

Date : 19/04/2016 12:39:37 PM
From : "Tim Cronin"
To : "CAVICCHIOLO Mark"
Cc : "SULLIVAN Scott (DES)"
Subject : Cook Shire Council - Seawall Show Cause
Mark

I have rung and left a message. I am looking to organise a meeting with EHP to provide a presentation outlining our response to the show cause notice. The timing we are looking at is 11am Wednesday 27 April at EHP's offices in Cairns. GHD and Council are available at this time. If you are able to advise as soon as possible on availability, that would be greatly appreciated.

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

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Date : 26/04/2016 10:54:34 AM

From : "Tim Cronin"

To : "CAVICCHIOLO Mark", "SULLIVAN Scott (DES)"

Cc : CTPI 49-Sch4 @ghd.com", CTPI 49-Sch4 @kingandcompany.com.au"

Subject : Cook Shire Council Response to DEHP Show Cause Notice

Attachment : Response to Show Cause Notice 26 04 16 Final CSC.pdf;473556_DRAFT B Webber Eplanade Failure Mode Analysis_GHD 21 04 2016.pdf;

Mark

Please find attached Cook Shire Council's response to the Show Cause Notice issued by DEHP 12 February 2016. Our response includes:

- Letter to DEHP (attached)
- GHD Rock Revetment Review April 2016 (by separate email with link to download file)
- Draft Failure Modes Analysis (attached)

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

<https://ghd.sendthisfile.com/iyZ4eCyGf6BOWeOHJwyaGUlp>

Note: These files will expire in 14 days from the time this email was generated.

We look forward to meeting with you tomorrow at 11am to brief you on Council's response.

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

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Your ref: CR70795

Our ref: D16/5206

Date: 26 April 2016

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

Attention: Mark Cavicchiolo

REVTMENT WALL AT WEBBER ESPLANADE COOKTOWN – INITIAL REPRESENTATIONS TO SHOW CAUSE NOTICE

Reference is made to the show cause notice issued by the Department of Environment and Heritage Protection dated 12 February 2016.

Council acknowledges and appreciates the extensions granted by the Department to the due date for representations, now required by 29 April 2016.

This letter represents Council's initial representations to the show cause notice.

Council action to date

1. By letter dated 2 December 2015, the Department advised Council that it was investigating a complaint concerning the construction of the revetment wall at Webber Esplanade.
2. Upon receipt of this letter, Council engaged consultants GHD to assist with Council's investigations into the matter.
3. Following a desktop review of the issues raised by the Department, and with the benefit of 'as constructed' survey information acquired and produced by Council's survey team in early January 2016, GHD produced a initial memo report dated 5 February 2016. This memo report was provided to the Department on 12 February 2016 and would form the basis for further assessment to be undertaken by GHD as outlined in the report.
4. On 17 February 2016, a meeting was convened between Council representatives and officers of the Department at its office in Cairns, to discuss Council's proposed course of action. At the meeting it was acknowledged that a request to extend the due date for written representations to 31 March 2016 would be appropriate to allow:-
 - (a) Council's consultants, GHD, to continue their investigations into the construction of the revetment wall, including rock suitability testing;
 - (b) GHD to prepare a report outlining their findings and recommendations on future actions; and
 - (c) detailed written representations to be prepared in response to the show cause notice based upon the information provided by GHD.

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5. On 17 and 18 February 2016, GHD conducted a series of onsite 'peel backs' in order to assess the revetment composition and build. In addition to these 'peel backs', GHD commissioned Cardno to carry out the following independent third party tests to determine the durability risk of insitu rock sampled from the revetment:-
 - (a) saturated surface – dry relative density;
 - (b) water absorption;
 - (c) Los Angeles abrasion test;
 - (d) sodium sulphate soundness test; and
 - (e) crushing resistance.
6. When Cardno required rock samples to be sent to Western Australia for further testing, Council wrote to the Department on 22 March 2016 and met with the Department on 24 March 2016 seeking a further extension of the due date for written representations to 29 April 2016. The Department agreed to this request 31 March 2016.
7. On 14 April 2016, Council representatives participated in a half day briefing session held by GHD at its office in Brisbane to review the outcomes of GHD's investigations and Cardno's rock tests.
8. The outcomes of the investigations and tests have been recorded and summarised in the form of a Rock Revetment Review prepared by GHD dated April 2016. This review is entitled Cook Shire Council Webber Esplanade Rock Revetment Review April 2016. Details of a link to download this report will be sent via separate email 26 April 2016. This forms "**Attachment A**" to Cook Shire Council's response to the show cause notice.
9. In addition to the Rock Revetment Review, and with Council's input at the briefing session on 14 April 2016, GHD has produced a Draft Failure Modes Analysis. This analysis and qualitative risk assessment has been prepared to facilitate a better understanding of the inherent risks with the as-built revetment structure, to the extent that such risks could be reasonably and practicably ascertained after the event. A copy of the Draft Failure Modes Analysis is attached to the email. It will be finalised following our briefing session with the Department and will form "**Attachment B**" to Cook Shire Council's response to the show cause notice.
10. Council would now like the Department to consider the contents of the Rock Revetment Review and Draft Failure Modes Analysis with a view to participating the briefing session for the Department officers and representatives, to be conducted by GHD with Council in Cairns, on 27 April 2016. Council would like the session to form part of the representations to the show cause notice.
11. Council anticipates that, following this session, a further meeting will need to be held between Council and the Department to discuss the Department's response to the Council's representations, and how, in respect of issues concerning the construction of the revetment wall, the parties can move forward with an acceptable and appropriate degree of certainty. It is anticipated that the Department will have sufficient time to confirm an acceptable risk profile in order to inform future actions with respect to the revetment wall.

Other matters

12. The Department should be aware that Council has engaged additional consultants within GHD to investigate other matters concerning the Webber Esplanade Project.

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13. On 16 March 2016, representatives from GHD Cairns undertook an initial site visit and met with Council to discuss proposed investigations into the following matters:-
- (a) the construction of the saltwater tidal lagoon, focusing on the sheet piling and blockwork retaining wall bounding the lagoon;
 - (b) the construction and functionality of the marina facility; and
 - (c) water quality within the saltwater tidal lagoon.
14. Council hopes to be in a position to present and discuss GHD's findings in respect of these matters at the briefing session to be held with the Department in Cairns on 27 April 2016.

Please do not hesitate to contact my office should you wish to discuss any aspect of this matter and these representations in further detail.

Yours faithfully

CTPI 49-Sch4

Tim Cronin
Chief Executive Officer
Cook Shire Council

Date : 17/02/2016 8:54:44 AM
From : "OFFNER Sarah"
To : "SULLIVAN Scott (DES)" , "PRENZLER Paul" , "BRAIN Tim (DES)"
Subject : FW: Draft Agenda - Meeting Cook Shire Council 17th Feb
Attachment : Draft Agenda.docx;472438_Webber Esplande rock revetment_05 02 2016.pdf;image003.jpg;image001.png;image004.png;image005.png;
Good morning,

A draft agenda and supporting information for today's meeting with Cook Shire Council.

There may also be a lawyer for council attending.

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: QUICK Calvin
Sent: Wednesday, 17 February 2016 8:51 AM
To: OFFNER Sarah
Subject: FW: Draft Agenda - Meeting Cook Shire Council 17th Feb



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

From: Michael Czarnecki [<mailto:MCzarnecki@cook.qld.gov.au>]
Sent: Friday, 12 February 2016 1:17 PM
To: CAVICCHIOLO Mark; QUICK Calvin
Subject: Draft Agenda - Meeting Cook Shire Council 17th Feb

Hi Mark/Calvin

As per my conversation with Mark last week please see attached a draft agenda, if you could add any topics you would like to cover and your other attendees so I can lock it in that would be great.

I have also attached a CONFIDENTIAL Memorandum report from GHD outlining current status of review. If you have any further questions please give me a call.

Cook Shire Council looks forward to the opportunity to meet with you next week.

Regards

Michael Czarnecki | Director | Engineering 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 Fumeaux Street (PO Box 3), Cooktown, Qld, 4895

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DRAFT AGENDA

Location: DEHP Offices, Level 3, 5B Sheridan Street

Time: 9:30am to 11:30am

Attendees: Tim Cronin (CEO Cook Shire), Michael Czarnecki (Director Engineering Services), CTPI 49-Sch4 Senior Maritime / Coastal Engineer (RPEQ) GHD), Calvin Quick (DEHP), Mark Cavicchiolo (Compliance Delivery Manager)

Topics for discussion:

- Chronology of events summary for the project
- DEHP letter to Council
- GHD response to DEHP letter
- GHD recommendations and further investigation
- DEHP current/future requirements for the project
- DEHP show cause Notice (conditions 1,2,13)

Date : 12/02/2016 4:41:06 PM

From : "BRAIN Tim (EHP)"

To : "CONNOR Andrew"

Cc : "SULLIVAN Scott (DES)" , "Compliance Manager Industry & Development" , "Managers (Compliance)"

Subject : FW: ESR ALERT – Webber Esplanade Show Cause Notice

Attachment : image001.png;image002.png;image003.png;image004.png;

Hi Andrew

As discussed earlier today, Scott and his team have prepared an Alert about the Show Cause Notice that I signed under SPA today. I'm not sure if Rob Lawrence has seen it yet so please pass on to him as well.

Thanks and Regards

Tim



Tim Brain

Acting Manager (Compliance)

Industry, Development & South Queensland Compliance

Environmental Services and Regulation

Department of Environment and Heritage Protection

P 07 4121 1685

Ground Floor, 102 Lennox Street, Maryborough, QLD 4650

PO Box 145 Maryborough QLD 4650

From: SULLIVAN Scott

Sent: Friday, 12 February 2016 4:35 PM

To: BRAIN Tim (EHP)

Subject: ESR ALERT ♦ Webber Esplanade Show Cause Notice

ALERT CATEGORY:

- Enforcement activity

ALERT NAME:

- Proposed Enforcement Notice, Webber Esplanade Sea Wall, Cooktown.

CUSTOMER DETAILS:

- Cook Shire Council
- Furneaux street, Cooktown

SUMMARY OF ISSUE/S:

- In 2006, Cook Shire Council (CSC) proposed a \$6.5 million redevelopment of the Cooktown foreshore and Webber Esplanade to protect the foreshore and repair land eroded by storm events. The development included a sea wall and reclamation area at the mouth of the Endeavour River. The project included recreational facilities in the reclaimed area, revitalisation of the heritage-listed ♦ Powder Magazine ♦, and a road upgrade to accommodate turning for large vehicles and parking.
- A Development Approval was issued in 2006 to CSC to undertake the proposed works.
- The development works commenced and parts of the sea wall were complete the following year.
- The CSC applied in 2014 to amend their approval to include some changes to the structures installed on the site. The permissible change of use application was granted.
- On 26 October 2015, the Cook Shire Ratepayer and Resident Association sent correspondence to the Minister ♦s office raising concerns about the seawall, and stated that the infrastructure had not been installed in accordance with the approval conditions and plans.
- The Department of Environment and Heritage Protection (the department) commenced investigations in November 2015.
- On the 3 December 2015, the department undertook a site inspection of the works on Webber Esplanade and held follow-up meetings with the CSC.
- A review of the associated information, documents, plans, approved drawings and observations during the site inspection, indicates that the structure does not appear to be built in accordance with the approval and the submitted ♦As Built♦ plans. This was confirmed verbally by the CSC and is a breach of the conditions of a Development Approval pursuant to the *Sustainable Planning Act 2009*.
- The review indicates that the constructed seawall is of a steeper grade in parts than originally designed and as the toe of the wall sits on soft benthic silts, this raises public safety concerns for potential wall collapse in parts.
- The seawall also has not had geotextile fabric installed behind the wall, which may result in leaching of fill material through the wall. This could lead to the development of sinkholes in the public parkland behind the wall and/or impact on water quality in the Endeavour River.
- There are also some elements of the ♦as constructed♦ sea wall that are uncertain due to the lack of construction records. This includes the grading of the rock used for armouring, the geochemistry of construction materials, and the final height of the constructed seawall.
- There is existing signage and some fencing to restrict public access to the area, however it was observed during the site

inspection that the general public were entering the area.

- It has been reported to the department that the Engineer who certified the works no longer works for the CSC and this person is currently being investigated by the Board of Registered Professional Engineers Queensland in relation to this matter.
- Separate investigations are underway by the Department of Natural Resources and Mines, due to the unauthorised encroachment of the project footprint onto State Lands.

POTENTIAL IMPACTS / RISKS:

- The structural integrity of the sea wall and associated works is uncertain.
- The uncertainty gives rise to concerns for public safety in relation to the use of the structure, and/or damage to coastal resources and neighbouring properties.
- Given the current cyclone season, there is an urgency for a professional assessment and further information about the works.
- Any remedial action taken by Cook Shire Council is likely to incur significant cost.

CUSTOMER ACTIONS:

- In December 2015, CSC verbally acknowledged the issues and indicated to the department that they would undertake an investigation of the works.
- On 15 December 2015, CSC responded to the Departmental letter of 2 December 2015, stating they were currently undertaking an investigation of the works with assistance from GHD, and that it was expected that the results would be available in three (3) months.
- On 6 January 2016, Cook Shire Council submitted correspondence stating the following actions had been taken:
 - Construction fencing at the two entry points to the site had been installed;
 - Construction bunting had been installed around potential hazards on site; and
 - Investigations commenced regarding impacts to parklands and road areas behind the sea wall.
- Council acknowledged the serious nature and potential consequences of the issues raised by the Department, and requested that the Department refrain from taking further enforcement action in relation to the seawall while their own investigations are underway.
- CSC have completed a survey of the structure and have engaged GHD Engineering Consultants to complete an investigation of the structure.

DEPARTMENT ACTIONS:

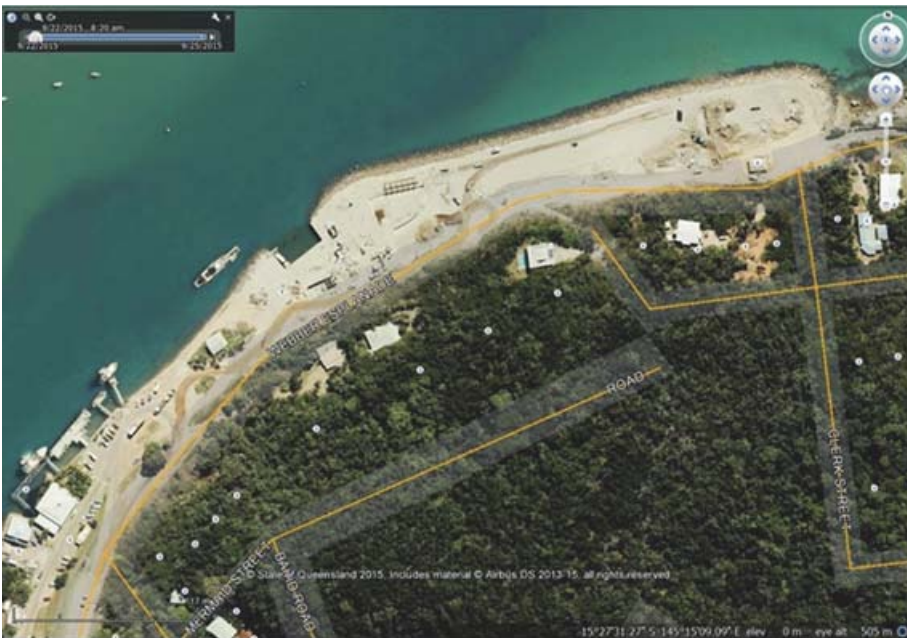
[HISTORICAL ACTIONS]

- On 2 December 2015, the department sent correspondence to CSC, detailing potential non-compliance with three conditions of the development approval, and requested written response outlining any mitigating circumstances that may be present.
- On 3 December 2015, the department inspected the site and met with CSC representatives.
- The department has considered CSC's proposal to complete an investigation within three (3) months, however the department recommends that this timeframe (given the current cyclone season) is shortened; due to the urgent need to be better understand the public safety and environmental risks.
- On 23 December 2015, the department sent further correspondence to Cook Shire Council stating it had reviewed the information submitted by Council to date, and was considering its compliance and enforcement response. The letter re-stated concerns for public safety and suggested further measures are required to exclude public access through the site.
- On 4 February 2015, the department held a meeting with Cook Shire Council stating it had reviewed the information submitted by Council to date, and was considering its compliance and enforcement response, including the possibility of issuing a Show Cause Notice with the view to issue an Enforcement Notice pursuant to the *Sustainable Planning Act 2009*.
- On Friday 12 February 2016, the Department issued a Show Cause Notice. The notice inviting Cook Shire Council to show cause why an Enforcement Notice under the *Sustainable Planning Act 2009* should not be issued. A response is due by the 14 March 2016.

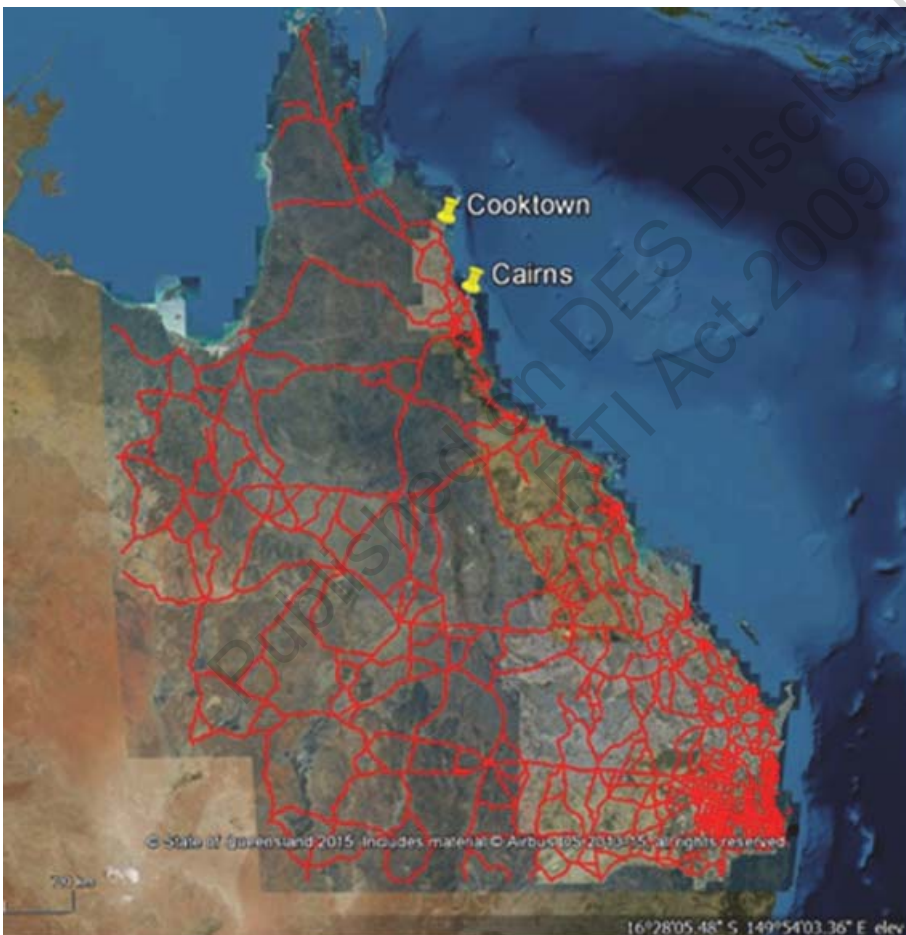
[PLANNED ACTIONS]

- The department proposes to issue an Enforcement Notice under section 590 of the *Sustainable Planning Act 2009*. The notice will request an investigation into the works undertaken and a scope of the remedial works required to repair the structure.

LOCALITY DETAILS AND PHOTOGRAPHS:



- The subject works are located at Webber Esplanade, Cooktown at the mouth of the Endeavour River.



- Cooktown in relation to Cairns.

KEY COMMUNICATION MESSAGES:

- The Department of Environment and Heritage Protection (the department) has investigated complaints about the Webber Esplanade Sea Wall.
- The complaints allege that the Sea Wall has not been built as required by the development Approval.
- The department takes matters regarding unlawful building of structures in the coastal zone very seriously as they can result in hazards to public safety and property.
- The department is continuing to make enquiries but has in the interim issued a Show Cause Notice to Cook Shire Council, inviting them to Show Cause why an Enforcement Notice should not be issued.
- Matters of this nature 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 initial alert in respect of this matter.

If further advice or action is required, it will be communicated via normal channels such as a briefing note.

END

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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 : 19/07/2016 11:50:09 AM
From : "CAVICCHIOLO Mark"
To : "SULLIVAN Scott (DES)"
Subject : FW: Webber Esplanade - Model Conditions
Attachment : SARA DEHP Model Conditions (Version 2) 9Dec2015.docx;image001.png;image002.png;
Scott, fyi for our discussion this afternoon

From: PRENZLER Paul
Sent: Monday, 18 July 2016 12:33 PM
To: CAVICCHIOLO Mark; OFFNER Sarah
Subject: Webber Esplanade - Model Conditions

Hi Mark

From the model conditions (attached) if Council proceeds with a permissible change application I think we can use the following conditions (with some minor mods as indicated in **bold**):

ID No.	Model condition
CP06	Submit RPEQ certification confirming that the development has been constructed in accordance with the Department of Environment and Heritage Protection guideline 'Building and engineering standards for tidal works' or relevant Australian Standards in relation to the works recommended by the report 'XXXXX' prepared by XXX dated XXXX. A copy of the certification must be provided to palm@ehp.qld.gov.au or mail to Department of Environment and Heritage Protection Permit and License Management Implementation and Support Unit GPO Box 2454 Brisbane Qld 4001
CP07	Submit "As Constructed drawings" to palm@ehp.qld.gov.au or mail to: Department of Environment and Heritage Protection Permit and License Management Implementation and Support Unit GPO Box 2454 Brisbane Qld 4001
CP03	(a) The works are to be attached to the land the subject of this approval. (b) Should the works become detached the registered landowner(s) shall be responsible for the collection and removal of all debris at their own expense.

I think we could considered just getting certification of the works undertaken to meet the recommendations of **CTPI 49-Sch** report. I think getting certification of the entire wall will not be possible as I doubt **CTPI 49-Sch** (or any RPEQ for that matter) will now sign-off on the entire structure. I would like to see a risk management plan to address the problem of not having certification for the entire structure.



Paul Prenzler
Principal Coastal Engineer
Coastal and Marine Assessment | Environmental Service and Regulation
Department of Environment and Heritage Protection
P 07 3339 5824
Level 8 | 400 George Street | Brisbane
GPO Box 2454 Brisbane Q 4001

5.0 Department of Environment and Heritage Protection

5.1. Environmentally relevant activities (Module 4)

ID No.	Model condition	Timing	Reason for condition
4.1 Concurrence environmentally relevant activities			
RA01	<p>A development free buffer must be established between the location for the activity and the [insert name] in accordance with [insert name of the plan] prepared by [insert author] dated [insert plan date/date received], reference [insert reference] and revision [insert revision].</p> <p>or</p> <p>[Note: if buffer zone is not located on plan by the applicant then the technical agency can amend the plan in red]</p> <p>A development free buffer must be established between the location for the activity and the [insert name] in accordance with [insert name of the plan] as amended in red prepared by [insert author] dated [insert amended in red date], reference [insert reference] and revision [insert revision].</p>	Prior to the commencement of the activity and maintained at all times	<p>To ensure adequate buffer zones are provided to minimise the potential for the activity to impact on the identified environmental values.</p> <p>[Note: buffer zone must be within land on which the application has been made]</p>
RA02	Storage areas for hazardous contaminants must be located above the [insert name of flood level e.g. Q100] flood level as documented in [insert reference to relevant flood mapping] .	At all times	To prevent the risk of hazardous contaminates being released into the surrounding environment during a flood event.
RA03	<p>The facility for the activity must include:</p> <p>(a) a storage area for hazardous contaminants that has secondary containment system to prevent any release of contaminants from the system, or containers within the system, to land, groundwater, or surface waters; and</p> <p>(b) containers for hazardous contaminants are secured to prevent movement during any flood event in accordance with [insert name of the plan] prepared by [insert author] dated [insert plan date/date received], reference [insert reference] and revision [insert revision].</p>	At all times	To ensure that the risk of hazardous contaminates being released into the surrounding environment either as a result of spillages, leaks or during a flood event is managed.

5.2. Queensland heritage (Module 9)

ID No.	Model condition	Timing	Reason for condition
9.1 Queensland heritage place			
QH01	Allow access to the Queensland heritage place by Department of Environment and Heritage Protection officers if requested.	For the duration of works the subject of this approval until six months after the development has been completed.	To facilitate the monitoring of the development works for compliance purposes.
QH02	A copy of this decision notice is to be retained at the Queensland heritage place.	For the duration of works the subject of this approval until six months after the development has been completed.	To facilitate the monitoring of the development works for compliance purposes.
QH03A [Building work and operational work]	<p>(a) Provide written notice to [insert specific details of the position and contact details] of the Department of Environment and Heritage Protection of the start of works the subject of this approval. The notices must state the application's reference number: [insert SARA reference number], the location and name of the Queensland heritage place and the condition number under which the notice is being given.</p> <p>(b) Provide written notice to [insert specific details of the position and contact details] of the Department of Environment and Heritage Protection of the completion of works the subject of this approval. The notices must state the application's reference number: [insert SARA reference number], the location and name of the Queensland heritage place and the condition number under which the notice is being given.</p>	<p>(a) Before the works the subject of this approval start</p> <p>(b) Within ten working days of completion of works</p>	To facilitate the monitoring of the development works for compliance purposes.
QH03B [ROL]	Submit the final plan of survey to [insert specific details of the position and contact details] of the Department of Environment and Heritage Protection.	Within ten working days from the registration of the survey plan	To facilitate the monitoring of the development works for compliance purposes.
QH03C [MCU]	Provide written notice of the commencement of the material change of use to [insert specific details of the position and contact details] of the Department of Environment and Heritage Protection.	Within 10 working days of the commencement of the material change of use the subject	To facilitate the monitoring of the development works for compliance purposes.

ID No.	Model condition	Timing	Reason for condition
QH04	(a) Protect existing building fabric and other significant elements of the Queensland heritage place from potential damage. (b) Do not cause damage unless specifically approved. (c) Notify [insert specific details of the position and contact details] of the Department of Environment and Heritage Protection of any damage which is not approved.	of this approval. a) and b) For the duration of the works the subject of this approval. c) Immediately if damage occurs.	To ensure cultural heritage significance is only reduced if authorised by the approval.
Before and after photographs of works			
QH05	Take photographs of the area where the works are undertaken: a) prior to the commencement of works and b) at the completion of works and c) submit the photographs to [insert specific details of the position and contact details] of the Department of Environment and Heritage Protection.	Within 10 working days of completion of the works the subject of this approval.	To facilitate the monitoring of the development works for compliance purposes.
Archival recording			
QH06A	Prepare an archival recording comprising [Insert photographs/ and/or measured drawings] of the existing [Insert extent/part of place/whole place] , in accordance with the technical requirements of the Archival Recording of Heritage Places guideline, prepared by the Department of Environment and Heritage Protection under section 173 of the <i>Queensland Heritage Act 1992</i> . The photographic recording must include images of elements of cultural heritage significance, a key plan or plans, an index sheet and a photographic report [Delete clause if not needed] . The measured drawings must include plans, elevations, sections, and details of elements of cultural heritage significance [Delete clause if not needed] .	Prior to the commencement of the works the subject of this approval.	To create a permanent record of elements which contribute to the cultural heritage significance of the place.
QH06B	(a) Prepare a scope of work document for the archival recording by [a person who has qualifications in architecture/history/a member of a professional heritage organisation (for example Australia ICOMOS)/an engineer/ a heritage consultant/an archaeologist]	Prior to the commencement of the works the subject of this	To create a permanent record of elements which contribute to the cultural heritage significance of the place.

ID No.	Model condition	Timing	Reason for condition
	<p>with appropriate experience in historical/industrial/maritime archaeology in Australia/other].</p> <p>(b) Carry out the archival recording by the person or persons who prepared the scope of work document, or a person or persons with qualifications or experience specified in the scope of work document.</p> <p>(c) Submit a copy of the scope of work document to [insert specific details of the position and contact details] of the Department of Environment and Heritage Protection.</p>	approval.	
QH06C	<p>Submit:</p> <p>(a) an electronic [insert hardcopy/other requirements] copy of the archival recording to [insert specific details of the position and contact details] of the Department of Environment and Heritage Protection and</p> <p>(b) a [electronic/hardcopy/other requirements] of the archival recording to [the John Oxley Library/other organisation] [Delete clause if not needed].</p>	Prior to the commencement of the works the subject of this approval.	To create a permanent record of elements which contribute to the cultural heritage significance of the place.
	<p>Advice</p> <p>The DEHP Archival Recording of Heritage Places Guideline can be found online at: http://www.ehp.qld.gov.au/assets/documents/land/heritage/archival-recording-heritage-places.pdf</p>		
Archaeological investigation			
QH07	<p>Carry out an archaeological investigation of [insert extent/ where it proposed to excavate, trench, core or bore through known or suspected archaeological deposits/ part/ whole of the Queensland heritage place/ other] by an appropriately qualified person in accordance with the DEHP Archaeological Investigations Guideline, prepared by the Department of Environment and Heritage Protection under section 173 of the <i>Queensland Heritage Act 1992</i>.</p> <p>The archaeological investigation must include [a preliminary assessment/ archaeological management plan/ provision for collection/ salvage/ appropriate storage/ conservation of recovered</p>	Prior to construction works	To ensure that a Queensland heritage place significant for its archaeological deposit has an adequate method in place to manage potential impact on that place's cultural heritage significance.

ID No.	Model condition	Timing	Reason for condition
	artefacts/ other] [Delete clause if not needed]. A post-investigation report must be submitted to [insert specific details of the position and contact details] of the Department of Environment and Heritage Protection. [Delete clause if not needed].		
	Advice The DEHP Archaeological Investigations Guideline can be found here: http://www.ehp.qld.gov.au/assets/documents/land/heritage/archaeological-investigations-guideline.pdf .		

5.3. Coastal protection (Module 10)

ID No.	Model condition	Timing	Reason for condition
Tidal works, or development in a coastal management district			
CP01	For the proposed works only use materials which are free from contaminants as defined under section 11 of the <i>Environmental Protection Act 1994</i> .	For the duration of the works the subject of this approval	To ensure the development avoids or minimises adverse impacts on coastal resources and their values.
CP02	Erosion and sediment control measures are to be installed and maintained to prevent the release of sediment to tidal waters.	For the duration of the works the subject of this approval	To ensure the development avoids or minimises adverse impacts on coastal resources and their values.
CP03	(a) The works are to be attached to the land the subject of this approval. (b) Should the works become detached the registered landowner(s) shall be responsible for the collection and removal of all debris at their own expense.	At all times	To ensure landowners are aware they must take responsibility for their damaged property as they can impact on coastal resources and public safety.
CP04	Sand must not be removed from the erosion prone area, and any sand excavated from the site must be placed on the beach, seaward of the work.	At all times	To ensure the natural processes and the protective function of landforms and vegetation are maintained in coastal hazard areas. Use in conjunction with CP01.

ID No.	Model condition	Timing	Reason for condition
CP05	All material used in the reclamation of land from tidal water must be wholly contained within the reclaimed area.	At all times	To ensure the development avoids or minimises adverse impacts on coastal resources and their values. Use in conjunction with CP01.
CP06	<p>Submit RPEQ certification confirming that the development has been constructed in accordance with the [Department of Environment and Heritage Protection guideline 'Building and engineering standards for tidal works' or relevant Australian Standards].</p> <p>A copy of the certification must be provided to palm@ehp.qld.gov.au or mail to Department of Environment and Heritage Protection Permit and License Management Implementation and Support Unit GPO Box 2454 Brisbane Qld 4001</p>	Within two (2) weeks of the completion of the works	<p>To ensures the tidal works located on State land are safe and fit for purpose.</p> <p>Applies when SARA is the assessment manager and the DEHP Prescribed Tidal Works Code does not apply.</p>
CP07	<p>Submit "As Constructed drawings" to palm@ehp.qld.gov.au or mail to Department of Environment and Heritage Protection Permit and License Management Implementation and Support Unit GPO Box 2454 Brisbane Qld 4001</p>	Within two (2) weeks of the completion of the works	<p>To allow for compliance in relation to what is considered generally in accordance with the approved plans when preliminary plans are submitted with the application. Development inconsistent with the approval may have an impact on coastal management that was not considered in assessment.</p>
CP08	As a result of works the subject of this approval any disturbed or oxidised acid sulphate soil must be treated and managed in accordance with the current <i>Queensland Acid Sulfate Soil Technical Manual: Soil management guidelines</i> , prepared by the Department of Science, Information Technology, Innovation and the Arts, 2014.	For the duration of the works the subject of this approval	To ensure any disturbance to acid sulphate soils is managed to prevent impacts to coastal environments.

ID No.	Model condition	Timing	Reason for condition
CP09	<p>(a) Statutory Environmental Covenant</p> <p>Enter into an environmental covenant with the Department of Natural Resources and Mines pursuant to Section 97A of the <i>Land Title Act 1994</i> to ensure the appropriate management of the land identified as [Area X on [insert name of the plan] prepared by [insert author] dated [insert plan date/date received], reference [insert reference] and revision [insert revision] for the purpose of [preserving vegetation / coastal protection etc].</p> <p>(b) Submit Covenant</p> <p>Submit to [insert DEHP contact details] the environmental covenant for endorsement. The covenant must detail the responsibilities, liabilities, measures, remedies and intents as necessary to ensure the management of the identified vegetation and ecological features on the land and must address the following:</p> <p>I. Exclusion from the covenant area of [e.g. all buildings and structures (including swimming pools, tennis courts, retaining walls), open space, all associated facilities, landscaping, on-site stormwater infrastructure, on-site wastewater treatment, all areas of disturbance (including excavation and filling), on-site parking, access and manoeuvring, perimeter fence for the lot]</p> <p>(c) Lodge Covenant</p> <p>Lodge the endorsed Covenant Form 31 with the Registrar of Titles for the relevant Queensland State Government Authority.</p> <p>(d) Submit Copy of Registered Covenant</p> <p>Submit to [insert DEHP contact details], a copy of the registered Covenant Form 31.</p>	<p>a) Prior to sealing of the plan of subdivision with the local government</p> <p>b) Prior to an application for plan sealing with the local government</p> <p>c) Within 6 months of the local government's notation of the plan of subdivision</p> <p>d) Within 2 weeks of the registration of the covenant</p>	<p>To maintain the erosion prone area as a development free buffer zone protects people and infrastructure from coastal hazards and increases the community's resilience to natural hazards.</p>

CP10	<p>(a) Any temporary access tracks or other temporary work areas must be rehabilitated with native dune vegetation commonly found on adjacent areas using the species list and planting density contained in the [report name] reference/revision number [insert number/revision] prepared by [insert author] dated [insert date].</p> <p>(b) Any vegetation planted as a result of the work must be maintained [for a period of xx eg. 12 months or as per a revegetation plan/report]. This includes but is not limited to the control of weed species and controlled pedestrian and vehicle access.</p> <p>(c) Written evidence from a suitably qualified person that a) and b) has been fulfilled is to be provided to palm@ehp.qld.gov.au or mail to Department of Environment and Heritage Protection Permit and License Management Implementation and Support Unit GPO Box 2454 Brisbane Qld 4001</p>	<p>a) Upon the completion of the work.</p> <p>b) For xx months after completion of the works</p> <p>c) Upon xx months after completion of the works</p>	To ensure works do not adversely impact on coastal processes
CP11	In the event of erosion or tidal inundation, the work must be easily relocatable to facilitate removal.	At all times	To ensure works do not adversely impact on coastal processes and the need for future protection works in the event of erosion threatening low value structures
CP12	Reinstate dune crest height to [include AHD] within areas impacted by this development.	Within two (2) weeks of the completion of the works	To ensure works do not adversely impact on coastal processes
CP13	Sand placed under this approval must not cover any dune vegetation.	At all times during construction works	<p>To ensure works do not adversely impact on coastal processes</p> <p>Applies only to beach nourishment and re-profiling</p>
CP14	Beach [re-profiling or nourishment] must not exceed [volume] cubic	At all times	To ensure works do not adversely

	metres [in any 12 month period] .		impact on coastal processes For beach nourishment and re-profiling
CP15	The depth of excavation for beach re-profiling must not exceed [depth] metres AHD.	At all times	To ensure works do not adversely impact on coastal processes Applies only to re-profiling
CP16	Earthworks associated with beach [re-profiling or nourishment] must not expose or disturb underlying bedrock, coffee rock and other cemented sediment material or consolidated mud/organic material layers.	At all times	To ensure works do not adversely impact on coastal processes For beach nourishment and re-profiling
CP17	[Beach re-profiling/beach nourishment/spoil disposal] is to be finished to a maximum of 1 vertical : 3 horizontal ratio for the material being placed.	At all times	To ensure works do not adversely impact on coastal processes or public safety For beach nourishment and re-profiling
CP18	Sand must be excavated only from [borrow area details (plan or coordinates)] .	At all times	To ensure works do not adversely impact on coastal processes For beach nourishment and re-profiling
CP19	Sand must have the following characteristics: (a) the sand used for the work is not finer than the upper beach sand at the site and (b) the sediment is clean, free of contaminants and does not contain any building waste or rock.	At all times	To ensure works do not adversely impact on coastal processes For beach nourishment and re-profiling
CP20	The entire [description/name of structure] structure is to be removed.	Within [time period e.g. three months] of commencement of the demolition	To ensure demolition of tidal work occurs in a timely fashion and does not adversely impact on coastal processes.
CP21	The volume (in cubic metres) of material disposed of in tidal water under this approval must be provided to palm@ehp.qld.gov.au or mail to	Within two (2) weeks of the completion of the	To confirm the activity has been undertaken in accordance with the approval and has not impacted on

	Department of Environment and Heritage Protection Permit and License Management Implementation and Support Unit GPO Box 2454 Brisbane Qld 4001	works	environmental values of adjacent
CP22	A hydrographic and land level survey of the [artificial waterway/canal, entrance channel and newly created lots] , must be prepared by a registered surveyor following the works being undertaken and submitted to palm@ehp.qld.gov.au or mail to Department of Environment and Heritage Protection Permit and License Management Implementation and Support Unit GPO Box 2454 Brisbane Qld 4001	Within two (2) weeks of the completion of the works	To confirm the artificial waterway has been constructed to the correct profile and the land levels are as per the approval to avoid impacts from coastal hazards
CP23	A hydrographic survey must be prepared by a registered surveyor of the [dredge area/spoil/waste deposition area] and the immediate adjacent area likely to be affected by the [dredging/spoil disposal] , following the works being undertaken and submitted to palm@ehp.qld.gov.au or mail to Department of Environment and Heritage Protection Permit and License Management Implementation and Support Unit GPO Box 2454 Brisbane Qld 4001	Prior to the commencement of works and within two (2) weeks of the completion of the works	To confirm the activity has been undertaken within the approved location and has not impacted on environmental values of adjacent
CP24	A [width e.g. 10] metre wide development free corridor as shown on submitted [insert name of the plan] prepared by [insert author] dated [insert plan date/date received] , reference [insert reference] and revision [insert revision] (as amended in red) is to be maintained along the top of the [seawall/revetment wall] to allow for future maintenance.	At all times	To ensure the structure can be maintained at all time from the land to enhance community resilience to natural hazards. This is particularly important during storm events where access for urgent maintenance may not be possible from the beach. To provide certainty, plan potentially is required to be amended in red to illustrate the

			necessary width of corridor.
Private marine development attached to freehold land			
<i>When indicated by the Department of Environment and Heritage Protection (EHP), these conditions may be considered as EHP's technical advice by the Department of Infrastructure, Local Government and Planning (DILGP) for private marine development attached to freehold land. These standard conditions will be held by DILGP.</i>			
CP25	All works are to be constructed and maintained in a safe condition in accordance with the plans/drawings listed on the Owner's consent notice provided by Department of Environment and Heritage Protection.	At all times	Development works must comply with the approved plans to avoid unacceptable impact on coastal values and physical coastal processes. RPEQ signoff indicates the development is appropriately designed and is structurally sound.
CP26	The works to which this approval relates are to be for a private purpose only.	At all times	Ensures that the coastal resource (State land) is appropriately administered under the <i>Coastal Protection and Management Act 1995</i> and the <i>Land Act 1994</i>
CP27	Any operator and contractor involved in the works to which this approval relates must: (a) be provided a copy of the these referral agency conditions; (b) install all measures, plant and equipment necessary to ensure compliance with the conditions of this approval; (c) maintain such measures, plant and equipment in a proper and efficient condition; and (d) operate such measures, plant and equipment in a proper and efficient manner.	During construction	Ensures impacts on coastal values (water quality) are avoided or minimised.
CP28	For the proposed works only use materials which are free from contaminants as defined under section 11 of the <i>Environmental Protection Act 1994</i> .	During construction	Ensures importation of materials does not result in adverse impacts on coastal values. Chemical and other contaminants have the potential to have an unacceptable impact on coastal values.

CP29	Should the works become damaged as a result of erosion, flooding or storm tide inundation, the registered landowner(s) of the subject land shall be responsible for the removal of all debris at their own expense.	At all times	Damaged structures can impact on coastal resources and public safety
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5.4. Wetlands

Stormwater			
WPA1A	Stormwater runoff must be diverted or bypassed around the wetland in a Wetland Protection Area (WPA).	At all times during construction works	
WPA1B	Stormwater runoff leaving the site or discharging into the Wetland Protection Area (WPA) must not exceed a maximum concentration of <50>mg/L of total suspended solids.	At all times during construction and operation	
WPA1C	Stormwater discharge quality and quantities are treated in accordance with the <i>Queensland Best Practice Environmental Management Guidelines</i> before stormwater flow enters the buffer of the wetland as show on [INSERT Title, Plan reference, drawn by, Date, number, version].	At all times	
Erosion and sediment control			
WPA2A	Earthworks and construction must only occur during [INSERT clarify months] of the dry season.	At all times during construction works	
WPA2B	Develop and implement erosion and sediment controls in accordance with the <i>Best Practice Erosion and Sediment Control (BPESC) guidelines for Australia (International Erosion Control Association)</i> . In particular, maintain sediment control devices to achieve best practice design objectives.	At all times during construction works	
Pest management			
WPA3A	Develop and implement a site-based pest management plan that	At all times	

	<p>includes, but is not limited to, the following:</p> <ul style="list-style-type: none"> a) A pre-works inspection of the property to locate, map and identify existing pest flora and fauna species. b) Training of site personnel in the identification of local pest species likely to occur at the site. c) [INSERT measures in order to prevent the spread of pests into the wetland protection area]. d) [INSERT appropriate interventions in order to control pest flora and fauna species introduced into the wetland protection area as a result of the development]. 	during construction works	
WPA3B	<p>Prior to arrival on site, all plant and equipment is to be cleaned down in accordance with the Department of Agriculture and Fisheries <i>Queensland Vehicle and machinery checklists Clean-down procedures 2014</i>.</p>	At all times during construction works and maintenance of the works	

5.5. Contaminated land

Unexploded Ordnance (UXO)			
UXO1	<p>Provide written confirmation to the Department of Environment and Heritage Protection by an approved contractor on the Australian Government, Department of Defence, Unexploded Ordnance (UXO) Panel that the subject site has been remediated and cleared of Unexploded Ordnances.</p> <p>The Unexploded Ordnance (UXO) Panel is found online at: http://www.defence.gov.au/estatesmanagement/support/DEHP/WhoToEngage.asp.</p> <p>Contact Email: I&D@ehp.qld.gov.au or mail to</p>	Prior to the commencement of works	To ensure the development manages the land in a manner that protects human safety and the environment.

	Principal Environmental Officer - Unexploded Ordnance Department of Environment and Heritage Protection GPO Box 2454, Brisbane QLD 4001 Phone: 1300 130372		
	<p>ADVICE - Unexploded Ordnance (UXO)</p> <p>Provide the owner, occupier and any person employed to work on the subject site the following information:</p> <p>(a) Residual UXO may still exist following remediation and all work should proceed with due caution.</p> <p>(b) The procedure to be followed by any person finding an object suspected of being explosive ordnance or component thereof:</p> <ul style="list-style-type: none"> · Advise the Police immediately. · Do not disturb the object. · Take action, where appropriate, to prevent it being disturbed by another person. · Note its approximate dimensions and general appearance. · Note the route to its location. <p>Applicants wanting to find out more details of area management advice (AMA), current UXO investigations and remedial search contractors may use the following websites:</p> <p>DEHP - http://www.ehp.qld.gov.au OR</p> <p>Commonwealth Defence Force</p> <p>http://www.defence.gov.au/uxo/uxo_warning_and_advice.asp</p>		

Date : 12/02/2016 11:59:38 AM

From : "QUICK Calvin"

To : "SULLIVAN Scott (DES)"

Subject : FW: Webber Esplanade

Attachment : Signed assessment report.pdf;Signed Show Cause Notice.pdf;Signed decision memo.pdf;Signed decision memo.pdf;image001.png;image002.png;image005.png;image006.png;image009.png;image012.png;image013.png;image014.png;
Here you go Scott.



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

From: QUICK Calvin

Sent: Friday, 12 February 2016 11:26 AM

To: ESTownsville

Cc: OFFNER Sarah

Subject: FW: Webber Esplanade

Hey guys,

The latest with regard to the Webber Esplanade complaint CR70795.

Regards,
Calvin.



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

From: BRAIN Tim (EHP)

Sent: Friday, 12 February 2016 9:11 AM

To: QUICK Calvin

Cc: CAVICCHILO Mark; Compliance Manager Industry & Development; Managers (Compliance); LEE Deirdre

Subject: RE: Webber Esplanade

Hi Calvin

The signed notice, assessment report and decision memo are attached. Could you please email the notice to your council contact and if they are not expecting it, give them a call first. We'll post the original notice from here and send up the signed copies of the AR and memo.

I'll send feedback on that draft tidal works notice you sent in too but it will say pretty much the same thing as the memo on this one, i.e. don't use it at this stage.

Thanks for your help.

Regards

Tim



Tim Brain

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

P 07 4121 1685
Ground Floor, 102 Lennox Street, Maryborough, QLD 4650
PO Box 145 Maryborough QLD 4650

From: QUICK Calvin

Sent: Friday, 12 February 2016 8:49 AM

To: BRAIN Tim (EHP)

Subject: RE: Webber Esplanade

Hi Tim,

Please see attached. I have just reconciled the lot and plan in smart maps and you're correct. I've made the required changes to the notice. I have also replaced my email address with the ESTownsville email address and accepted all other changes.

Regards,
Calvin.



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

From: BRAIN Tim (EHP)
Sent: Thursday, 11 February 2016 5:02 PM
To: QUICK Calvin
Subject: RE: Webber Esplanade

Hi Calvin

Sorry this has taken me so long today, the jurisdiction took a while to work through and since then I've had a meeting and a request to review some material relevant to a court hearing. Anyway, I've attached the notice with a couple of minor changes but I have put in a question about one of the lot numbers. When I went to look it up Google Earth said it didn't exist, but the second one did. I have entered in the lot details that I think are relevant but could you please check and then accept the changes that you are ok with? If you would like to discuss please give me a call.

Thanks

Tim



Tim Brain

Acting Manager (Compliance)
Industry, Development & South Queensland Compliance
Environmental Services and Regulation
Department of Environment and Heritage Protection
P 07 4121 1685
Ground Floor, 102 Lennox Street, Maryborough, QLD 4650
PO Box 145 Maryborough QLD 4650

From: QUICK Calvin
Sent: Thursday, 11 February 2016 10:37 AM
To: BRAIN Tim (EHP)
Subject: RE: Webber Esplanade

Hi Tim,

The original approval for the Webber Esplanade occurred in two stages, one in May 2006 and another in August 2006. I have attached the decision notice and development permit for these. They are from EcoTrack but word only. I don't have access to the archived hard file to view the signed version. However the word versions do state that we are acting as the assessment manager for the application. The project involved operational works – reclaiming land under tidal water and disposing dredge spoil for which I understand we would be assessment manager for. Although it doesn't seem to state this on the decision notice, referring only to tidal work in, on, or above tidal waters. I believe the dredging was done by Ports not Council, they just used the resulting spoil for land reclamation. If you need I can recall the original documents from archive?

Regards,
Calvin.



Calvin Quick

Senior Environmental Officer (Compliance)
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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

From: BRAIN Tim (EHP)
Sent: Thursday, 11 February 2016 10:21 AM
To: QUICK Calvin
Subject: Webber Esplanade

Hi Calvin

The following may help with my question. For the dredging operation back in 2006 we were possibly Assessment Manager (AM) (i.e. because for projects in state waters outside the local government area we were AM) and it is possible that the whole project (dredging, land reclamation and rock wall) was done as one DA with us as AM because of that. What we are looking at now is one part of the whole project, i.e. the rock wall, which on its own would normally have local government as an AM, but if it is part of the whole project then the permissible change was for one part of the whole project that we were AM for. If this makes any sense it may help as if this is the case then I think all we need to do is establish that we were AM for the original project.

I hope this helps.

Regards

Tim



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

P 07 4121 1685
Ground Floor, 102 Lennox Street, Maryborough, QLD 4650
PO Box 145 Maryborough QLD 4650

Published on DES Disclosure Log
RTI Act 2009

Memo

Tidal works notice

S60 Coastal Protection and Management Act 1995

Date:	10 February 2016
Development approval number:	SRDA00429914 / SPD-0414-006809
Name:	Cook Shire Council
Date of submission of task:	22 January 2016

Background and review details:

Background

A development approval was issued for tidal works in 2006 and a permissible change application was approved in 2014. The most recent approval referred to "as built" plans for the sea wall.

26 October 2015 the local rate payers association alleged that the infrastructure was not built in accordance with the plans.

The draft assessment report indicates that there appear to be a number of aspects to the construction that do not appear to comply with the most recent plans approved under the notice

Review of Decision

A key aspect to this decision is the definition of 'repair'. Macquarie dictionary definition is as follows.

- verb (t)* 1. to restore to a good or sound condition after decay or damage; mend: *to repair a clock.*
2. to restore or renew by any process of making good, strengthening, etc.: *repair a broken constitution.*
3. to remedy; make good; make up for: *to repair damage; to repair a loss; to repair a deficiency.*
4. to make amends for: *repair a wrong done.*

A Tidal Works Notice is an option but is issued to 'repair' authorised structures. The definition of 'repair' in the Macquarie Dictionary uses terms such as 'restore ... after decay or damage', 'renew by any process of making good' which seems to indicate restoring to an original condition. In this case the structure does not appear to have been built to design standards in the first place, so 'repair' is arguably not the correct term. The definition also uses the term 'to remedy; make good; make up for: to repair damage, to repair a loss; to repair a deficiency'. This definition arguably could be used to

justify issuing a Tidal Works notice although it could be argued and in addition, an investigation into what needs to be done is more appropriate. The use of a Tidal Works notice may not be the best tool to require an investigation as it seems to be intended to require physical works.

At this stage in the investigation of this matter, the nature of the shortcomings in the structure are not fully understood so the use of a tidal works notice, even if it could be grounded, would seem premature.

Given that there are alleged development offences SPA seems to be the appropriate legislative process to use at this point in the investigation of the matter and a show cause notice has been prepared by the Compliance Centre and issued.

The assessment report for the Show Cause Notice indicates that Council has commissioned an investigation into the structure and will have the opportunity to provide the information generated by the investigation as part of its response to the show cause notice.

In conclusion, although a Tidal Works Notice is a possible option (although the definition is arguable) SPA provisions seem more appropriate at this stage.

Enforcement Guidelines

Reasonable Nature

Note the requirement under s63 to record the notice in the land registry.

Recommendation:

Utilise the Show Cause provisions in SPA to formalise the collection of information and then consider the most appropriate tool to use.

Recommendation supported by:

Name:	Tim Brain	Position:	Manager (Compliance)
Signature:	CTPI 49-Sch4	Date:	12-2-16