 4722 5200.

Yours sincerely

Rob Lawrence
Executive Director

Published on DES Disclosure Log
RTI Act 2009

Date : 22/11/2016 1:01:58 PM

From : "Tony Croke"

To : "Brett Nancarrow" , "Sara-EHP" , "CAVICCHIOLO Mark" , "BIRCH Kerynne" , "SIMMONS Anthony" , "PRENZLER Paul" , "OFFNER Sarah" , "WOODWARD Andrew" , "ROWE Charles" , "MOSS Marianne" , "BRAIN Tim (EHP)" , "michael.a.barnett@msq.qld.gov.au"

Cc : "STEWART Richard" , "MSQ_IDAS_Cairns@msq.qld.gov.au" , "Planning Services North DA"

Subject : FW: Copy of Pre-lodgement meeting record and further advice - SPL-0916-033716 - Cooktown Sea Wall - Webber Esplanade

Attachment : SPL-0916-033716 - N6-T2-Pre-lodgement meeting record.pdf;image001.jpg;

SARA reference; - SPL-0916-033716

Dear MSQ, DEHP, DNRM and MSQ

For your records please find attached a copy of the final pre-lodgement meeting record and further advice for the Cooktown Sea Wall for the Webber Esplanade. This was sent to Cook Shire Council on 17 October 2016.

I apologise if I have already sent this to you.

Kind regards

Tony Croke

Principal Planning Officer

(Monday 10am – 4:45pm, Tuesday 8:45am – 4.15pm, Wednesday 9.15am to 12:30pm and Friday 9am – 4.15pm)

Far North Queensland Regional Office - Ph: ~~07~~ 4048 1122

Department of Infrastructure Local Government and Planning

From: Tony Croke

Sent: Tuesday, 22 November 2016 12:58 PM

To: 'Tim Cronin'

Subject: Copy of Pre-lodgement meeting record and further advice - SPL-0916-033716 - Cooktown Sea Wall - Webber Esplanade

Hi Tim

As requested please find attached a copy of the Pre-lodgement meeting record and further advice for the Cooktown Sea Wall on the Webber Esplanade.

The original was emailed to Robert Uebergang on 17 October 2016.

Kind regards

Tony Croke

Principal Planning Officer

(Monday 10am – 4:45pm, Tuesday 8:45am – 4.15pm, Wednesday 9.15am to 12:30pm and Friday 9am – 4.15pm)

Far North Queensland Regional Office

Planning and Development Services

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o L v s P O B o x 2358 Cairns QLD 4870

N v s C n r G r a f t o n a n d H a r t l e y S t , C a i r n s

4: Tony.Croke@dilgp.qld.gov.au or CairnsSARA@dilgp.qld.gov.au

0 b: www.dilgp.qld.gov.au

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Our reference: SPL-0916-033716
Your reference:

17 October 2016

Chief Executive Officer
Cook Shire Council
PO Box 3
Cooktown QLD 4895

Att: Mr Robert Uebergang

Dear Sir

Pre-lodgement meeting record—proposed development

9 Webber Esplanade and 27 Webber Esplanade, Cooktown, QLD 4895 – Adjacent to and including Lot 82 on BS246 and Lot 83 on BS161

This pre-lodgement record provides a summary of the matters discussed at the pre-lodgement meeting in addition to providing further advice prepared subsequent to the meeting. This record provides initial advice regarding the likely major issues relevant to the development proposal to assist in the timely processing of a development application. While this pre-lodgement advice is provided in good faith, if the proposal is changed to that which was discussed with the department during the pre-lodgement meeting, this advice is not binding.

Reference information

Departmental role: Assessment manager or Responsible entity

Jurisdiction: Schedule 6, Table 3, Item 6 – Tidal works or works within a coastal management district
OR
Schedule 6, Table 4, Item 1 – Applications involving multiple jurisdictions (Tidal works or works within a coastal management district and Queensland Heritage Place)
AND
Schedule 7, Table 2, Item 15— Tidal works or works within a coastal management district (maritime safety)

Pre-lodgement 04 October 2016

Reference information

meeting date:

Meeting

attendees:

Name	Position	Organisation
Tim Cronin	Chief Executive Officer	Cook Shire Council (CSC)
Robert Uebergang	Director, Infrastructure Services	CSC
Brett Nancarrow	Manager, Planning	Department of Infrastructure Local Government and Planning (DILGP)
Tony Croke	Principal Planner	DILGP
Mark Cavicchiolo	Compliance Delivery Manager	Department of Environment and Heritage (DEHP)
Sarah Offner	A/Team Leader Compliance	DEHP
Kerynne Birch (teleconference)	Manager, Coastal and Marine Assessment	DEHP
Paul Prenzler (teleconference)	Principal Coastal Management Officer	DEHP
Marianne Moss (teleconference)	Principal Heritage Officer	DEHP
Captain Michael Barnett	Cairns Harbourmaster	Maritime Safety Queensland (MSQ)

Site details

Street address: 9 Webber Esplanade, Cooktown, QLD 4895
27 Webber Esplanade, Cooktown, QLD 4895

Real property description: Adjacent to and including Lot 1 on SP287194 (previously Lot 82 on Plan BS246) and Lot 2 on SP287194
Lot 83 on BS161

Local government area: Cook Shire Council

Local government zone: Recreation and Open Space
Community Facilities (Powder Magazine)

Site details

	Unzoned
Existing use:	Webber Esplanade Sea Wall
Relevant site history:	<p>On 15 August 2006 tidal works for the construction of a sea wall was approved by the Environmental Protection Agency. Maritime Safety Queensland was an advice agency. Port Corporation Queensland provided written comment.</p> <p>On 26 May 2014, the former Department of State Development, Infrastructure and Planning issued a notice of decision for a changed approval as responsible entity.</p> <p>On 2 December 2015 the Department of Environment and Heritage Protection (DEHP) wrote to Cook Shire Council (CSC) regarding an investigation into non-compliance with conditions.</p> <p>On 12 February 2016 a show cause notice was issued by DEHP.</p> <p>On 4 August 2016, DEHP wrote to CSC requesting a detailed program of works to improve safety and stability of the sea wall. Advice was also provided that modifications to the sea wall may trigger either an amendment to the development permit or a new application. Pre-lodgement discussions were offered to assist CSC.</p>

Proposed development details

Development type:	Operational work
Development description:	Tidal works or works within a coastal management district to improve safety and stability of the Webber Esplanade sea wall.

Supporting information

Plan / Report title	Author	Reference no.	Version and date
Notice of Decision – Development Approval	Environmental Protection Agency	FN300179	15-Aug-2006
Notice of decision - changed approval	Department of State Development Infrastructure and Planning (DSDIP)	SPD-0414-006809	26 May 2014
Sea wall at Webber Esplanade (letter)	Department of Environment and Heritage Protection (DEHP)		2 December 2015

Plan / Report title	Author	Reference no.	Version and date
Webber Esplanade Seawall, Cooktown	DEHP	070/0000576 CR70795	4 August 2016
Re: Cooktown Foreshore Development – Technical Review – Final Report	CTPI 49-Sch4 Specialist Consultant, Innovative Expertise		19 September 2016

Meeting minutes

Item	Discussion and advice
Preliminaries	
1.	The meeting started at 10:00 am and introductions were made.
2.	The Department of Agriculture and Fisheries (DAF) was invited to the meeting but is not attending. Department of Natural Resources and Mines (DNRM) were not invited to the meeting as it was not a concurrence agency for the approval.
Tenure	
3.	The Department of Environment and Heritage Protection (DEHP) advised that there are owner's consent and tenure issues. Cook Shire Council (CSC) advised that: <ul style="list-style-type: none"> it is working with DNRM to create a reserve and there was provisional approval a survey had been completed there had been a meeting with TOs (Traditional Owners) six weeks ago in relation to Native Title the Bluewater Club had decided to surrender its lease to DNRM on 21 August 2016. The intention is for DNRM to lease the area to CSC who would sub-lease to Bluewater Club. the tenure matters would be resolved in two stages <ul style="list-style-type: none"> Stage 1 – Bluewater Club Stage 2 – subdivision plan to create the reserve.
Overview of Proposal	
4.	The sea wall does not conform to the current approval and remediation works (such as reinforcing) are required. The reference to the approved plans in the approval need to change to reflect what is in place and the remediation works proposed. CSC advised that:

Item	Discussion and advice
	<ul style="list-style-type: none"> the remediation works proposed will achieve a standard of 1:50 storm event with 5 – 10% damage, rather than the DEHP standard of 0 – 5 % there will be a yearly review to see how the sea wall is performing and a review after each event and ongoing maintenance.
Approval Processes	
5.	<p>There are two options to make the existing and remedial works lawful:</p> <ol style="list-style-type: none"> Request a permissible change to the current 2014 development approval Lodge a new development application seeking a new approval. <p>The fee for a permissible change is \$1511.00. The fee for a new development application would be in the thousands.</p> <p><i>Action: The Department of Infrastructure, Local Government and Planning (DILGP) to provide further advice about:</i></p> <ul style="list-style-type: none"> <i>whether it would be accepted as a permissible change or whether a new development application would be required</i> <i>the fees for the request or the application.</i>
3.	<p>CSC asked for an indication of the timeframes for the two processes.</p> <p>DILGP advised that this depends on the quality of the application. A good application could indicatively take:</p> <ul style="list-style-type: none"> Six to eight weeks for a permissible change Two to three months for a new development Approximately four weeks should also be added for native title notification <p>CSC asked for a worst case scenario. DILGP advised that if it was a poor quality development application, an information request may be required and the process could take longer.</p> <p>CSC was concerned that this could mean that it could take five to six months to complete the works.</p> <p><i>Action: DILGP to provide further advice about:</i></p> <ul style="list-style-type: none"> <i>Timeframes for a permissible change request</i> <i>Native title procedural rights (notification).</i>
Maritime safety	
4.	<p>Maritime Safety Queensland (MSQ) advised that its concerns were about the stability of the structure and its influence on access to the channel</p> <p>A general discussion then took place about the CTPI 49-Sch4 report.</p> <p>CSC advised that:</p> <ul style="list-style-type: none"> the remediation works will achieve a standard of 1:50 storm event with 5 – 10% damage there is a low risk of catastrophic failure, it will be slow and can be dealt

Item	Discussion and advice
	<p>with</p> <ul style="list-style-type: none"> the sea wall has been there for two years and been through two cyclones there is no piping or failure <p>MSQ observed that there had been a breach into the tidal lagoon.</p> <p>CSC advised that the sea wall would be shored up by replacing small rocks with big rocks, which would not be as easily dislodged by waves.</p> <p>MSQ advised that substantial rocks had been dislodged in Mackay and that this was unexpected.</p> <p>CSC advised that:</p> <ul style="list-style-type: none"> wave modelling had been done and the waves were smaller (1.7 – 2.1 m) than originally thought (2.7m) the wind fetch was from the north and north-east the water was shallow which dissipated the wave energy. <p>A general discussion took place about the boating community's expectations, dredging of the channel and boat ramps.</p> <p>MSQ advised that the channel had recently been surveyed.</p> <p><i>Action: MSQ to send CSC a copy of the channel survey.</i></p> <p><i>Action: DILGP to send CSC email to MSQ.</i></p>
Heritage	
5.	<p>DEHP advised that:</p> <ul style="list-style-type: none"> The powder magazine is a Queensland Heritage Place. Any works with Lot 83 on BS161 (220m²) will trigger Heritage assessment. Works on the magazine were assessed in 2004 (conservation work) and 2008 (replacement of fretted bricks, desalination of walls, insertion of a chemical damp proof course and the application of sacrificial coatings to masonry walls). Reference was made in the 2014 permissible change to the Pilot's Jetty. This is not currently a Queensland Heritage Place. Section 89 of the <i>Queensland Heritage Act 1992</i> requires that DEHP is notified of the discovery of an archaeological artefact. (http://www.qld.gov.au/environment/land/heritage/archaeology/discoveries/) <p>CSC advised that:</p> <ul style="list-style-type: none"> the history of the sea wall was that the road was being eroded and there was a risk of losing the magazine it was not sure of the lot boundary. There may be roadworks within it. However, the rock wall was quite a distance from the magazine. <p>DEHP advised that:</p>

Item	Discussion and advice
	<ul style="list-style-type: none"> Heritage assessment will be triggered if there are works in Lot 83. This could either be: <ul style="list-style-type: none"> a permissible change or a new development application or an exemption certificate. Regarding future roadworks near the structure the cumulative effect of increased traffic on the heritage place may need to be considered. CSC include all of the works in a permissible change request or a development application; this will mean any of the area enclosed by the wall, which falls within Lot 83. <p>A general discussion took place about the heritage place description of the northern boundary being the high water mark. This description may now need to change. DEHP's Environmental Policy and Planning (EPP) Division is responsible for managing any administrative changes to boundary descriptions. EPP can be contacted via email: heritage@ehp.qld.gov.au</p> <p>Lot 83 on BS161 may still be relied on as the boundary of the heritage place.</p>
Coastal	
6.	<p>The current condition for the development to be generally in accordance with the approved plans and drawings needs to be changed to reflect -</p> <ul style="list-style-type: none"> the as constructed sea wall the remediation works proposed.
7.	<p>The RPEQ (Registered Professional Engineer of Queensland) certification of the sea wall construction is not possible to do retrospectively.</p> <p>In light of this situation, DEHP suggest that a risk management plan be provided that details such things as monitoring, maintenance and public access and safety. This could be based on the recommendations of the CTPI 49-Sch4 report.</p> <p>A general discussion took place about who would prepare this plan and what its contents would be.</p> <p><i>Action: DEHP to provide CSC with more details about the contents of such a risk management plan.</i></p> <p>CSC advised that these matters could also be included in the local disaster management plan.</p>
8.	<p>A general discussion took place that CTPI 49-Sch4 is a Chartered Professional Engineer on the National Engineering Register administered by Engineers Australia but not a RPEQ.</p>
9.	<p>DEHP recommended that the application material provide details about:</p> <ul style="list-style-type: none"> stormwater and drainage to avoid overtopping the wall the source of the armour rocks and details of its durability and suitability for the purpose. For example, the previous work done by GHD.

Item	Discussion and advice
	<p>A general discussion took place about the road and drainage design and a previous on-site meeting. DEHP requested that details of this be provided with the application.</p> <p>CSC advised that the old Mount Carbine mine was being considered as a source of rock. This rock was apparently used in the Port Douglas sea wall. DEHP advised that details of the structural properties and geochemistry of the rock be also provided:</p>
10.	<p>A general discussion also took place about the erosion prone area remaining as it is despite the construction of the sea wall.</p>
11.	<p>DEHP asked for a program of works, when CSC intended to commence works and details of engineering supervision.</p> <p>CSC advised that:</p> <ul style="list-style-type: none"> • it wanted to start work tomorrow • that it had identified the rock and the contractor and was ready to go • that this was subject to getting the necessary approvals • that the works is anticipated to take a couple of months • that a 20 metre section would be done per day • that works would shut down in a storm event • that there would be close engineering supervision early in the process. The engineer is yet to be confirmed. It is unlikely to be CTP1 49-Sch4 and may be Royal Haskonning. • that council resolved in September 2016 to fill the lagoon. This would include excavation to repair the geotextile. <p>DEHP advised that filling in the lagoon would not be tidal works, even though there is piping through the wall.</p> <p>DEHP suggested that the program of works details what CSC planned to do and the timing (duration) for those works. This could include:</p> <ul style="list-style-type: none"> • work that could happen under the existing approval • work that could wait until after an approval is obtained.
12.	<p>DEHP requested a new survey plan for the sea wall.</p> <p>CSC advised there was no change from the survey plan of January 2016.</p> <p>Reference was made to the GHD final report of April 2016.</p> <p><i>Action: DILGP to check if it has a copy of the final GHD report and if not CSC to provide a copy.</i></p>
General Business	
13.	<p>A general discussion took place about the process from here including:</p> <ul style="list-style-type: none"> • DILGP to send written pre-lodgement advice within one to two weeks

Item	Discussion and advice
	<ul style="list-style-type: none"> CSC to prepare development application and expedite the lodgement.
14.	<p>CSC again raised concerns:</p> <ul style="list-style-type: none"> about the timing of the approval and works being delayed the benefits of doing the works when the winds were calmer before they start blowing in April and May the potential impacts of the wet season and cyclones the need to shore up the sea wall as part of risk mitigation. <p>CSC advised that it was critical that the works be done soon and asked if something could be done to accelerate the process.</p> <p>CSC questioned whether it could proceed with remediation as emergency works in the short term, in parallel with an application. CSC considered that this was a pragmatic approach.</p> <p>DILGP advised that it would examine what options were available with regard to carrying out emergency works.</p> <p><i>Action: DILGP to provide further advice in the pre-lodgement minutes about emergency works.</i></p>

It is considered that the above summary is an accurate record of the matters discussed at the pre-lodgement meeting.

The following information is provided as further advice prepared subsequent to the meeting.

Further advice

Item	Further advice
Emergency Works	
1.	<p>The potential avenues in the <i>Sustainable Planning Act 2009</i> (SPA) for carrying out emergency works include:</p> <ul style="list-style-type: none"> Section 585 of SPA provides for a Coastal emergency exemption for operational work that is tidal works. <p>The circumstances include emergency work to ensure the structural safety of an existing structure for which there is a development permit or the operation or safety of community infrastructure.</p> <p>Section 585 also requires a safety management plan and a development application be submitted as soon as possible.</p> <p>A risk with this avenue is that if the application is refused, the exemption ceases to apply and the person must remove the emergency work as soon as practicable.</p> <ul style="list-style-type: none"> Section 584 of SPA provides for a General exemption for emergency development or use.

Item	Further advice
	<p>This does not apply to work that is tidal works ie section 585 applies. Conversely, only section 584 applies (not 585) if it is not tidal works.</p> <p>It is up to the person considering the use of sections 584 and 585 of SPA to satisfy themselves that the situation is an emergency and meets the other criteria in these sections.</p> <p>DILGP recommends that CSC seek its own independent advice about meeting the criteria of these sections before deciding whether or not to rely on these provisions.</p>
Changes to Approval	
2.	<p>DILGP considers that the proposed changes:</p> <ul style="list-style-type: none"> • do not result in a substantially different development • does not require referral to additional concurrence agencies • does not require impact assessment • does not include any prohibited development. <p>Therefore, the changes, as currently described, are considered to be a permissible change to the current development approval.</p> <p>A permissible change request must be lodged with DILGP as the responsible entity.</p> <p>Requests may be lodged electronically through MyDAS. More information about MyDAS is available at: http://www.dilgp.qld.gov.au/planning/development-assessment/electronic-lodgement.html</p> <p>The current fee for a permissible change request is \$1511.00.</p> <p>The statutory period for deciding a permissible change request is within 30 business days.</p> <p>If native title notification was required, 4 weeks is added to the timeframe above. Notification is a statutory requirement to allow for Traditional Owners (TOs) to provide submissions or responses on Native Title.</p>
3.	<p>If the proposed changes, when lodged, are <u>not</u> a permissible change then DILGP is the assessment manager under the SPR for:</p> <p>Schedule 6, Table 3, Item 6 – Tidal works or works within a coastal management district</p> <p>OR</p> <p>Schedule 6, Table 4, Item 1 – Applications involving multiple jurisdictions (Tidal works or works within a coastal management district and Queensland Heritage Place).</p> <p>DILGP is also a concurrence agency for Schedule 7, Table 2, Item 15 in relation to maritime safety.</p> <p>The fees for a new development application and referral are:</p> <ul style="list-style-type: none"> • \$3024.00 for tidal works

Item	Further advice
	<ul style="list-style-type: none"> • \$3024.00 for Queensland heritage place • \$12,095.00 for maritime safety.
Coastal	
4.	<p><u>Risk Management Plan</u></p> <p>Given the history of the seawall it is considered appropriate to condition compliance with a Risk Management Plan for the seawall and reclaimed area. The plan should at a minimum address:</p> <ul style="list-style-type: none"> • Procedures for managing the site to reduce risk to the public in the lead up to and during an extreme weather event. • Detailed description of an Engineering Inspection program, including timing of regular inspections and inspections following extreme weather events. Inspection program should include, armour rock condition, seawall stability and stability of the reclaimed area. The condition of the armour rock may be determined through monitoring of identified rocks to estimate damage to the armour layer, or another suitable method. The stability may be determined through comparison of survey data (e.g. cross-sections of the reclaimed area and seawall). • Description of the proposed maintenance program and how this will be adapted should an inspection identify any issues.
5.	<p><u>Registered Professional Engineer Queensland (RPEQ)</u></p> <p>The council has engaged CTPI 49-Sch4 to provide an assessment of the works that could be undertaken to remediate the wall appropriately for the expected design wave and water level conditions at the site.</p> <p>It is noted that CTPI 49-Sch4 is a Chartered Professional Engineer on the National Engineering Register administered by Engineers Australia.</p> <p>The <i>Professional Engineers Act 2002</i> requires engineers providing engineering services in Queensland to be registered with the Board of Professional Engineers (www.bpeq.qld.gov.au). A preliminary search of the register has not identified CTPI 49-Sch4 as being registered with the Queensland board.</p> <p>It is suggested that council confirm the engineer's registration status prior to lodging any application or permissible change application.</p>
Heritage	
6.	<p>The State heritage register boundary for the Cooktown Powder Magazine (Queensland heritage register number 600425) is Lot 83 BS161.</p> <p>The New Revetment Wall General Arrangement Plan, prepared by GHD, dated 12/09/05, Drawing No: 42-12740-C001 Rev: 0 documents the location of Lot 83 BS161 in relation to the seawall. The plan indicates that part of Lot 83 is within the wall's construction zone.</p> <p>If any works associated with the permissible change to the seawall fall within Lot 83, including works to any of the reclaimed area enclosed by the wall, the</p>

Item	Further advice
	<i>Sustainable Planning Regulation 2009</i> will be triggered, requiring referral for development on a State heritage place.
Tenure	
7.	<p><u>Tenure</u></p> <p>Lot 1 on SP287194 - is now reserve for park and recreation purposes with Cook Shire Council (CSC) as trustee (previously Lot 82 on Plan BS246). The special lease was surrendered to allow for the dedication of the area as a reserve.</p> <p>Lot 2 on SP287194 – the area of reclamation/revetment works is a reserve for Strategic Land Management Purposes with CSC as trustee (previously USL).</p> <p>A fresh offer has been made to council to amend the purpose of the SLM reserve to park and recreation and buffer (rock wall) purposes subject to survey and CSC addressing native title.</p> <p>Lot 83 on Plan BS161 should be excluded from the works. This is a deed of grant in trust for museum purposes under the ownership of CSC and will remain as such. (No approval under the <i>Land Act 1994</i> is required).</p> <p>Owners consent will need to be provided by the Department of Natural Resources and Mines (DNRM) for any material change of use or operational works on land below high-water mark.</p>
8.	<p><u>Advice for proponents where owner's consent is required</u></p> <p>Owner's consent from the Department of Natural Resources and Mines is required to lodge a "properly made" development proposal for:</p> <ul style="list-style-type: none"> • A material change of use or reconfiguring a lot on state land, or, • Work on land below high-water and outside a canal. <p>No fee is applicable and the forms to apply for owner's consent can be found on the Department of Natural Resources and Mines website:</p> <p>Application form Contact and Land Details Part A: www.dnrm.qld.gov.au/data/assets/pdf_file/0018/101781/state-land-form-la00.pdf</p> <p>Application for owners consent to development applications Part B: www.dnrm.qld.gov.au/data/assets/pdf_file/0008/101789/state-land-form-la08.pdf</p> <p>The application for owner's consent should also include:</p> <ul style="list-style-type: none"> • Original application details—the IDAS Form 1 with all necessary other forms or attachments including sketches/plans of existing and proposed improvements proposed to be lodged with the assessment manager • If acting on a person's behalf, a letter from the person advising that you are acting on their behalf • A letter from the leaseholder or trustee, if the development proposal relates to a secondary interest in the land (e.g. sublease, trustee lease); and, • Any additional attachments, as requested. <p>Further information can be found at:</p>

Item	Further advice
	<p>www.qld.gov.au/environment/land/state/owner-consent/</p> <p>or at:</p> <p>http://www.dilgp.qld.gov.au/resources/factsheet/planning/da-owners-consent.pdf</p> <p>You can lodge your application by email to: SLAMlodgement@dnrm.qld.gov.au or post it to the Department of Natural Resources and Mines, PO Box 5318, Townsville QLD 4810.</p> <p>You can track the progress of your lodged land application on the DNRM webpage - https://dashboard.dnrm.qld.gov.au/#/services</p>

If you require any further information, please contact Tony Croke, Principal Planning Officer, SARA Far North QLD on 4037 3205, or tony.croke@dilgp.qld.gov.au who will be pleased to assist.

Yours sincerely

CTPI 49-Sch4

Joanne Manson
A/Manager (Planning)

Date : 25/11/2016 1:02:10 PM

From : "CAVICCHIOLO Mark"

To : "PRENZLER Paul"

Cc : "BRAIN Tim (EHP)" , "OFFNER Sarah" , "SULLIVAN Scott" , "BIRCH Kerynne"

Subject : ESR alert - Webber Esplanade Sea Wall

Attachment : image001.png;

Hi Paul, here is the latest version of the ESR Alert for you to add the statements regarding risk.

ALERT CATEGORY:

- Customer activity

ALERT NAME:

- Webber Esplanade Sea Wall, Cooktown

CUSTOMER DETAILS:

- Cook Shire Council

SUMMARY OF ISSUE/S:

- In 2006, Cook Shire Council (Council) commenced construction of a \$6.5 million redevelopment of the Cooktown foreshore and Webber Esplanade to protect the foreshore and repair land eroded by storm events. Works on the seawall were completed the following year, with associated works in the revetment area ongoing.
- The Department of Environment and Heritage Protection (EHP) received complaints in 2015 from the local residents and rate payers association alleging the wall wasn't built to the standard required by the development approval (DA).
- EHP investigations substantiated the ratepayers' concerns and the Council was issued with a Show Cause notice under the *Sustainable Planning Act 2009* (SPA).
- Council has taken steps to restrict public access to the site, while the matter is resolved.
- Council has subsequently engaged a number of consultants and coastal engineers to investigate the matter, and have developed a proposal for remediating the Sea Wall to a safe standard. Council estimates the cost for proposed remediation works at circa \$500,000.
- EHP has agreed in principal with the proposal, and with other state agencies, has participated in a prelodgement meeting with Council and SARA to discuss the assessment processes pursuant to SPA.
- At the meeting, Department of Infrastructure, Local Government and Planning (DILGP) officers advised that the assessment processes may take three-four months to complete, which means that Council may not be able to commence works prior to the commencement of the wet season.
- Notwithstanding the above, SPA provisions also allow for works to be undertaken without obtaining development consent; for example "emergency works" can be undertaken without prior approval, and certain types of maintenance works are also allowable as 'excluded works' as defined by SPA.
- Council has expressed a desire to commence the works as soon as possible and before an approval is in place, using provisions for "emergency works" under SPA.
- EHP has determined that it is appropriate to issue an enforcement notice pursuant to SPA to ensure that the works are undertaken within defined timeframes.
- The enforcement notice will include a requirement that council lodge a SPA application so that the proposed works can be assessed and that the sea wall be upgraded.

POTENTIAL IMPACTS / RISKS:

- The current structure presents the potential for rock slippage, sinkholes in the public parklands, and overtopping during an extreme weather event.
- The current engineering shortfalls could potentially result in injury to members of the public, and/or damage to coastal resources and neighbouring properties.
- The issues with the sea wall have aroused significant public interest; the Cooktown Residents and Ratepayers Association has made several public statements regarding the state of the sea wall in the Cooktown local newspaper.
- Any "emergency works" undertaken are subject to a subsequent application and assessment pursuant to SPA. If Council's application is refused, under the requirements of SPA, the works must be removed.
- The Local Residents and Ratepayers Association may have a different view to Council as to whether the emergency works provisions apply for this proposal.
- The repairs proposed will not achieve full compliance with the EHP guideline for tidal works; to address this, EHP intends to request a risk management plan for annual and event/based assessment of the structure, so that routine monitoring is undertaken and repairs can be undertaken in a timely manner.

CUSTOMER ACTIONS:

- Council has engaged multiple consultants to assess the engineering standard and have subsequently developed a proposal to restore the development at a reasonable cost.
- Council has attended a pre-lodgement meeting through SARA for advice prior to lodging an application pursuant to SPA.
- A special Council meeting in October has approved the commencement of works as soon as possible under the "emergency works" provisions of SPA, prior to obtaining the relevant approvals.
- Council have indicated they will commence works in November/December 2016 using the "emergency works" provisions of SPA.

DEPARTMENT ACTIONS:

[HISTORICAL ACTIONS]

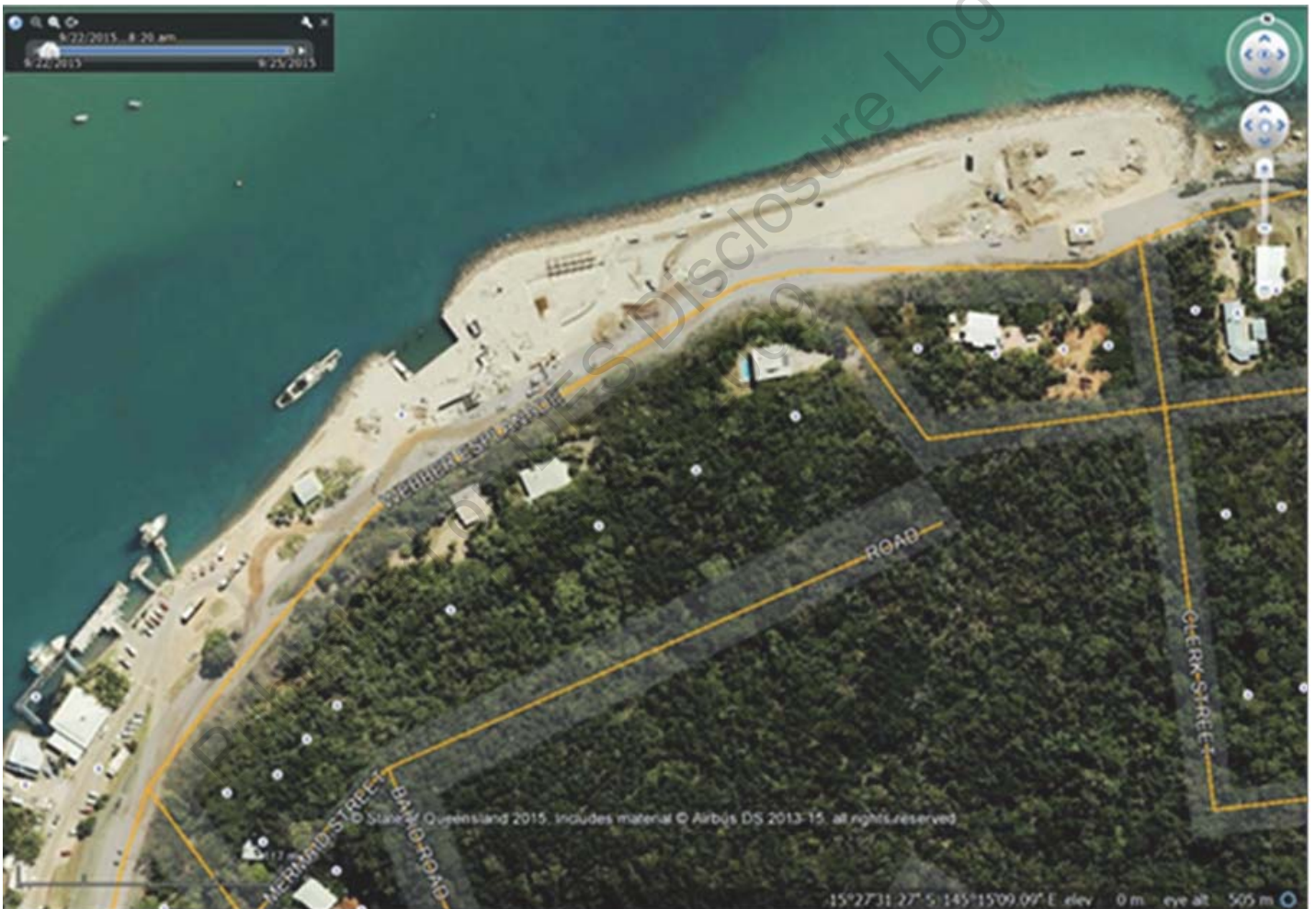
- EHP investigated the residents and rate payers complaints and subsequently issued a statutory notice to Council
- EHP has sent its own Coastal Engineer to inspect the Sea Wall as part of its assessment of Councils proposal to restore the development to a safe standard.
- EHP has met with Council and representatives of the Cooktown Residents and Ratepayers Association on several occasions.
- EHP has provided pre-lodgement advice to SARA regarding the development approval requirements.
- EHP has discussed with Council options for “emergency works” and “excluded works” under SPA, and has provided relevant departmental guidelines. EHP does not “approve” these works until an application has been properly assessed and they are undertaken at Council’s own risk.
- A Draft Enforcement Notice pursuant to SPA has been given to Cook Shire Council for their review and comment.

[PLANNED ACTIONS]

- EHP will shortly issue the Enforcement Notice to ensure works are completed to remediate the seawall and that an application for a Permissible Change to a Development Approval is made, pursuant to SPA.

LOCALITY DETAILS AND PHOTOGRAPHS:

- Webber Esplanade, Cooktown
- The project area is approximately 3668m² (see map below).



KEY COMMUNICATION MESSAGES:

- The Department of Environment and Heritage Protection (EHP) takes matters regarding unlawful building of structures in the coastal zone very seriously.
- Risks to public safety must be addressed appropriately by the Cook Shire Council.
- EHP is currently working with Council to achieve a satisfactory resolution.
- Complaints about council’s actions can be reported through the Pollution Hotline on 1300 130 372.

CONTACT DETAILS:

- Name: Rob Lawrence, Executive Director, Minerals and North Queensland Compliance
- Phone number: 07 – 4222 5338
- Division: Environmental Service and Regulation

This email is an update alert in respect of this matter.

END

Mark Cavicchiolo
Compliance Delivery Manager, North Queensland Compliance
Environmental Services and Regulation
Department of Environment and Heritage Protection
Ph: 07 42225322

Published on DES Disclosure Log
RTI Act 2009

Date : 25/11/2016 4:33:43 PM

From : "Tim Cronin"

To : "CAVICCHIOLO Mark" , "Robert Uebergang"

Cc : "SULLIVAN Scott" , "BRAIN Tim (EHP)" , "PRENZLER Paul" , "OFFNER Sarah"

Subject : RE: cm-no-spa-enforcement-notice _FINAL DRAFT TB 25-11-16

All good. Thanks Mark.

Timothy Cronin | CEO |
Cook Shire Council

Phone | 07 4082 0524

Mobile | CTPI 49-Sch4

Email | tcronin@cook.qld.gov.au Website | www.cook.qld.gov.au

Address | 10 Furneaux Street (PO Box 3), Cooktown, Qld, 4895

From: CAVICCHIOLO Mark [mailto:Mark.Cavicchiolo@ehp.qld.gov.au]

Sent: Friday, 25 November 2016 3:56 PM

To: Tim Cronin; Robert Uebergang

Cc: SULLIVAN Scott; BRAIN Tim (EHP); PRENZLER Paul; OFFNER Sarah

Subject: cm-no-spa-enforcement-notice _FINAL DRAFT TB 25-11-16

Hello Tim and Robert, I have to apologise ♦ I sent you an incorrect version of the draft enforcement notice a little earlier. Attached is the finalised draft ♦ please refer to this one instead, by COB Tuesday 29 November. Sorry for any confusion.

The information in this email together with any attachments is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. There is no waiver of any confidentiality/privilege by your inadvertent receipt of this material.

Any form of review, disclosure, modification, distribution and/or publication of this email message is prohibited, unless as a necessary part of Departmental business.

If you have received this message in error, you are asked to inform the sender as quickly as possible and delete this message and any copies of this message from your computer and/or your computer system network.

Date : 25/11/2016 3:55:35 PM

From : "CAVICCHIOLO Mark"

To : "tcronin@cook.qld.gov.au" , "Robert Uebergang (RUebergang@cook.qld.gov.au)"

Cc : "SULLIVAN Scott" , "BRAIN Tim (EHP)" , "PRENZLER Paul" , "OFFNER Sarah"

Subject : cm-no-spa-enforcement-notice _FINAL DRAFT TB 25-11-16

Attachment : cm-no-spa-enforcement-notice _FINAL DRAFT TB 25-11-16.docx;

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Attached is the finalised draft – please refer to this one instead, by COB Tuesday 29 November. Sorry for any confusion.

Published on DES Disclosure Log
RTI Act 2009

Notice

Sustainable Planning Act 2009

Enforcement notice

This enforcement notice is issued by the administering authority pursuant to section 590 of the Sustainable Planning Act 2009.

Chief Executive Officer
Cook Shire Council
10 Furneaux Street
COOKTOWN Q 4895

Your reference: IPDC00316505D11/ SPD-0414-006809

Our reference: CR70795, 070/0000576

22 November 2016

Dear Mr Cronin,

Note: that under the *Sustainable Planning Act 2009* (the Act) an enforcement notice is issued to Cook Shire Council (you) by the administering authority. The administering authority is the Chief Executive of the Department of Environment and Heritage Protection (the department).

The enforcement notice is issued in respect to the activities of Cook Shire Council at the Cooktown Foreshore and Webber Esplanade Revitalisation Project on land described as lots 1 and 2 on SP287194 (formerly lot 82 on BS246), and lot 83 BS161 at the Webber Esplanade, Cooktown (the premises).

A. Grounds

The enforcement notice is issued on the following grounds:

- The department has a reasonable belief that you have committed or are committing a development offence namely, that you are in breach of section 580 of the Act.
- A show cause notice was issued to you on 12 February 2016.
- The department has considered your representations and believes that it is appropriate to issue the enforcement notice in the circumstances.

The facts and circumstances forming the basis for these grounds are:

- Cook Shire Council is the holder of development approval IPDC00316505D11 as amended by permissible changes in SPD-0414-006809 (the development approval).
- The development approval is for *Operational Work (tidal works in, on, or above tidal waters – revetment wall)*, at former lot 82 on plan BS246 (now lots 1 and 2 on plan SP287194), and lot 83 on plan BS161; at the Webber Esplanade, Cooktown, Q 4871 (the works).
- A community complaint was received by the department on 25 October 2015 which alleged the works did not comply with conditions of the approval. The matters of concern were:

R

- that the seawall was not constructed as per the original design and was not in its designed location;
 - a geotechnical survey had not been undertaken;
 - the slope of the seabed where the seawall was constructed was steeper than shown in the design plans;
 - mud layers overlying the bedrock were not removed before construction of the seawall;
 - rock layers were not placed as per design or size and there is unknown packing density of the armour and filter layers;
 - there was lack of project supervision by consultants during construction; and
 - there was damage to the rock armouring after Cyclone Ita.
- Following further investigation, officers of the department formed a reasonable belief that there was a breach of conditions 1, 2 and 13 of the development approval.
- It is an offence to contravene a condition of a development approval pursuant to section 580 of the *Sustainable Planning Act 2009*.
- A show cause notice was issued to Cook Shire Council on 12 February 2016, pursuant to section 588 of the *Sustainable Planning Act 2009*, for a breach of conditions 1, 2 and 13 of the development approval, and invited representations about the alleged breaches.
- Cook Shire Council has engaged consultants GHD and CTPI 49-Sch4 to review the works and has provided the department the reports prepared by these consultants. The reviews confirmed the allegations that the works were not completed in accordance with conditions of the approval. The matters of concern noted were:
 - the seawall is not on the alignment in the approved “as built” plans;
 - the rock armouring is undersized and not well interlocked;
 - rock used for armouring varies and the material properties of some rock are unsuitable for this application;
 - the seawall is lower than originally designed with a risk of overtopping;
 - the sheet-piling at the marina and at the tidal lagoon has the potential to fail;
 - the geotextile fabric was not installed behind the seawall;
 - there is evidence of tidal connectivity through the seawall into the tidal lagoon;
 - there is evidence of piping, scour and sinkholes near the tidal lagoon; and
 - the structure does not comply with the departmental Operation Policy for Tidal Works.
- These reported findings confirm a breach of conditions 1, 2 and 13 of the development approval.
- In accordance with condition 3 of the development approval, Cook Shire Council engineer, Tony Lickiss (RPEQ), provided a statutory declaration to the department, signed on 24 June 2014, that: the works were constructed in accordance with the approved drawings; that the works are fit for purpose; and the works comply with the departmental Operational Policy for Tidal Works. It is alleged that this statement is false, based on the review findings.
- Cook Shire Council has proposed rectification works as presented in the final review report by CTPI 4 dated 19 September 2016.
- Given the concerns identified by the consultants engaged by council to investigate the works, it seems reasonable to believe that under storm conditions the works may be regarded as dangerous.

- In accordance with section 592(h) of the Act, it is appropriate that Cook Shire Council be required to repair and rectify the works as specified in the *Requirements* below to make the works safe and to maintain the works in a safe condition.
- In accordance with section 592(f) of the Act, it is appropriate that Cook Shire Council be required to apply for a development permit for the repair and rectification works to ensure that works are undertaken in accordance with a properly certified design that is consistent with relevant engineering standards for tidal works.

B. Requirements

You are required to do the following:

1. By 31 May 2017, the rock armour of the sea wall is to be repaired in accord with the recommendations outlined in the report *Cooktown Foreshore Development - Technical Review – Final Report* prepared for Cook Shire Council by CTPI 49-Sch4 dated 19 September 2016. This is to include, but is not limited to the following works:
 - a) ¹Using a skilled operator, in each 4 to 5 metre section of the wall, remove 8 to 10 of the smaller rocks and replace them with 5 to 6 larger armour stones in the 1 to 3 tonne range. All of the armour stones are to be tightly placed such that each armour stone has contact with at least three adjoining stones.
 - b) Use appropriate material to protect the rear of the wall from erosion in the event that a storm results in heavy wave overtopping.

¹Item a) is reproduced from the recommendations by CTPI 49-Sch4 on page 6 of his report *Cooktown Foreshore Development – Technical Review – Final Report*, dated 19 September 2016.
2. By 30 June 2017, you must provide written certification, from a suitably qualified Registered Professional Engineer of Queensland (RPEQ) that the following repair and rectification works have been completed as specified below:
 - a. The rock armour is repaired in accord with the recommendations outlined in the report *Cooktown Foreshore Development - Technical Review – Final Report* prepared for Cook Shire Council by CTPI 49-Sch4 dated 19 September 2016.
 - b. The rock armouring and other aspects of the sheetpile walls and lagoon are repaired to address identified concerns in the report *Cooktown Foreshore Development - Technical Review – Final Report* prepared for Cook Shire Council by CTPI 49-Sch4 dated 19 September 2016. The concerns identified, and for which repair or rectification is required, include, but are not limited to:
 - i. rock interlocking, rock size, and rock type suitability;
 - ii. the seawall slope, which needs to meet a maximum slope of 1 horizontal to 2 vertical;
 - iii. the marina sheetpile wall to ensure the structure is made safe.
 - iv. the piping and overland scour of sediment, particularly in the area of the tidal lagoon so that the release of sediments does not occur.
3. As-constructed plans of the seawall following completion of the works and construction certification by an RPEQ, must be provided to the department by 30 June 2017 and include certification that the repair works undertaken comply with the recommendations of the *Cooktown Foreshore Development -*

Technical Review – Final Report prepared for Cook Shire Council by CTPI 49-Sch4 dated 19 September 2016.

4. By 2 January 2017, Cook Shire Council must prepare and submit to EHP a management plan for managing the ongoing safety and integrity of the sea wall which must include, but is not limited to, at least the following provisions:
 - a) A review following each extreme weather event by a suitably qualified person; (the review must incorporate the collection of sufficient information to monitor and measure the structural integrity of the works; ensure that repairs are identified and promptly undertaken; and that any impacts on coastal resources are identified and addressed).
 - b) A procedure for closing the site to access by people and managing public risk during and after a severe weather event.
 - c) An annual review of the sea wall; and
 - d) A review following any severe weather event.

The annual and event based reviews listed above must be undertaken by a suitably qualified person and must incorporate the collection of sufficient information to monitor and measure the structural integrity of the works; ensure that repairs are identified and promptly undertaken; and that any impacts on coastal resources are identified and addressed.

5. By 6 February 2017, Cook Shire Council must submit a valid application, pursuant to the relevant provisions of the *Sustainable Planning Act 2009*, for the sea wall (including any works to repair or rectify the structure). The application must incorporate plans depicting the proposed works, signed by a suitably qualified RPEQ.

Note:

- The requirements of the enforcement notice take effect immediately upon service of the notice.
- This notice remains in force until further notice from the administering authority.

C. Definitions

“‘suitably qualified person’ means a person who has professional qualifications, training, skills or experience relevant to the nominated subject matter and can give authoritative assessment, advice and analysis on performance relating to the subject matter using relevant protocols, standards, methods or literature.”

D Appeal rights

You may appeal the decision to issue the enforcement notice to either a building and development dispute resolution committee or the Planning and Environment Court within 20 business days after the day the enforcement notice is given to you.

This information regarding review and appeal under the Act is intended as a guide only. You may have other legal rights and obligations and should seek and be guided by your own legal advice.

E Penalties

Failing to comply with an enforcement notice is an offence.

- The maximum penalty for an individual is 1665 penalty units, totalling \$202,963.50.
- The maximum penalty for a corporation is 8325 penalty units, totalling \$1,014,817.50.

Should you have any queries in relation to this notice, please contact Sarah Offner of the department on telephone number 07- 4222 5438.



Signature



Date

Enquiries:

Department of Environment and heritage
Protection

Attention: Sarah Offner

Ph: (07) 4222 5438

Email: Sarah.Offner@ehp.qld.gov.au

Tim Brain

Manager (Compliance)

Department of Environment and Heritage Protection

Sustainable Planning Act 2009

Published on DES Disclosure Log
RTI Act 2009

Date : 29/11/2016 11:27:52 AM

From : "Tim Cronin"

To : "CAVICCHIOLO Mark" , "Robert Uebergang"

Cc : "SULLIVAN Scott" , "BRAIN Tim (EHP)" , "PRENZLER Paul" , "OFFNER Sarah"

Subject : RE: cm-no-spa-enforcement-notice _FINAL DRAFT TB 25-11-16

Mark

Cook Shire Council is happy with the enforcement notice.

Regards

Timothy Cronin | CEO |
Cook Shire Council

Phone | 07 4082 0524

Mobile | CTPI 49-Sch4

Email | tcronin@cook.qld.gov.au **Website** | www.cook.qld.gov.au

Address | 10 Furneaux Street (PO Box 3), Cooktown, Qld, 4895

From: CAVICCHIOLO Mark [mailto:Mark.Cavicchiolo@ehp.qld.gov.au]

Sent: Friday, 25 November 2016 3:56 PM

To: Tim Cronin; Robert Uebergang

Cc: SULLIVAN Scott; BRAIN Tim (EHP); PRENZLER Paul; OFFNER Sarah

Subject: cm-no-spa-enforcement-notice _FINAL DRAFT TB 25-11-16

Hello Tim and Robert, I have to apologise ♦ I sent you an incorrect version of the draft enforcement notice a little earlier.

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If you have received this message in error, you are asked to inform the sender as quickly as possible and delete this message and any copies of this message from your computer and/or your computer system network.

Date : 1/12/2016 3:21:00 PM

From : "CAVICCHIOLO Mark"

To : "tcronin@cook.qld.gov.au" , "Robert Uebergang (RUebergang@cook.qld.gov.au)"

Cc : "SULLIVAN Scott" , "LITTLE Rob" , "OFFNER Sarah"

Subject : Emailing - Enforcement Notice SPA to Cook Shire Council.pdf

Attachment : Enforcement Notice SPA to Cook Shire Council.pdf;

Hi Tim and Robert, please find attached the finalised and signed enforcement notice for the Webber Esplanade sea wall. If you have any queries, please contact myself on 07 42225322 or Sarah Offner on 07 42225338.

Published on DES Disclosure Log
RTI Act 2009

Notice

Sustainable Planning Act 2009

Enforcement notice

This enforcement notice is issued by the administering authority pursuant to section 590 of the Sustainable Planning Act 2009.

Chief Executive Officer
Cook Shire Council
10 Furneaux Street
COOKTOWN Q 4895

Your reference: IPDC00316505D11/ SPD-0414-006809

Our reference: CR70795, 070/0000576

1 December 2016

Dear Mr Cronin,

Note: that under the *Sustainable Planning Act 2009* (the Act) an enforcement notice is issued to Cook Shire Council (you) by the administering authority. The administering authority is the Chief Executive of the Department of Environment and Heritage Protection (the department).

The enforcement notice is issued in respect to the activities of Cook Shire Council at the Cooktown Foreshore and Webber Esplanade Revitalisation Project on land described as lots 1 and 2 on SP287194 (formerly lot 82 on BS246), and lot 83 BS161 at the Webber Esplanade, Cooktown (the premises).

A. Grounds

The enforcement notice is issued on the following grounds:

- The department has a reasonable belief that you have committed or are committing a development offence namely, that you are in breach of section 580 of the Act.
- A show cause notice was issued to you on 12 February 2016.
- The department has considered your representations and believes that in the circumstances, it is appropriate to issue the enforcement notice.

The facts and circumstances forming the basis for these grounds are:

- Cook Shire Council is the holder of development approval IPDC00316505D11 as amended by permissible changes in SPD-0414-006809 (the development approval).
- The development approval is for *Operational Work (tidal works in, on, or above tidal waters – revetment wall)*, at former lot 82 on plan BS246 (now lots 1 and 2 on plan SP287194), and lot 83 on plan BS161; at the Webber Esplanade, Cooktown, Q 4871 (the works).

- A community complaint was received by the department on 25 October 2015 which alleged the works did not comply with conditions of the approval. The matters of concern were:
 - that the seawall was not constructed as per the original design and was not in its designed location;
 - a geotechnical survey had not been undertaken;
 - the slope of the seabed where the seawall was constructed was steeper than shown in the design plans;
 - mud layers overlying the bedrock were not removed before construction of the seawall;
 - rock layers were not placed as per design or size and there is unknown packing density of the armour and filter layers;
 - there was lack of project supervision by consultants during construction; and
 - there was damage to the rock armouring after Cyclone Ita.
- Following further investigation, officers of the department formed a reasonable belief that there was a breach of conditions 1, 2 and 13 of the development approval.
- It is an offence to contravene a condition of a development approval pursuant to section 580 of the *Sustainable Planning Act 2009*.
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 - the seawall is not on the alignment in the approved “as built” plans;
 - the rock armouring is undersized and not well interlocked;
 - rock used for armouring varies and the material properties of some rock are unsuitable for this application;
 - the seawall is lower than originally designed with a risk of overtopping;
 - the sheet-piling at the marina and at the tidal lagoon has the potential to fail;
 - the geotextile fabric was not installed behind the seawall;
 - there is evidence of tidal connectivity through the seawall into the tidal lagoon;
 - there is evidence of piping, scour and sinkholes near the tidal lagoon; and
 - the structure does not comply with the departmental Operation Policy for Tidal Works.
- These reported findings confirm a breach of conditions 1, 2 and 13 of the development approval.
- In accordance with condition 3 of the development approval, Cook Shire Council engineer, Tony Lickiss (RPEQ), provided a statutory declaration to the department, signed on 24 June 2014, that: the works were constructed in accordance with the approved drawings; that the works are fit for purpose; and the works comply with the departmental Operational Policy for Tidal Works. It is alleged that this statement is false, based on the review findings.
- Cook Shire Council has proposed rectification works as presented in the final review report by CTPI 4 dated 19 September 2016.

- Given the concerns identified by the consultants engaged by council to investigate the works, it seems reasonable to believe that under storm conditions the works may be regarded as dangerous.
- In accordance with section 592(h) of the Act, it is appropriate that Cook Shire Council be required to repair and rectify the works as specified in the *Requirements* below to make the works safe and to maintain the works in a safe condition.
- In accordance with section 592(f) of the Act, it is appropriate that Cook Shire Council be required to apply for a development permit for the repair and rectification works to ensure that works are undertaken in accordance with a properly certified design that is consistent with relevant engineering standards for tidal works.

B. Requirements

You are required to do the following:

1. By 31 May 2017, the rock armour of the sea wall is to be repaired in accord with the recommendations outlined in the report *Cooktown Foreshore Development - Technical Review – Final Report* prepared for Cook Shire Council by CTPI 49-Sch4 dated 19 September 2016. This is to include, but is not limited to the following works:
 - a) ¹Using a skilled operator, in each 4 to 5 metre section of the wall, remove 8 to 10 of the smaller rocks and replace them with 5 to 6 larger armour stones in the 1 to 3 tonne range. All of the armour stones are to be tightly placed such that each armour stone has contact with at least three adjoining stones; and
 - b) Use of appropriate material to protect the rear of the wall from erosion in the event that a storm results in heavy wave overtopping.

¹Item a) is reproduced from the recommendations by CTPI 49-Sch4 on page 6 of his report *Cooktown Foreshore Development – Technical Review – Final Report*, dated 19 September 2016.
2. By 30 June 2017, you must provide written certification, from a suitably qualified Registered Professional Engineer of Queensland (RPEQ) that the following repair and rectification works have been completed as specified below:
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 - ii. the seawall slope, which needs to meet a maximum slope of 1 horizontal to 2 vertical;
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 - iv. the piping and overland scour of sediment, particularly in the area of the tidal lagoon so that the release of sediments does not occur.
3. As-constructed plans of the seawall following completion of the works and construction certification by an RPEQ, must be provided to the department by 30 June 2017 and include certification that the repair

works undertaken comply with the recommendations of the *Cooktown Foreshore Development - Technical Review – Final Report* prepared for Cook Shire Council by CTPI 49-Sch4 dated 19 September 2016.

4. By 6 January 2017, Cook Shire Council must prepare and submit to EHP a management plan for managing the ongoing safety and integrity of the sea wall which must include, but is not limited to, at least the following provisions:
 - a) A review following each severe weather event by a suitably qualified person;
 - b) An annual review of the sea wall; and
 - c) A procedure for closing the site to access by people and managing public risk during and after a severe weather event.

The annual and event based reviews listed in 4 a) and 4 b) must be undertaken by a suitably qualified person and must incorporate the collection of sufficient information to monitor and measure the structural integrity of the works; ensure that any necessary repairs are identified and promptly undertaken; and that any impacts on coastal resources are identified and addressed.

5. By 6 February 2017, Cook Shire Council must submit a valid application, pursuant to the relevant provisions of the *Sustainable Planning Act 2009*, for the sea wall (including any works to repair or rectify the structure). The application must incorporate plans depicting the proposed works, signed by a suitably qualified RPEQ.

Note:

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- This notice remains in force until further notice from the administering authority.

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"suitably qualified person" means a person who has professional qualifications, training, skills or experience relevant to the nominated subject matter and can give authoritative assessment, advice and analysis on performance relating to the subject matter using relevant protocols, standards, methods or literature."

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- The maximum penalty for a corporation is 8325 penalty units, totalling \$1,014,817.50.

Notice
Enforcement notice

Should you have any queries in relation to this notice, please contact Sarah Offner of the department on telephone number 07- 4222 5438.

CTPI 49-Sch4

Signature

1 December 2016

Date

Enquiries:

Department of Environment and heritage
Protection

Attention: Sarah Offner

Ph: (07) 4222 5438

Email: Sarah.Offner@ehp.qld.gov.au

Tim Brain

Manager (Compliance)

Department of Environment and Heritage Protection

Sustainable Planning Act 2009

Published on DES Disclosure Log
RTI Act 2009

Date : 6/12/2016 5:05:03 PM

From : "Robert Uebergang"

To : "OFFNER Sarah"

Cc : CTPI 49@reelplanning.com"

Subject : FW: Cooktown Webber Esplanade Seawall - 1. Emergency Works Commencement & Safety Management Plan; 2. Enforcement Notice Requirement B.4

Attachment : 25112016145610-0001.pdf;SWMS_RevetmentWallWorks.doc;ConstructionSite_EmergencyPlan.pdf;Construction Safety Plan Webber Esplanade Revetment Wall Remediation Pro....doc;Remedial Works for Webber Esplanade - RHDHV. 6.12.16.pdf;

Hi Sarah,

Information as discussed on seawall emergency works, etc,

Regards,

Robert Uebergang | Director | Infrastructure Services
Cook Shire Council

Phone | 07 4069 5444 **Fax** | 07 4069 5423

Email | RUebergang@cook.qld.gov.au **Website** | www.cook.qld.gov.au

Address | 10 Furneaux Street (PO Box 3), Cooktown, Qld, 4895

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From: Robert Uebergang

Sent: Tuesday, 6 December 2016 4:49 PM

To: 'CAVICCHILO Mark' <Mark.Cavicchiolo@ehp.qld.gov.au>

Cc: 'Tony Croke' <Tony.Croke@dilgp.qld.gov.au>; Tim Cronin <tcronin@cook.qld.gov.au>; CTPI 49-Sch4 @rhdhv.com>; Chris Wood <cwood@cook.qld.gov.au>; CTPI 4@reelplanning.com CTPI 49@reelplanning.com>; Karen Nicolaou <knicolaou@cook.qld.gov.au>

Subject: Cooktown Webber Esplanade Seawall - 1. Emergency Works Commencement & Safety Management Plan; 2. Enforcement Notice Requirement B.4

Dear Mark,

Re: Cooktown Seawall Remediation

Please note that emergency works are scheduled to commence on the Cooktown seawall remediation tomorrow morning Wednesday 7 December. A quantum of rocks from the Mt Amos quarry have now been delivered to site with Gary Blumberg (coastal engineer from Royal Haskoning RHDHV) being on site Wednesday - Friday of this week to supervise initial remediation methodology. Seawall remediation works are scheduled between 7-16 December 2016 with construction recommencing early January 2017.

In support of the works please find attached:

1. *Construction Safety Plan : includes SWMS for seawall remediation works, Construction Safety Plan, Construction Site Emergency Plan* - This set of documents establishes the Safety Management Plan for undertaking emergency works. The site has been established as a construction site with a Construction Safety Plan for the seawall remediation and ancillary works within the seawall site.
2. *Safety Management Plan for Emergency Works: Memo from RHDHV* - Although titled a Safety Management Plan for Emergency Works (SMPEW), this document provides response to the 1 December 2016 DEHP enforcement notice section B. Requirements item 4. The enforcement notice outlines the information being required by 6 January 2017, with this information now provided per attached.

Regards,

Robert Uebergang | Director | Infrastructure Services
Cook Shire Council

Phone | 07 4069 5444 **Fax** | 07 4069 5423

Email | RUebergang@cook.qld.gov.au **Website** | www.cook.qld.gov.au

Address | 10 Furneaux Street (PO Box 3), Cooktown, Qld, 4895

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Date : 31/01/2017 11:18:10 AM
From : "Tony Croke"
To : "OFFNER Sarah", "CAVICCHIOLO Mark"
Cc : "Brett Nancarrow"
Subject : Cooktown Sea Wall
Attachment : image001.jpg;
Hi Mark and Sarah

73(2)Irrelevant and am seeking an update on the Cooktown sea wall.

Did DEHP issue an enforcement notice and/or did Cook Shire Council carry out coastal emergency works under section 585 of SPA? If so could you provide SARA a copy of the enforcement notice and/or any other relevant correspondence.

Section 585 of SPA requires a safety management plan and a development application. In this case it would be a request to change to the development approval.

There has been no request lodged with SARA to change the development approval.

Kind regards

Tony Croke
Principal Planning Officer
(Monday 9.15am ♦ 2:30pm, Tuesday 8:45am ♦ 4.15pm, Wednesday 9.15am to 2:30pm and Friday 9.15am ♦ 4.15pm)
Far North Queensland Regional Office
Planning and Development Services
Department of Infrastructure Local Government and Planning
Queensland Government

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Date : 7/02/2017 3:22:31 PM

From : "Tony Croke"

To : "Brett Nancarrow", "CAVICCHIOLO Mark", "BIRCH Kerynne", "SIMMONS Anthony", "PRENZLER Paul", "OFFNER Sarah", "WOODWARD Andrew", "ROWE Charles", "MOSS Marianne", "BRAIN Tim (EHP)", "michael.a.barnett@msq.qld.gov.au"

Cc : "STEWART Richard", "MSQ_IDAS_Cairns@msq.qld.gov.au", "Planning Services North DA"

Subject : Permissible Change Request - SPL-0916-033716 - Cooktown Sea Wall - Webber Esplanade

Attachment : image001.jpg;

Hi everyone

For your information, SARA has received a permissible change request for the Cooktown seawall on Webber Esplanade from Cook Shire Council. The MyDAS reference number is SPD-0217-033861. In this instance advice has been sought from DEHP and MSQ.

This request is in response to an enforcement notice issued by DEHP. A pre-lodgement meeting involving your agency or area took place on 4 October 2016.

Please call me if you need to clarify.

Kind regards

Tony Croke

Principal Planning Officer

(Monday 9.15am – 2:30pm, Tuesday 8:45am – 4.15pm, Wednesday 9.15am to 2:30pm and Friday 9.15am – 4.15pm)

Far North Queensland Regional Office - Ph: 4037 3205

Department of Infrastructure Local Government and Planning

From: Tony Croke

Sent: Tuesday, 22 November 2016 1:02 PM

To: 'Brett Nancarrow'; 'sara@ehp.qld.gov.au'; 'mark.cavicchiolo@ehp.qld.gov.au'; 'BIRCH Kerynne'; 'SIMMONS Anthony'; 'PRENZLER Paul'; 'OFFNER Sarah'; 'WOODWARD Andrew'; 'ROWE Charles'; 'MOSS Marianne'; 'BRAIN Tim (EHP)'; 'michael.a.barnett@msq.qld.gov.au'

Cc: 'richard.stewart@daf.qld.gov.au'; 'MSQ_IDAS_Cairns@msq.qld.gov.au'; 'PlanningServicesNorthDA@dnrm.qld.gov.au'

Subject: FW: Copy of Pre-lodgement meeting record and further advice - SPL-0916-033716 - Cooktown Sea Wall - Webber Esplanade

SARA reference; - SPL-0916-033716

Dear MSQ, DEHP, DNRm and MSQ

For your records please find attached a copy of the final pre-lodgement meeting record and further advice for the Cooktown Sea Wall for the Webber Esplanade. This was sent to Cook Shire Council on 17 October 2016.

I apologise if I have already sent this to you.

Kind regards

Tony Croke

Principal Planning Officer

(Monday 10am – 4:45pm, Tuesday 8:45am – 4.15pm, Wednesday 9.15am to 12:30pm and Friday 9am – 4.15pm)

Far North Queensland Regional Office - Ph: 4037 3205

Department of Infrastructure Local Government and Planning

From: Tony Croke

Sent: Tuesday, 22 November 2016 12:58 PM

To: 'Tim Cronin'

Subject: Copy of Pre-lodgement meeting record and further advice - SPL-0916-033716 - Cooktown Sea Wall - Webber Esplanade

Hi Tim

As requested please find attached a copy of the Pre-lodgement meeting record and further advice for the Cooktown Sea Wall on the Webber Esplanade.

The original was emailed to Robert Uebergang on 17 October 2016.

Kind regards

Tony Croke

Principal Planning Officer

(Monday 10am – 4:45pm, Tuesday 8:45am – 4.15pm, Wednesday 9.15am to 12:30pm and Friday 9am – 4.15pm)

Far North Queensland Regional Office

Planning and Development Services

Department of Infrastructure Local Government and Planning

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