

Date : 22/01/2016 4:36:05 PM

From : "QUICK Calvin"

To : "Compliance Manager Industry & Development"

Cc : "BRAIN Tim (EHP)" , "CLEARY Amanda" , "OFFNER Sarah" , "CAVICCHIOLO Mark"

Subject : DRAFT FOR REVIEW: Webber Esplanade, Cooktown - Tidal Works Notice and Assessment Report

Attachment : DRAFT_Notice-tidal-works-CQ SO.doc;DRAFT_Assessment Report - Tidal Works Notice - Webber Esplanade CQ SO.doc;CQ07 - Approved plans aerial overlay.pdf;CQ01 - RPEQ certification-Statutory declaration.pdf;CQ02 - Authorised person notes.pdf;CQ03 - Photographs of Webber Esplanade Seawall.docx;CQ04 - GHD memorandum February 2014.pdf;CQ05 - Aerial image of dredge material leaching.docx;CQ06 - Approved plans aerial overlay close up.pdf;Permissible Change SPD-0414-006809 - Responsible Entity.pdf;image001.png;image003.png;

Hi Tim,

Please see attached a draft of the tidal works notice and assessment report regarding the Webber Esplanade, Cooktown.

As discussed yesterday, I will look at our compliance options regarding this matter under the *Sustainable Planning Act 2009*, specifically the possibility of an enforcement notice.

I look forward to your thoughts regarding this.

I am happy to discuss.

Regards,
Calvin.



Calvin Quick

Senior Environmental Officer (Compliance)

North Queensland Compliance | Environmental Services and Regulation

Department of Environment and Heritage Protection

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Level 3, 5B Sheridan Street, Cairns QLD 4870

PO Box 7230, Cairns QLD 4870

Assessment Report

Coastal Protection and Management Act 1995

Tidal works notice

This document is to record the information considered by the Department of Environment and Heritage Protection (the department) when making the decision to issue a tidal works notice under section 60 of the Coastal Protection and Management Act 1995.

Identifying details	
Location description:	Webber Esplanade Cooktown Lot 82 on BS246 and Lot 83 on BS161
Client/Company name:	Cook Shire Council
Trading as:	Not applicable
Compliance activity number:	CR70795
Permit/approval number:	SRDA00429914 / SPD-0414-006809
File number:	070/0000576
Registered business address:	10 Furneaux Street COOKTOWN QLD 4895

1. Brief history of the matter

- The subject works are located at Webber Esplanade, Cooktown as depicted in Figure 1 below. Real property description: lot 82 on BS246 & 83 on B161 and adjacent waters of the Endeavour River.
- The area lies seaward of the road known as Webber Esplanade and was proposed to create a recreational use area spanning approximately 3668m².
- Originally, the project proposed to upgrade the Cooktown Foreshore and Webber Esplanade, which included works to construct a seawall and reclaim land at the mouth of the Endeavour River which had been eroded by storm events. The reclamation was proposed to protect the road against further erosion, and provide public parkland and an activity area at an estimated cost of \$6.5M. The project proposal included works to:
 - construct a rock wall filled with dredge spoil from the Endeavour River
 - construct a tidal pool and water play area
 - install fishing platforms, interpretive signage, a cycle path and revitalise the heritage listed "Powder Magazine"

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- o upgrade the road to accommodate turning for large vehicles and parking.
- Permit IPDC00316505D11 was issued 2006 under the *Coastal Protection and Management Act 1995* for Coastal Works.
- A permissible change of use application was granted in 2014 (SRDA00429914). The application included some changes to the structures installed on the site. Supporting documents included the “As Built” plans for the sea wall.
- On 26 October 2015, the Cook Shire Ratepayer and Resident Association (the 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 conditions and approved plans of the approval.
- On 10 November 2015 the Department of Environment and Heritage Protection (the department) was asked to respond to and investigate the Association’s concerns. Departmental officer commenced a full desktop audit of the activity in November 2015.
- On 3 December 2015, the department undertook a site inspection of the works on Webber Esplanade.
- A review of associated information, documents, plans, approved drawings and an on-site assessment by departmental officers indicate that the structure does not appear to be built in accordance with the approved and submitted “As Built” plans.
- The review indicates that parts of the constructed seawall are of a steeper grade than originally designed. Given that the toe of the wall sits on soft benthic silts, there are therefore concerns for the integrity of the structure raising public safety concerns.
- The review also indicates that the geotextile lining either is not installed, or is not installed in part of the sea wall. This raises concerns for the leaching of sediments and other potential contaminants to the surrounding marine environment, and to the possible development of sinkholes in the parklands adjacent to the sea wall.
- The review also identified that there is uncertainty regarding various aspects of the construction of the seawall as there has been limited records maintained regarding the ‘as constructed’ structure.
- This uncertainty includes the following aspects of construction:
 - o Assumptions made in terms of materials used, rock size and grading, rock layer thickness and the levels and foundation conditions.
 - o Thickness of the armour and filter rock layers
 - o Grading of the armour and filter rock layers
 - o Voiding / packing density of the armour and filter rock layers.
 - o Rock revetment toe layer thickness and corresponding finish levels.
 - o Finished height of the seawall.
- It has been reported to the department that the RPEQ Engineer who certified the works is currently being investigated by another governing body in relation to this matter.

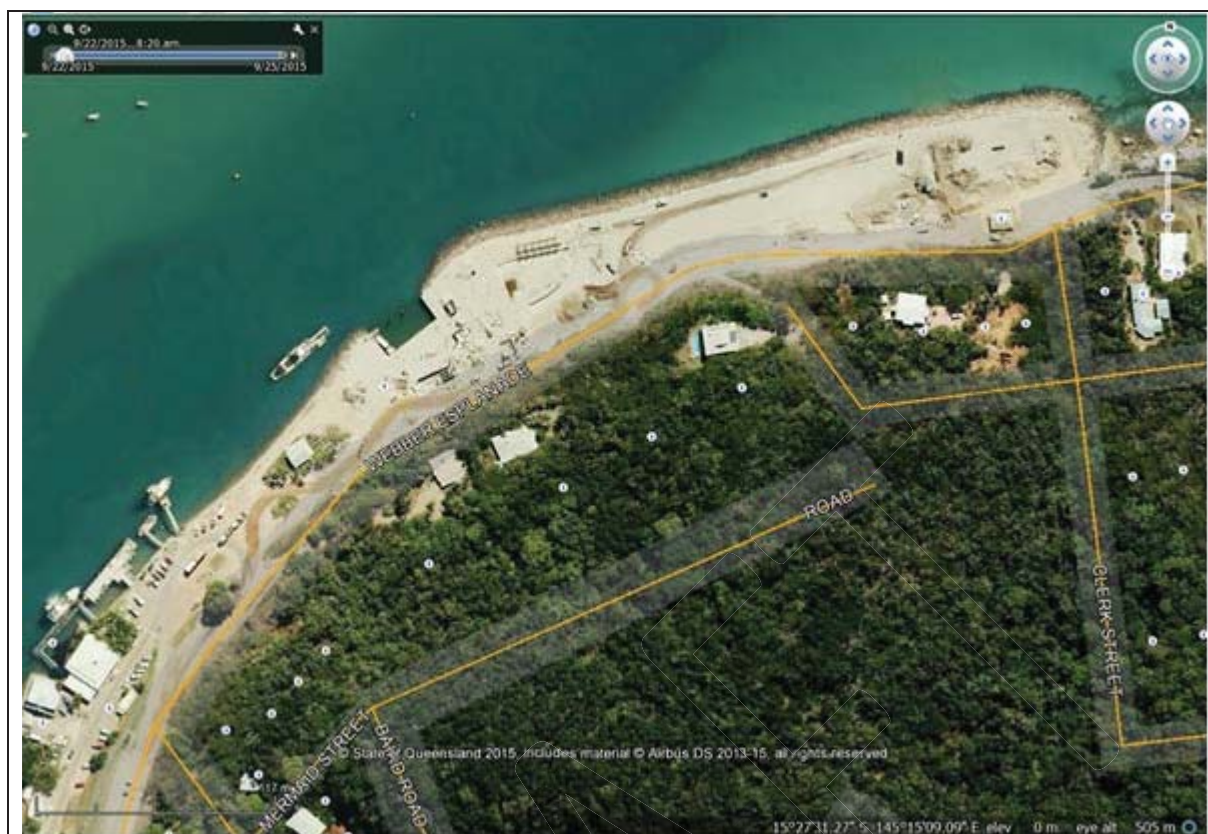


Figure 1. Webber Esplanade, Cooktown.

2. Grounds for issue of a tidal works notice

In the opinion of the chief executive, tidal works:

- ☒ need repair;
- ☐ are abandoned;
- ☐ should be removed to protect public safety;
- ☐ should be removed to prevent adverse effects on coastal resources.

3. Expand upon the grounds

Number	Specific ground
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1	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.
2	The department investigated the complaint in November and December 2015, and the investigation revealed that the complaint appears to be substantiated.
3	It is recommended that under section 60 of the <i>Coastal Protection and Management Act 1995</i> , a Tidal Works Notice is issued to Cook Shire Council, to require an investigation/survey of the structures to determine what works are needed to prevent adverse effects on coastal resources, and on public safety.

4. Document the evidence supporting the recommendation

Legislative requirement	Evidence	Facts and circumstances
Number 1		
Date - 26 October 2015	CR70795 - Cook Shire Ratepayer and Resident Association lodged a complaint against Cook Shire Council in regards to the Webber Esplanade project. A copy of the documented complaint can be found on the environmental register "Ecotrack" under reference CR70795	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 conditions and approved plans of the original and subsequently amended development approval.
Time	The Department undertook a site inspection commencing at 10.12am on 3 December 2015	Results of the investigation indicate that the claims made by the complainant appear to be substantiated.
Place	The subject works are located seaward of Webber Esplanade, Cooktown. Real property description: lot 82 on BS246 & 83 on B161 and adjacent waters of the Endeavour River	Title search reveals Lot 82 on B246 is under 30 year lease for Recreation Use from Cook Shire Council to Game Fishing Club and expires on 31/08/2016
Person – Cook Shire Council	Development Approval SRDA00429914 is held in the name of Cook Shire Council, on departmental file 070/0000576 ASIC Business name search Business Name: Cook Shire Council Status: non-registered entity (Nret)	Cooktown Shire Council is the holder of Development Approval SRDA00429914 As per section 32D of the <i>Acts Interpretation Act 1954</i> , in an Act, a reference to a person generally includes a reference to a corporation as well as an individual. Chapter 2, Part 1, section 11(a) of the <i>Local Government Act 2009</i> states that a local government is a body corporate

	<p>Address for service: 10 Furneaux Street, Cooktown 4895</p> <p>Current Business Name Search Summary CG01 attached</p>	<p>with perpetual succession.</p> <p>Part 8, Section 32D of the <i>Acts Interpretation Act 1954</i>, identifies a body corporate as an example of an express reference to a corporation.</p> <p>Cook Shire Council is considered to be a corporation for the purposes of the <i>Coastal Protection and Management Act 1995</i></p>
Number 2		
<p>The department investigated the complaint in November and December 2015, and that investigation revealed that the complaint was substantiated.</p>	<p>A full desktop audit of the approved plans and conditions of the approval was undertaken in November, to establish what engineering controls had been utilised, and whether those controls and structures had been installed as per submitted plans.</p> <p>A copy of the development approval including approved plans is held on departmental file 070/0000576</p> <p>A statutory Declaration made by the responsible Registered Professional Engineer of Queensland (RPEQ 8021) Mr Tony Lickiss, signed on 24 June 2014 stating:</p> <ul style="list-style-type: none"> - all works had been constructed in accordance with the approved drawings CSC-C001, CSC-C002, CSC-C003 and the conditions of the DA SPD-0414-006809 - the works are suitable for the intended usage, are structurally adequate for the intended location and use, are structurally adequate to allow for scour resulting from flooding and tidal influence, and are designed and constructed in accordance with all appropriate Australian 	<p>Photographs show that construction works on Webber Esplanade had commenced but had not been completed.</p> <p>Observations included:</p> <ul style="list-style-type: none"> • General public were entering the area freely even though the site was a construction zone • The engineered slope of the seawall was not in accordance with details and designs included in CSC-C001, CSC-C002, CSC-C003 • Outer armouring of the seawall was observed to have been constructed from various sized rock ranging from approximately 750mm to 2000mm with no uniform method of construction applied • Rock used as foundation was observed to be ungraded not unlike waste rock, and consisted of various sized material not consistent with similar structures that had previously been inspected.

	<p>Standards and guidelines except as detailed in the minimum design criteria in the Department of Environment and Heritage Protection's operational policy <i>Building and Engineering Standards for Tidal Works.</i>,</p> <p>Statutory Declaration attached as evidence CQ01.</p> <p>Photographs of the property taken by departmental officer Calvin Quick during a site inspection carried out on 3 December 2015.</p> <p>Conversations held during the site inspection between departmental officer Calvin Quick and Cook Shire Council Surveyor, Jon Van Den Bergh were documented in Authorised Officer Calvin Quicks' notebook, on pages 89 and 90.</p> <p>Attached as evidence CQ02</p>	<p>Cook Shire Council Surveyor stated during the inspection:</p> <ul style="list-style-type: none"> • He had concerns that the seawall had not been constructed in accordance with the approved plans within the development approval • The mud substrate had not been removed prior to depositing rock to install foundations of the seawall • Rock armouring was inconsistently sized and not adequately graded • No geotechnical survey had occurred prior to commencing the building of the structure • No geo-fabric liner had been used to line the inner wall prior to rock armouring
	Coastal zone map shows Webber Esplanade development is within the coastal zone and the Coastal Management District (CMD).	The tidal works are within the coastal zone and the CMD.
Number 3		
Tidal works should be repaired to prevent adverse	Section 60 of the <i>Coastal Protection</i>	Section 60 provides the department with authority to require Cook Shire

<p>effects on coastal resources, and improve public safety.</p>	<p><i>and Management Act 1995 (CPM Act) provides:</i></p> <p>(1) Subsection (2) applies if, in the chief executive's opinion, tidal works (the relevant works) need repair, are abandoned or should be removed to—</p> <p style="padding-left: 40px;">(a) protect public safety; or</p> <p style="padding-left: 40px;">(b) prevent adverse effects on coastal resources.</p> <p>(2) The chief executive may give a notice (a tidal works notice) to the person responsible for the relevant works.</p> <p>Conversations held during the site inspection between departmental officer Calvin Quick and Cook Shire Council Surveyor, Jon Van Den Bergh were documented in Authorised Officer Calvin Quicks' notebook, on pages 89 and 90.</p> <p>Attached as evidence CQ02</p> <p>Review of GHD memorandum, copy to "Webber Esplanade Rock Revetment", subject "As-Constructed' Rock Revetment" dated 24 February 2014.</p> <p>Attached as evidence CQ04</p> <p>Aerial imagery identifying the leaching of dredge material through the seawall</p> <p>Attached as evidence CQ05</p> <p>Approved drawing CSC-C001 overlayed against aerial imagery of the area which identifies the footprint of the seawall against the approved drawings.</p> <p>Attached as evidence CQ06 and CQ07</p>	<p>Council to make repairs to the structures to "protect public safety and prevent adverse effects on coastal resources".</p> <p>No geo textile fabric liner was installed during the construction of the seawall as required by approved drawings drawing CSC-C001, CSC-C002 and CSC-C003.</p> <ul style="list-style-type: none"> o Impacts of this are that dredge spoil placed for land reclamation may leach through the seawall. o There is evidence of this occurring based on aerial imagery (CQ05). o The department's coastal engineer stated that this has the potential to result in the undermining of the reclaimed land and generation of sink holes. The area is being developed as a public foreshore and esplanade and will have public infrastructure on it. This is a potential threat to public safety. o There is also the potential impact to coastal resources from leaching of dredge spoil as a result of the generation of turbidity and
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		<p>mobilisation of other contaminants in the dredge spoil.</p> <p>To enable Cook Shire Council to “make repairs” to protect public safety and to prevent adverse effects on coastal resources, which were identified above.</p> <p>Repairs is defined in the Macquarie Dictionary as the following:</p> <ul style="list-style-type: none"> “....3. to remedy; make good; make up for: to repair damage; to repair a loss; to repair a deficiency....” <p>It is considered that the divergence in the ‘as constructed’ seawall from those detailed in the approved plans require “repair” to remedy and repair the deficiency.</p> <p>To make repairs the department will initially require Cook Shire Council to undertake an investigation, and confirm the “As Built” plans and sea wall construction and therefore inform what works are required to repair the wall.</p> <p>An investigation report will provide the department with information that can form the grounds for an order for Cook Shire Council to make repairs to the structures.</p> <p>It is recommended that a Tidal Works Notice be issued to Cook Shire Council to require an investigation (including a survey) of the works in the first instance, then report that information back to the department to be utilised in an additional Tidal Works Notice to undertake the required repairs.</p> <p>To Issue a notice to require repairs to the structures without a full investigation and survey, would be likely to have negative economic, environmental and social impacts on the community.</p> <p>It is important that the repair works that</p>
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		are undertaken are appropriate to the actual in-situ works completed to date to ensure that both public safety and coastal processes are protected.
	<p>The development approval was issued with condition 10 which states:</p> <p>The chief executive administering the Coastal Protection and Management Act 1995 may order the works to be removed or modified if they:</p> <ul style="list-style-type: none"> - Create a navigation hazard or other danger to the public; or - Cause erosion or land degradation; or - Are unstable or have not been constructed according to the approved plans. <p>Photographs of the property taken by departmental officer Calvin Quick during a site inspection carried out on 3 December 2015. Attached as evidence CQ03</p> <p>Conversations held during the site inspection between departmental officer Calvin Quick and Cook Shire Council Surveyor, Jon Van Den Bergh were documented in Authorised Officer Calvin Quicks' notebook, on pages 89 and 90. Attached as evidence CQ02</p> <p>Review of GHD memorandum, copy to "Webber Esplanade Rock Revetment", subject "As-Constructed' Rock Revetment" dated 24 February 2014. Attached as evidence CQ04</p> <p>Aerial imagery identifying the leaching of dredge material through</p>	<p>Departmental investigation has confirmed that the structures have not been constructed according to the approved plans. Verbal conversations with the Cook Shire Surveyor assisted the officers in making these determinations.</p> <p>The investigation has also confirmed that the foundations of parts of the seawall may become unstable over time or during severe weather events and this is likely to have an adverse effect on both public safety and coastal processes.</p> <p>Evidence that construction of seawall not in accordance with plans of development approval is detailed below.</p> <p>No geo textile fabric liner was installed during the construction of the seawall as required by approved drawings drawing CSC-C001, CSC-C002 and CSC-C003.</p> <ul style="list-style-type: none"> o Impacts of this are that dredge spoil placed for land reclamation may leach through the seawall. o There is evidence of this occurring based on 2015 aerial imagery (CQ05). o The department's coastal engineer stated that this has the potential to result in the undermining of the reclaimed land and generation of sink holes. The area is being developed as a public foreshore and esplanade

	<p>the seawall</p> <p>Attached as evidence CQ05</p> <p>Approved drawing CSC-C001 overlayed against aerial imagery of the area which identifies the footprint of the seawall against the approved drawings.</p> <p>Attached as evidence CQ06 and CQ07</p>	<p>and will have public infrastructure on it. This is a potential threat to public safety.</p> <ul style="list-style-type: none"> o There is also the potential impact to coastal resources from leaching of dredge spoil as a result of the generation of turbidity and mobilisation of other contaminants in the dredge spoil. • The footprint of the seawall appears to not align with the plans of the development approval – (Overlay of approved plan with aerial imagery). <ul style="list-style-type: none"> o The footprint of the seawall does not appear to have the same width as the drawings on the development approval in the area around the MSQ mooring. o This likely means that the batters in this area are not the required 1 in 2 batter. The GHD report suggests areas of the seawall are 1 to 1.1 in sections. Observations and photographs taken by authorised persons also identifies that this section of seawall has a steeper batter when compared to the rest of the seawall. o Advice from the department's coastal engineer provided during a telephone conversation on 19 January 2015 stated that as the seawall was constructed on soft benthic sediments, it is critical that the batter of the structure is constructed in accordance
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		<p>with the approved plans. The combination of a batter greater than 1 in 2 being built on soft benthic sediments has the potential to cause the failure of the seawall.</p> <ul style="list-style-type: none"> o The footprint of the seawall does not appear to extend to the full extent in front of the Game Fishing club. • There is uncertainty regarding various aspects of the construction of the seawall as there has been limited records maintained regarding the 'as constructed' structure – (GHD report, absence of final 'as constructed' survey). These are as follows: <ul style="list-style-type: none"> o Assumptions made in terms of materials used, rock size and grading, rock layer thickness and levels and foundation conditions. o Thickness of the armour and filter rock layers o Grading of the armour and filter rock layers o Voiding / packing density of the armour and filter rock layers. o Rock revetment toe layer thickness and corresponding finish levels. o Finished height of the seawall.
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5. Proposed requirements

Proposed requirement	Justification
1. Cook Shire Council is required to immediately restrict public access to all areas of the Webber Esplanade Development (including the wall crest) from the seaward	The department is concerned for public safety in relation to the development, the sea wall in particular. Sea Walls are an attractive recreational location for walkers and recreational fishers. Restricting public access to the

<p>side of the road, until such time as the development as a whole can be deemed safe. Measures to restrict access to the site may include, but not be limited to:</p> <ul style="list-style-type: none"> a) Security detail; b) Fencing c) Signage d) Supervision e) Barriers and barricades 	<p>area is required to minimise the potential public safety risk until such time as the sea wall has been further investigated for structural integrity.</p>
<p>2. Cook Shire Council is required to commission an independent investigation on the Webber Esplanade development. The investigation must:</p> <ul style="list-style-type: none"> a) be conducted by a suitably qualified registered professional; and b) incorporate all current on ground structures, works, and materials used, and identify which components have, or have not been installed in accordance with the relevant approval and approved plans; and c) identify all structural, environmental, and public health and safety concerns relating to the development; and d) include a scope of works, including timeframes for completion of any works required to repair the development and return it to compliance with the approval and any other legislation, guideline, best practice standard or policy that is applicable. 	<p>Although there is strong evidence to support the findings that Cook Shire Council (CSC) has installed structures not in accordance with approved plans, it is unknown how those structures were installed, and what impacts their installation has on the environment, public safety, and the community. Commissioning an investigation will provide the department with the information required to form the grounds for a decision about appropriate future enforcement action, which may include a notice to conduct further repair works.</p>
<p>3. Cook Shire Council is required to submit a report to the Departments Cairns Office detailing the outcomes from the investigation referred to in Requirement <INSERT DATE> 2016.</p>	<p>Commissioning an investigation, and receiving a report will provide the department with the information required to form the grounds for a decision about appropriate future enforcement action, which may include a notice to conduct further repair works. Due to the potential public safety issues, this information is required as soon as practicable.</p>
<p>4. All works required by this notice must be undertaken in a manner that prevents and/or minimises further damage to coastal resources, and must be undertaken with regard to your general environmental duty (GED).</p>	

6. Natural justice

The investigating officer is required to notify the affected person that the department is considering issuing a tidal works notice and that the individual is welcome to make representation to the department as to why this action should not be taken. Any information provided by the affected person is to be documented and considered.

☒ The person has been provided with the opportunity to put their side of the story forward.
[Compliance Delivery Manager Mr Mark Cavicchiolo contacted CSC via email and requested a survey (or investigation) be done on the development. CSC responded that they would commence an investigation, however they proposed a timeline of at least 3 months for completion.]

☒ All information and/or defences provided were considered.
[The department has considered all provided documentation, plans and information provided by both local residents association and the CSC representatives. The CRC proposal to complete an investigation within three months is consistent with the tidal works notice recommended 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.]

☒ The department has considered the information or defences provided.
[The department has considered CSC proposal to complete an investigation within three months and 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.]

☒ The decision maker and investigator are free from bias or the perception of bias.

7. Recommendation

Recommendation:

It is recommended that on the above grounds, a Tidal Works Notice be issued to Cook Shire Council requiring them to undertake an investigation (including a survey) into the structural integrity of the development, and to identify all social and environmental impacts associated.

It is recommended that CSC are required to submit an investigation report, including new "As Built" plans and a scope of remedial works to the department so this information can be used to ground further tidal works notices should they be required.

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Signature

Signature

Date:

Date:

Calvin Quick

Sarah Offner

Senior Environmental Officer (Compliance)

[A/Team Leader, Compliance]

8. Approval

Signature

Date:

Manager, Compliance

Department of Environment and Heritage Protection

Coastal Protection and Management Act 1995

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Notice

Coastal Protection and Management Act 1995

Tidal works notice

This tidal works notice is issued by the Chief Executive pursuant to section 60 of the Coastal Protection and Management Act 1995.

Cook Shire Council
Attention: Mr Tim Cronin

Chief Executive Officer
10 Furneaux Street,
PO Box 3
Cooktown, QLD 4895

Email: t.cronin@cook.qld.gov.au

Your reference:

Our reference: CR70795

22 January 2016

Dear Mr Cronin

Take notice: that under the *Coastal Protection and Management Act 1995* (the Act) a tidal works notice is served on you by the Chief Executive of the Department of Environment and Heritage Protection (the department) to take the action stated in this notice to conduct the necessary investigations and surveys to determine works required to repair tidal works at Webber Esplanade.

This tidal works notice is issued in respect to the Webber Esplanade development on land described as lot number 982 on BS245 and Lot 83 on BS161, and adjacent waters of the Endeavour River, situated at Webber Esplanade (the site) for which you are responsible.

A. Grounds

This tidal works notice is issued on the following grounds:

- The tidal works need repair to protect public safety and prevent adverse effects on coastal resources.
- Cook Shire Council is a person who must ensure a structure that forms all or part of the tidal works is maintained in a safe condition.

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 that investigation revealed that the complaint was substantiated.
- Under section 60 of the *Coastal Protection and Management Act 1995*, a Tidal Works Notice is issued to Cook Shire Council, to require an investigation (including surveys) of the structures to determine what works are needed to prevent adverse effects on coastal resources, and improve public safety.

B. Requirements

You are required to do the following:

Requirement	Time frame
<p>1. Cook Shire Council is required to immediately restrict public access to all areas of the Webber Esplanade Development (including the wall crest) from the seaward side of the road, until such time as the development as a whole can be deemed safe. Measures to restrict access to the site may include, but not be limited to:</p> <ul style="list-style-type: none"> a) Security detail; b) Fencing c) Signage d) Supervision e) Barriers and barricades 	Action must be taken on the date of issue of this notice.
<p>2. Cook Shire Council is required to commission an independent investigation (including surveys) on the Webber Esplanade development. The investigation must:</p> <ul style="list-style-type: none"> a) be conducted by a suitably qualified registered professional; and b) incorporate all current on ground structures, works, and materials used, and identify which components have, or have not been installed in accordance with the relevant approval and approved plans; and c) identify all structural, environmental, and public health and safety concerns relating to the development; d) be accompanied by updated "As Built" plans as at the date of the survey, which are certified by a 	Action must be taken on the date of issue of this notice

<p>suitably qualified registered professional; and</p> <p>e) include a scope of works, including timeframes for completion of any works required to repair the development and return it to compliance with the approval and any other legislation, guideline, best practice standard or policy that is applicable.</p>	
<p>3. Cook Shire Council is required to submit a report and the updated "As Built" plans to the Department's Cairns Office detailing the outcomes from the investigation referred to in Requirement 2 by <INSERT DATE> 2016.</p>	<p>On or before <INSERT DATE> 2016</p>
<p>4. All works required by this notice must be undertaken in a manner that prevents and/or minimises further damage to coastal resources, and must be undertaken with regard to your general environmental duty (GED).</p>	

C. Obligations

If land or works subject to an undischarged tidal works notice are sold, you (the seller) **must** give the buyer written advice of the undischarged notice not less than 14 days before settlement of the sale. However, if settlement of the sale is made less than 14 days after the agreement to sell is made you must give the buyer written advice of the undischarged notice on the day the agreement is made.

Note:

- The requirements of this tidal works notice take effect immediately upon service of the notice.
- Failure to comply with this notice is an offence under the Act.
- This notice remains in force until further notice from the department.
- Notice of this tidal works notice will be given to the registrar of titles who must record the particulars of this notice in a way that a search of the land register kept by the registrar under any Act relating to title to the land will show the notice has been given.
- After this tidal works notice has been complied with the particulars of this notice will be removed from the land register.

D. Penalty

Failure to comply with this tidal works notice is an offence.

- The maximum penalty for an individual is 3000 penalty units, totalling \$353,400.00
- The maximum penalty for a corporation is 15,000 penalty units, totalling \$1,767,000.00

Should you fail to comply with this tidal works notice requiring particular action to be taken, the department may:

- take the required action and recover the costs it incurred as a debt;

- decide to commence legal proceedings, in accordance with the department's enforcement guidelines.

Failure to give the buyer written notice of the undischarged tidal works notice is an offence.

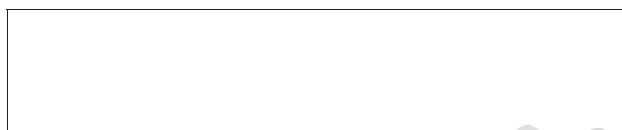
- The maximum penalty for an individual is 150 penalty units, totalling \$17,670
- The maximum penalty for a corporation is 750 penalty units, totalling \$88,350.00

E. Appeal rights

You may appeal the decision to issue the tidal works notice to the Planning and Environment Court within 30 days after the day the tidal works notice is given to you.

This information regarding 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.

Should you have any queries in relation to this notice, please contact Mark Cavicchiolo of the department on telephone number 4222 5322.



Signature



Date

Enquiries:

Department of Environment and Heritage
Protection

5B Sheridan Street,

Cairns QLD 4870

Ph: (07) 42225322

Email: mark.cavicchiolo@ehp.qld.gov.au

Tim Brain

Manager Compliance

Department of Environment and Heritage Protection

Coastal Protection and Management Act 1995

Statutory Declaration

QUEENSLAND
TO WIT

I, Tony James Lickiss RPEQ 8021

of CTPI 49-Sch4

in the State of Queensland

do solemnly and sincerely declare that

1. I am a Registered Professional Engineer of Queensland under the provisions of the Professional Engineers Act 2002 and have relevant experience in the civil construction of tidal works.

2. I Certify that:

(a) The works (including any other associated works) have been constructed in accordance with the approved drawings CSC-C001, CSC-C002, CSC-C003 and the conditions of the DA SPD-0414-006809 with the exception of the footpath as shown which will be constructed as staged works. A separate statutory Declaration will cover the completion of these footpath works.

(b) The works ;

- (i) are suitable for the intended useage;
- (ii) are structurally adequate for its intended location and anticipated usage;
- (iii) are structurally adequate to allow for the scour resulting from flood and tidal conditions;
- (iv) do not impose loads on existing structures such that the design capabilities of these existing structures are exceeded;
- (v) would not adversely affect the stability of the bed and the banks of the waterway in which the works were constructed and works designed for significant scour;
- (vi) are designed and constructed in accordance with all appropriate Australian Standards and guidelines except as detailed in the minimum design criteria in the Department of Environment and Heritage Protection's operational policy Building and engineering standards for tidal works;
- (vii) do not adversely affect the usage of adjacent structures; and
- (viii) have non-slip surface

(c) the bed and the banks of the waterway for a distance of 15 metres around the site of the works are clear of all constructional debris.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1867.

CTPI 49-Sch4

Signature of declarant/deponent

Taken and declared before me at

Cooktown

this 24th

day of

June 2014

CTPI 49-Sch4

CD 3893

~~A Justice of the~~
Peace/Commissioner for
Declarations.

DO% 42.0
 DOmg/L 3.23
 PH 7.79

MP2 Confluence (DC entry) 09:24

temp: 27.32°C
 EC: 0.126 mS/cm

TDS: 0.079 g/L

DO%: 41.8%

DO: 3.29 mg/L

pH: 7.34

MP3 Downstream (DC entry) 09:45

temp: 30.13°C

EC: 0.091 mS/cm

TDS: 0.055 g/L

DO%: 45.2%

DO: 3.41 mg/L

pH: 7.72

3/12/2015

CALVIN QUICK

DANIEL GUNZBURG

RE (EHP)

JAN VAN DEN

BERGH

STAVELAN (EHP)

10:12 AM

COOKSHIRE COUNCIL - WEBBER ESPERANDE

Department officers Calvin Quick & Daniel

Gunzburg visited the Webber Esplanade

Cooktown to investigate complaints regarding

the inadequate construction of the seawall,

for which the department issued and regulates

one development approval. The visit was unannounced,

but the sign leading to the construction

area stated 'local traffic only' and members

of the public had on previous nights been

seen entering. In department officer opinion the

site was publically accessible. Department

officers met Steve Low of Cookshire Council

by chance on-site. Steve advised we must

sign in. Department officers signed in. Walked

the extent of the seawall. In department office

approximation wall appeared to be at 1 in 3

batter. The outer armouring ~~was~~ appeared to

be of various sized rocks approx 75mm - 2m

in size. Some of the under rock was visible and

appeared to be ungraded 'waste rock' of various sizes. The concrete path was tied into the top of the seawall. While returning to the car the department officers were approached by Cook Shire Council Surveyor Jan Van Den Bergh. Jan requested some information regarding EHP's role and purpose in the matter. Cal-in advised that the department is responsible for issuing the licence to construct the rock wall, that license has conditions for which EHP undertakes compliance. Further advised that the EHP had received a complaint from the public regarding concerns about the construction of the wall and its threat to public safety. Further advised that EHP had issued a show cause on 2/12/2015 to Council regarding concerns that it had about the seawall, to allow Council to respond and provide natural justice. Jan advised that he had ~~concerns~~ been involved in the initial application process, subsequent permissible change of use approval, and the construction of the seawall. Jan raised concerns that the rock^{sea} wall had not been constructed in accordance with the design plans of either the initial development approval or subsequent ~~the~~ permissible change to that approval. Specifically Jan raised concerns that the mud substrate had not been removed, that the rock armoring was inconsistently sized, that the sub rock was not adequately graded, that no geo-technical survey had been undertaken, and no geofab had lined the inner wall. Cal-in advised that EHP was continuing to gather information, obtain expert opinion and determine its subsequent actions in relation to the matter.

3/12/2015

MICHAEL

CZARNECKI

TIM

CRONIN

(COOKSHIRE)

CALVIN QUICK

DANIEL GUNZBURG

(EHP)

12:30 PM

COOKSHIRE COUNCIL MEETING

Department officers Calvin Quick & Daniel Gunzburg visited Cook Shire Council office to hold a meeting with Cook Shire Engineer Michael Czarniecki. The meeting held to discuss department concerns regarding construction of webber esplanade seawall, and for which a show cause notice was issued to Council on 2/12/2015. Calvin advised that the department had visited the site that morning as an opportunity to see the works following involvement in the complaint the department received. Michael raised concerns regarding communication with the EHP, and believed there may be poor relationships following the previous engineers work. Calvin advised the visit was purely opportunistic given the EHP's other work in the area, and previous involvement with the complaint. Michael requested advice on what the process was moving forward. Calvin explained that the EHP had some concerns with the construction of the seawall and that it may not comply with conditions of its development permit. That a show cause notice is issued to give Council an opportunity to provide their response to the identified issues, and to give Council natural justice. Calvin advised that the EHP would continue to gather information including the Councils response to the show cause notice, existing available information, expert opinions from the department's Coastal Engineers before determining a response. Calvin advised it was too early to forecast a response would be taken until all this information was considered. Michael raised concerns that the EHP response may hold up processes with Department of Natural Resources & Mines. Calvin asked for clarification on this. Michael explained that the permissible change of use application was done by the previous engineer independent and without the knowledge or consent of the planning department or Council. As a result Council had developed on unallocated state land. Council has been working with DNRM to obtain change to the tenure of the land to allow the development.

12:45 PM

of the esplanade to continue, but that Council had concerns that the EHP's response may delay or stop the DNRM process from occurring. At this point Tim Cronin Cook Shire Council CEO entered the meeting. Calvin reiterated the advice provided to Michael in the meeting to date. Tim requested some advice on what some of the possible penalties would be in a worst case scenario. Calvin advised that it was too early to identify what the EHP's response would be, but that there was concerns that Cook Shire had contravened a condition(s) of the development approval, that this was an offense and had options available under relevant legislation. The departments response may range from no action, issuing a warning notice, issuing a penalty infringement notice, or issuing a tidal works notice. Tim wanted the information so that it could be conveyed at a Council meeting on the coming Monday. Tim asked whether EHP & DNRM were communicating about their respective responses. Calvin replied that to his knowledge they hadn't, but would take the concerns on board and see if this could be changed.



Seawall eastern end.



Seawall eastern end



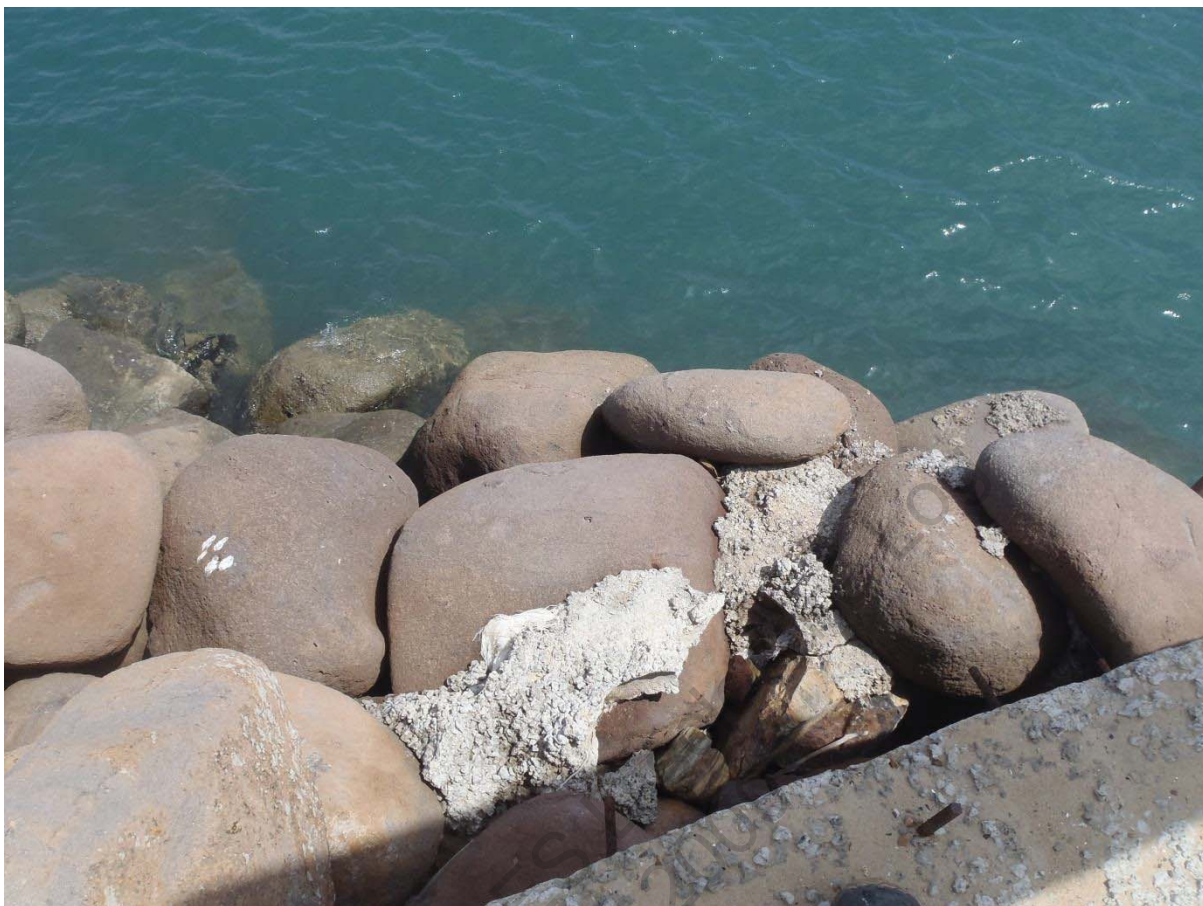
Seawall eastern end



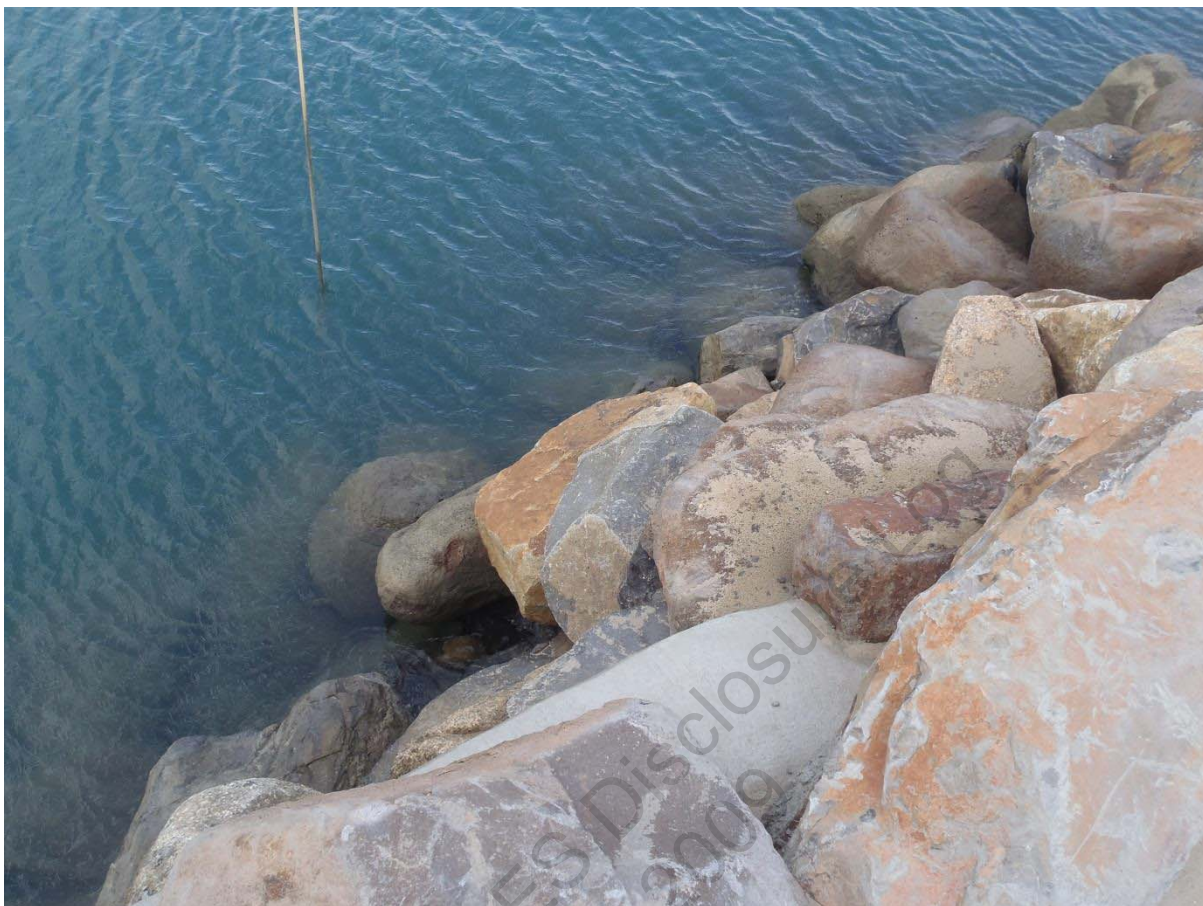
Seawall western end



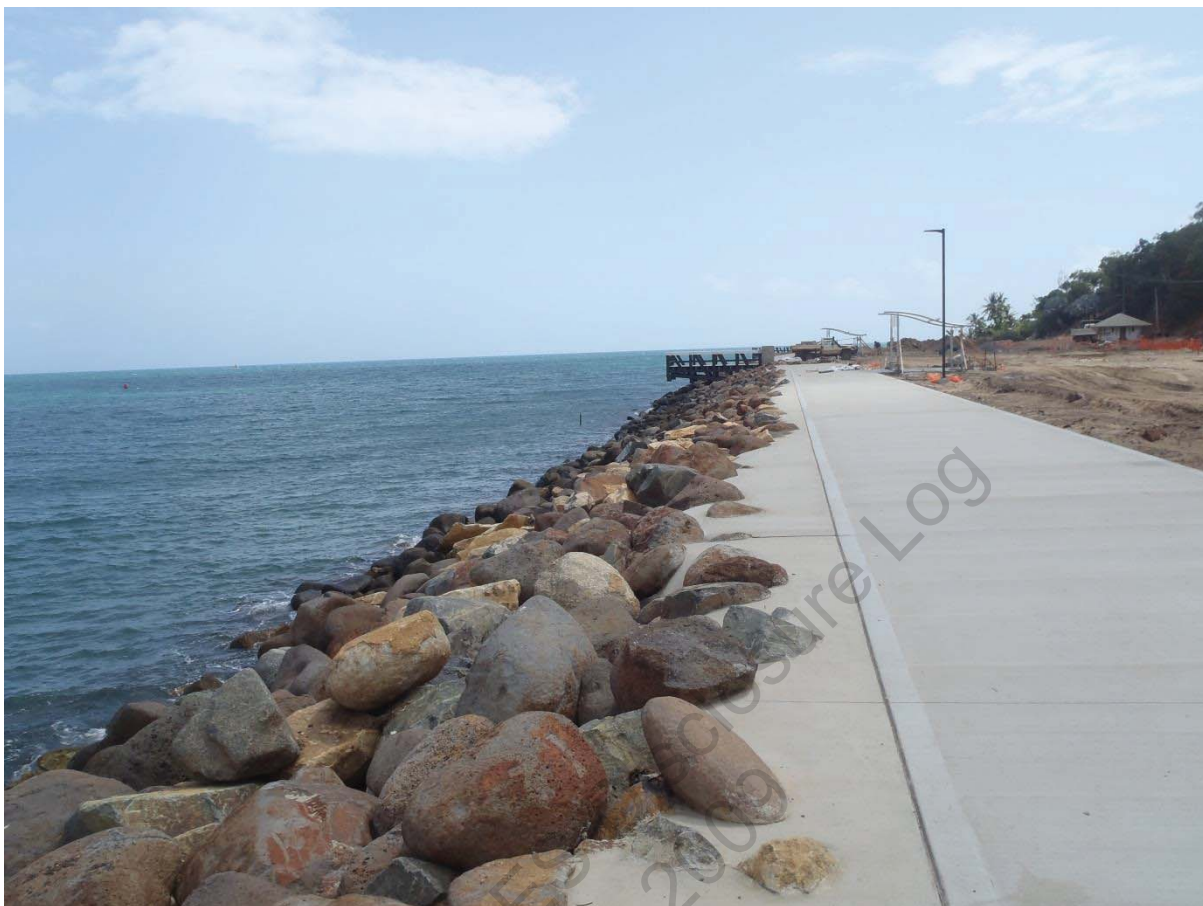
Seawall MSQ mooring



Seawall steep batter



Seawall steep batter



Seawall looking east



Seawall fill



Seawall looking west

ecoaccess

environmental licences and permits

Development Permit

Section 3.5.15 Integrated Planning Act 1997

EPA Permit¹ number: IPDC00316405D11

EPA Permit¹ number:	IPDC00316405D11
Assessment Manager reference:	FN300179
Date application received by EPA:	18-AUG-2004
Permit¹ Type:	Development Approval for Operational Work
Date of Decision:	15-AUG-2006
Decision:	Approved with conditions
Relevant Laws and Policies:	Coastal Protection and Management Act 1995 and any subordinate legislation

The development permit attaches to the land described below, which either connects to or receives the benefits of the structure or activity that is the tidal work.

The development permit applies to and binds the Cook Shire Council.

Development Description

Property	Lot/Plan	Aspect of Development
Webber Esplanade COOKTOWN QLD 4871	Lot 82, Plan BS246 & Lot 83, Plan BS161	Tidal work in, on, or above tidal waters relating to Stage 2 (reclamation and revetment)

Additional comments or advice about the application

Nil

Additional information for applicants

The standard currency periods stated in section 3.5.21 of the Integrated Planning Act 1997 or the nominated currency period, apply to each aspect of development in this permit¹. For information on when this permit¹ takes effect and the relevant currency periods, please see point 3 in the Notice of Decision.

¹ Permit includes licences, approvals, permits, authorisations, certificates, sanctions or equivalent/similar as required by legislation administered by the Environmental Protection Agency and the Queensland Parks and Wildlife Service



EPA Permit number: IPDC00316405D11

Contaminated Land

It is a requirement of the *Environmental Protection Act 1994* that if an owner or occupier of land becomes aware a Notifiable Activity (as defined by Schedule 2 of the *Environmental Protection Act 1994*) is being carried out on the land or that the land has been affected by a hazardous contaminant, they must, within 30 days after becoming so aware, give notice to the Environmental Protection Agency.

CTPI 49-Sch4

Ingrid Forniatti Minnesma
District Manager
Cairns District, Northern Region
Delegate
Environmental Protection Agency

15-AUG-2006

Published on DES Disclosure Log
RTI Act 2009

EPA Permit number: IPDC00316405D11

CONDITIONS OF APPROVAL

Agency Interest: Coastal - structures

- (PC1) All works are to be constructed in accordance with the attached approved drawings and specifications listed in the approved plans section in the notice attached to this development approval.
- (PC2) A report from a Registered Professional Engineer of Queensland must be submitted to the Environmental Protection Agency within three (3) months of the date of completion of the works certifying that: -
- (a) the works (including any other associated works) have been constructed in accordance with the approved drawings and these conditions;
 - (b) the works: -
 - (i) are structurally adequate for anticipated usage; and
 - (ii) comply with all relevant codes including the Environmental Protection Agency's operational policy
 - (c) The bed and banks of the waterway for a distance of 15 metres around the site of the works are clear of all debris.
- (PC3) All treated timber (creosote and/or CCA) used in or adjacent to tidal land or waters, must comply with Australian Standard 1604.1-2000.
- (PC4) All timber treated with creosote and/or CCA including double treated timber piles must be washed of all excess preservative prior to its use. Contaminated wash waters must not be deposited into tidal waters or cause contamination to land. All treated timber must be sawn or drilled over a catchment sheet or other surface suitable to catch waste materials and the waste materials must be disposed of to a licensed waste facility.
- (PC5) All temporary works associated with the construction of the reclamation works and revetment wall are to be removed from the site at the completion of the works and all wastes shall be collected from the site by the permittee and disposed of at a licensed waste facility.
- (PC6) The following measures must be taken during the removal of any existing revetment structures: -
- (a) the demolished structures and other debris located at the site must be completely removed and all material disposed of above the level of highest astronomical tide;
 - (b) all reasonable and practicable measures must be taken to prevent or minimise damage to coastal resources including that disturbance to the bed and banks of the waterway is minimised to the greatest extent practicable;
 - (c) any material or any debris that falls or is deposited on tidal lands during the demolition of the structure must be removed at the completion of the works.
- (PC7) Any stormwater outlet from the site must be constructed and maintained to prevent or minimise localised erosion or scouring, and, any erosion or scouring that occur must be repaired as soon as reasonably practicable.
- (PC8) The chief executive administering the Coastal Protection and Management Act 1995 may order the works to be removed or modified: -
- (a) create a navigation hazard or other danger to the public; or
 - (b) cause erosion or land degradation; or
 - (c) are unstable or have not been constructed according to the approved plans.

EPA Permit number: IPDC00316405D11

- (PC9) All reasonable and practicable measures must be taken to prevent pollution of adjacent waters as a result of silt run-off, oil and grease spills from machinery, concrete truck washout and alike. Concrete agitator wash out must only be conducted in a specified area to facilitate the removal of waste concrete from the area to landfill. Wastewater from cleaning equipment must not be discharged directly or in-directly to any watercourses or stormwater systems.
- (PC10) Other than as expressly provided by this development approval, any sand required for the works is to be obtained from outside the erosion prone area.
- (PC11) Prevent the release of sediment to waters or a build up of sediment in any stormwater drain.
- (PC12) All rock, stone, gravel, sand or other fill material used in the construction reclamation and the revetment wall must be: -
- (a) Suitable for the purpose having regard to the location of the land and to the proposed use of the land; and
 - (b) Free from contaminants.

Agency Interest: Heritage - historic buildings and locations

- (PH1) The remains of the existing Pilot's Jetty are to remain intact, covered with geofabric and buried in the reclamation works and is to be preceded by the thorough assessment and documentation of this structure by suitably qualified heritage personnel. The assessment by qualified heritage personnel shall continue during the reclamation process and once reclamation is finalised appropriate interpretive signage is to be displayed over the location of the Pilot's Jetty.

Any artefacts of cultural heritage significance revealed during reclamation and revetment works are to be documented and conserved and placed in the charge of the appropriate entity.

- (PH2) The Powder Magazine is afforded due protection by the listing on the National Heritage Database and Queensland Heritage Register and is to be fully protected during and after construction of the works. Suitable safety barrier fencing is to be installed to the perimeter of the Powder Magazine, with due consideration to minimising use of vibratory equipment or similar effects occurring in the close proximity to the Powder Magazine.

Agency Interest: Impacts on surrounds

- (PI1) Prior to commencement of the works, the holder of this development approval must prepare and submit a environmental management plan to the administering authority for its review and comment. The plan is to specify methodology proposed to undertake the reclamation and revetment works, regarding, but not limited to
- (a) sediment and erosion control measures
 - (b) drainage and erosion control
 - (c) noise and dust control
 - (d) a soil sampling program for the proposed fill to be used in the reclamation
 - (e) turbidity monitoring
- (PI2) The holder of this development approval must take due regard to comment provided by the administering authority after having reviewed a plan required as a condition of this development approval prior to the implementation of such plan.

EPA Permit number: IPDC00316405D11

- (PI3) The holder of this development approval must implement the environmental management plan at the commencement of the works. All elements of the environmental management plan must be implemented for the complete duration of the works.

Agency Interest: Tenure

- (PT1) The land tenure of the coastal waters to be reclaimed, as depicted on GHD Pty Ltd certified plan No.42-12740-C001 Rev.0, is to remain State Land as a declared Esplanade under the Land Act 1994, and be incorporated within the existing Webber Esplanade with Cook Shire Council as trustee.

DEFINITIONS

Words and phrases used throughout this permit¹ are defined below. Where a definition for a term used in this permit¹ is sought and the term is not defined within this permit¹ the definitions provided in the relevant legislation shall be used.

"approval" means 'notice of development application decision' or 'notice of concurrence agency response' under the *Integrated Planning Act 1997*.

"approved plans" means the plans and documents listed in the approved plans section in the notice attached to this development approval.

"coastal dune" means a ridge or hillock of sand or other material on the coast and built up by the wind.

"dredge spoil" means material taken from the bed or banks of waters by using dredging equipment or other equipment designed for use in extraction of earthen material.

"Environmental Protection Agency" means the department or agency (whatever called) administering the *Coastal Protection and Management Act 1995* or the *Environmental Protection Act 1994*.

"erosion prone area" means an area declared to be an erosion prone area under section 70(1) of the *Coastal Protection and Management Act 1995*.

"high water mark" means the ordinary high water mark at spring tides.

"quarry material" means material on State coastal land, other than a mineral within the meaning of any Act relating to mining. Material includes for example stone, gravel, sand, rock, clay, mud, silt and soil, unless it is removed from a culvert, stormwater drain or other drainage infrastructure as waste material.

"tidal water" means the sea and any part of a harbour or watercourse ordinarily within the ebb and flow of the tide at spring tides.

"watercourse" means a river, creek or stream in which water flows permanently or intermittently-

- in a natural channel, whether artificially improved or not; or
- in an artificial channel that has changed the course of the watercourse.

"waters" includes river, stream, lake, lagoon, pond, swamp, wetland, unconfined surface water, unconfined water natural or artificial watercourse, bed and bank of any waters, dams, non-tidal or tidal waters (including the sea), stormwater channel, stormwater drain, roadside gutter, stormwater run-off, and groundwater and any part thereof.

END OF CONDITIONS



Department of
State Development,
Infrastructure and Planning

Our reference: SPD-0414-006809

Date: 26 May 2014

Cook Shire Council
C/- Reel Planning
PO Box 2088
Milton Qld 4064

Dear CTPI 49-Sch4

Notice of decision—changed approval (responsible entity)

Operational Works (tidal work in, on, or above tidal waters) - Webber Esplanade, Cooktown
(Lot 82 on BS246 & Lot 83 on BS161)

(Given under section 376 of the *Sustainable Planning Act 2009*)

The Department of State Development, Infrastructure and Planning received representations under section 369 of the *Sustainable Planning Act 2009* (SPA) on 30 April 2014 for the original decision described below.

Applicant details

Applicant name: Cook Shire Council C/- Reel Planning

Site details

Real property description: Lot 82 on BS246 & Lot 83 on BS161

Local government area: Cook Shire Council

Application details

Proposed development: Development Permit for Operational Works (tidal work in, on, or above tidal waters – revetment wall)

Port Authority Building
Cnr Grafton and Hartley Streets, Cairns
PO Box 2358, Cairns
Queensland 4870 Australia

Telephone +61 7 4048 1111
Website www.dsdip.qld.gov.au
Email: CairnsSARA@dsdip.qld.gov.au
ABN 29 230 178 530

Page 1

Original decision

Date of original decision: 15 August 2006
Original decision details: Approved subject to conditions

A changed decision notice for this request is attached.

Copies of the following documents are also attached:

- relevant appeal provisions in the *Sustainable Planning Act 2009*
- any plans and specifications approved in relation to the decision notice.

If you require any further information, please contact Charlton Best, Senior Planning Officer, on 07 4048 1499 or via email at CairnsSARA@dsdip.qld.gov.au, who will be pleased to assist.

Yours sincerely

CTPI 49-Sch4

Angela Foster
Manager (Planning)

enc: Changed decision notice
Approved plans and specifications
Attachment 1—Changed Assessment Manager conditions
Attachment 2—SPA appeal provisions

Our reference: SPD-0414-006809

Changed decision notice

(Given under section 376 of the *Sustainable Planning Act 2009*)

Applicant details

Applicant name: Cook Shire Council
Applicant contact details: C/- Reel Planning
PO Box 2088
Milton Qld 4064

Application details

Level of assessment: Code assessment
Date of request for change: 30 April 2014

Site details

Street address: Webber Esplanade, Cooktown
Real property description: Lot 82 on BS246 & Lot 83 on BS161
Site area: 3668m²
Name of owner: State of Queensland

Nature of the changes

The nature of the changes agreed to are:

1. Changes to previously approved plans and specifications in order to accurately reflect the layout of the constructed Revetment Wall.

Original decision

Date of original decision: 15 August 2006
Original decision details: Approved subject to conditions

Changed decision

Date of changed decision: 26 May 2014
Changed decision details: Approved subject to conditions

Conditions

This approval is subject to:

- the changed assessment manager conditions in Attachment 1

The department has, for particular conditions of this approval, nominated an entity to be the assessing authority for that condition under section 255D(3) of the *Sustainable Planning Act 2009*.

Aspects of development and development approval granted

Nature of Development	Approval Type	Brief Description of Proposal	Level of Assessment
Operational Works	Development Permit	Tidal work in, on, or above tidal waters – revetment wall	Code Assessment

Findings on material questions of fact

- The development proposal is considered to meet or proposes acceptable outcomes or actions that meet with the performance outcomes specified in the statutory planning instrument, the State Development Assessment Provisions.
- The request to change the assessment manager's approval was received on 30 April 2014.
- The provision of conditions relating to the permit ensures that suitable coastal and environmental outcomes are reached.

Evidence or other material on which the findings were based

- All supporting material submitted by the applicant.
- State Development Assessment Provisions published by the Department of State Development, Infrastructure and Planning – Modules 10 and 14.
- Development Approval IPDC00316405D11.
- Coastal Protection and Management Act 1995*.
- Coastal Protection and Management Regulation 2003*.
- Environmental Protection Act 1994*.
- Environmental Protection Regulation 2008*.
- Sustainable Planning Regulation 2009*.
- Sustainable Planning Act 2009*.
- Department of Environment and Heritage Protection guidelines <http://www.ehp.qld.gov.au/coastal/development/guidelines.html>
- Department of Environment and Heritage Protection policy documents http://www.ehp.qld.gov.au/coastal/development/operational_policies.html
- Department of Environment and Heritage Protection information sheets http://www.ehp.qld.gov.au/coastal/development/information_sheets.html
- Coastal technical series http://www.ehp.qld.gov.au/coastal/ecology/beaches-dunes/beach_conservation.html

Rights of appeal

The rights of applicants to appeal to the Planning and Environment Court against decisions about a development application are set out in chapter 7, part 1, division 8 of the *Sustainable Planning Act 2009*. For particular applications, there may also be a right to appeal to the Building and Development Dispute Resolution Committee (see chapter 7, part 2 of the *Sustainable Planning Act 2009*).

Copies of the relevant appeal provisions are attached.

Published on DES Disclosure Log
RTI Act 2009

Our reference: SPD-0414-006809

Attachment 1—Changed Assessment Manager conditions

No.	Conditions	Condition timing
General – Approved Plans		
1.	<p>Development must be carried out generally in accordance with the following plans and/or documents, except as modified by these assessment manager conditions:</p> <ul style="list-style-type: none"> • 'Cook Shire Council – Webber Esplanade – Cooktown – Revetment Wall – As Built Design General Arrangement Plan', Reference No CSC-C001, Version A1, dated 20/05/2014. • 'Cook Shire Council – Webber Esplanade – Cooktown – Revetment Wall – As Built Design Sections Sheet 1 of 2', Reference No CSC-C002, Version A1, dated 20/05/2014. • 'Cook Shire Council – Webber Esplanade – Cooktown – Revetment Wall – As Built Design Sections Sheet 2 of 2', Reference No CSC-C003, Version A1, dated 20/05/2014. 	From the date this approval takes effect.
Coastal – Structures		
2.	All works are to be constructed in accordance with the drawings and specifications listed in this changed approval notice.	From the date this approval takes effect.
3.	<p>A report from a Registered Professional Engineer of Queensland must be submitted to the Department of Environment and Heritage Protection within three (3) months of the date of completion of the works certifying that:</p> <ul style="list-style-type: none"> • The works (including any other associated works) have been constructed in accordance with the drawings listed in this Technical Advice and these conditions; • The works: <ul style="list-style-type: none"> ○ are structurally adequate for anticipated usage; and ○ comply with all relevant codes including the Environmental Protection Agency's operational policy • The bed and banks of the waterway for a distance of 15 metres around the site of the works are clear of all debris. 	From the date this approval takes effect.
4.	This approval does not constitute a ruling on the structural safety of the works. It is the responsibility of the applicant to ensure adequacy of the design, construction and ongoing maintenance of the works.	From the date this approval takes effect.
5.	All treated timber (creosote and/or CCA) used in or adjacent to tidal land or waters, must comply with Australian Standard 1604.1-2000.	From the date this approval takes effect.

6.	All timber treated with creosote and/or CCA including double treated timber piles must be washed of all excess preservative prior to its use. Contaminated wash waters must not be deposited into tidal waters or cause contamination to land. All treated timber must be sawn or drilled over a catchment sheet or other surface suitable to catch waste materials and the waste materials must be disposed of to a licensed waste facility.	From the date this approval takes effect.
7.	All temporary works associated with the construction of the revetment wall are to be removed from the site at the completion of the works and all wastes shall be collected from the site by the permittee and disposed of at a licensed waste facility.	From the date this approval takes effect.
8.	<p>The following measures must be taken during the removal of any existing revetment structures:</p> <ul style="list-style-type: none"> • The demolished structures and other debris located at the site must be completely removed and all material disposed of above the level of highest astronomical tide; • All reasonable and practicable measures must be taken to prevent or minimise damage to coastal resources including that disturbance to the bed and banks of the waterway is minimised to the greatest extent practicable; and • Any material or any debris that falls or is deposited on tidal lands during the demolition of the structure must be removed at the completion of the works. 	From the date this approval takes effect.
9.	Any stormwater outlet from the site must be constructed and maintained to prevent or minimise localised erosion or scouring, and, any erosion or scouring that occur must be repaired as soon as reasonably practicable.	From the date this approval takes effect.
10.	<p>The chief executive administering the Coastal Protection and Management Act 1995 may order the works to be removed or modified:</p> <ul style="list-style-type: none"> • Create a navigation hazard or other danger to the public; or • Cause erosion or land degradation; or • Are unstable or have not been constructed according to the approved plans. 	From the date this approval takes effect.
11.	All reasonable and practicable measures must be taken to prevent pollution of adjacent waters as a result of silt run-off, oil and grease spills from machinery, concrete truck washout and alike. Concrete agitator wash out must only be conducted in a specified area to facilitate the removal of waste concrete from the area to landfill. Wastewater from cleaning equipment must not be discharged directly or in-directly to any watercourses or stormwater systems.	From the date this approval takes effect.
12.	Other than as expressly provided by this development approval, any sand required for the works is to be obtained from outside the erosion prone area.	From the date this approval takes effect.

13.	Prevent the release of sediment to waters or a build-up of sediment in any stormwater drain.	From the date this approval takes effect.
14.	<p>All rock, stone, gravel, sand or other material used in the construction of the revetment wall must be:</p> <ul style="list-style-type: none"> • Suitable for the purpose having regard to the location of the land and to the proposed use of the land; and • Free from contaminants. 	From the date this approval takes effect.
Heritage		
15.	The demolition of the Pilot's Jetty is to be preceded by the assessment and documentation of this structure by suitably qualified heritage personnel.	From the date this approval takes effect.
16.	The demolition of the structure is to be undertaken under supervision by suitably qualified heritage personnel.	From the date this approval takes effect.
17.	Any artefacts of cultural heritage significance revealed during demolition works are to be documented and conserved and placed in the charge of the appropriate entity.	From the date this approval takes effect.

Attachment 2—SPA Appeal Provisions

Sustainable Planning Act 2009—Representation and appeal provisions

The following relevant appeal provisions are provided in accordance with s336(a) of the *Sustainable Planning Act 2009*.

Chapter 6 Integrated development assessment system (IDAS)**Part 8 Dealing with decision notices and approvals****Division 1 Changing decision notices and approvals during applicant's appeal period****360 Application of div 1**

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

361 Applicant may make representations about decision

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

362 Assessment manager to consider representations

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

363 Decision about representations

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

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

364 Giving new notice about charges for infrastructure

- (1) This section applies if the development approved by the negotiated decision notice is different from the development approved in the decision notice or deemed approval in a way that affects the amount of an infrastructure charge, regulated infrastructure charge or adopted infrastructure charge.
- (2) The local government may give the applicant a new infrastructure charges notice under section 633, regulated infrastructure charges notice under section 643 or adopted infrastructure charges notice under section 648F to replace the original notice.

366 Applicant may suspend applicant's appeal period

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

Chapter 7 Appeals, offences and enforcement

Part 1 Planning and Environment Court

Division 8 Appeals to court relating to development applications and approvals

461 Appeals by applicants

- (1) An applicant for a development application may appeal to the court against any of the following—
- (a) the refusal, or the refusal in part, of the development application;
 - (b) any condition of a development approval, another matter stated in a development approval and the identification or inclusion of a code under section 242;
 - (c) the decision to give a preliminary approval when a development permit was applied for;
 - (d) the length of a period mentioned in section 341;
 - (e) a deemed refusal of the development application.
- (2) An appeal under subsection (1)(a), (b), (c) or (d) must be started within 20 business days (the **applicant's appeal period**) after—
- (a) if a decision notice or negotiated decision notice is given—the day the decision notice or negotiated decision notice is given to the applicant; or
 - (b) otherwise—the day a decision notice was required to be given to the applicant.

- (3) An appeal under subsection (1)(e) may be started at any time after the last day a decision on the matter should have been made.

462 Appeals by submitters—general

- (1) A submitter for a development application may appeal to the court only against—
 - (a) the part of the approval relating to the assessment manager's decision about any part of the application requiring impact assessment under section 314; or
 - (b) the part of the approval relating to the assessment manager's decision under section 327.
- (2) To the extent an appeal may be made under subsection (1), the appeal may be against 1 or more of the following—
 - (a) the giving of a development approval;
 - (b) any provision of the approval including—
 - (i) a condition of, or lack of condition for, the approval; or
 - (ii) the length of a period mentioned in section 341 for the approval.
- (3) However, a submitter may not appeal if the submitter—
 - (a) withdraws the submission before the application is decided; or
 - (b) has given the assessment manager a notice under section 339(1)(b)(ii).
- (4) The appeal must be started within 20 business days (the **submitter's appeal period**) after the decision notice or negotiated decision notice is given to the submitter.

463 Additional and extended appeal rights for submitters for particular development applications

- (1) This section applies to a development application to which chapter 9, part 7 applies.
- (2) A submitter of a properly made submission for the application may appeal to the court about a referral agency's response made by a concurrence agency for the application.
- (3) However, the submitter may only appeal against a referral agency's response to the extent it relates to—
 - (a) development for an aquacultural ERA; or
 - (b) development that is—
 - (i) a material change of use of premises for aquaculture; or
 - (ii) operational work that is the removal, damage or destruction of a marine plant.
- (3) Despite section 462(1), the submitter may appeal against the following matters for the application even if the matters relate to code assessment—
 - (a) a decision about a matter mentioned in section 462(2) if it is a decision of the chief executive;
 - (b) a referral agency's response mentioned in subsection (2).

464 Appeals by advice agency submitters

- (1) Subsection (2) applies if an advice agency, in its response for an application, told the assessment manager to treat the response as a properly made submission.
- (2) The advice agency may, within the limits of its jurisdiction, appeal to the court about—
 - (a) any part of the approval relating to the assessment manager's decision about any part of the application requiring impact assessment under section 314; or
 - (b) any part of the approval relating to the assessment manager's decision under section 327.
- (3) The appeal must be started within 20 business days after the day the decision notice or negotiated decision notice is given to the advice agency as a submitter.
- (4) However, if the advice agency has given the assessment manager a notice under section 339(1)(b)(ii), the advice agency may not appeal the decision.

465 Appeals about decisions relating to extensions for approvals

- (1) For a development approval given for a development application, a person to whom a notice is given under section 389, other than a notice for a decision under section 386(2), may appeal to the court against the decision in the notice.

- (2) The appeal must be started within 20 business days after the day the notice of the decision is given to the person.
- (3) Also, a person who has made a request under section 383 may appeal to the court against a deemed refusal of the request.
- (4) An appeal under subsection (3) may be started at any time after the last day the decision on the matter should have been made.

466 Appeals about decisions relating to permissible changes

- (1) For a development approval given for a development application, the following persons may appeal to the court against a decision on a request to make a permissible change to the approval—
 - (a) if the responsible entity for making the change is the assessment manager for the application—
 - (i) the person who made the request; or
 - (ii) an entity that gave a notice under section 373 or a pre-request response notice about the request;
 - (b) if the responsible entity for making the change is a concurrence agency for the application—the person who made the request.
- (2) The appeal must be started within 20 business days after the day the person is given notice of the decision on the request under section 376.
- (3) Also, a person who has made a request under section 369 may appeal to the court against a deemed refusal of the request.
- (4) An appeal under subsection (3) may be started at any time after the last day the decision on the matter should have been made.

467 Appeals about changing or cancelling conditions imposed by assessment manager or concurrence agency

- (1) A person to whom a notice under section 378(9)(b) giving a decision to change or cancel a condition of a development approval has been given may appeal to the court against the decision in the notice.
- (2) The appeal must be started within 20 business days after the day the notice of the decision is given to the person.

Division 11 Making and appeal to Court

481 How appeals to the court are started

- (1) An appeal is started by lodging written notice of appeal with the registrar of the court.
- (2) The notice of appeal must state the grounds of the appeal.
- (3) The person starting the appeal must also comply with the rules of the court applying to the appeal.
- (4) However, the court may hear and decide an appeal even if the person has not complied with subsection (3).

482 Notice of appeal to other parties—development applications and approvals

- (1) An appellant under division 8 must give written notice of the appeal to—
 - (a) if the appellant is an applicant—
 - (i) the chief executive; and
 - (ii) the assessment manager; and
 - (iii) any concurrence agency; and
 - (iv) any principal submitter whose submission has not been withdrawn; and
 - (v) any advice agency treated as a submitter whose submission has not been withdrawn; or
 - (b) if the appellant is a submitter or an advice agency whose response to the development application is treated as a submission for an appeal—
 - (i) the chief executive; and
 - (ii) the assessment manager; and
 - (iii) any referral agency; and

- (iv) the applicant; or
- (c) if the appellant is a person to whom a notice mentioned in section 465(1) has been given—
 - (i) the chief executive; and
 - (ii) the assessment manager for the development application to which the notice relates; and
 - (iii) any entity that was a concurrence agency for the development application to which the notice relates; and
 - (iv) the person who made the request under section 383 to which the notice relates, if the person is not the appellant; or
- (d) if the appellant is a person mentioned in section 466(1)—
 - (i) the chief executive; and
 - (ii) the responsible entity for making the change to which the appeal relates; and
 - (iii) the person who made the request to which the appeal relates under section 369, if the person is not the appellant; and
 - (iv) if the responsible entity is the assessment manager—any entity that was a concurrence agency for the development application to which the notice of the decision on the request relates; or
- (e) if the appellant is a person to whom a notice mentioned in section 467 has been given—the entity that gave the notice.
- (2) The notice must be given within—
 - (a) if the appellant is a submitter or advice agency whose response to the development application is treated as a submission for an appeal—2 business days after the appeal is started; or
 - (b) otherwise—10 business days after the appeal is started.
- (3) The notice must state—
 - (a) the grounds of the appeal; and
 - (b) if the person given the notice is not the respondent or a co-respondent under section 485—that the person may, within 10 business days after the notice is given, elect to become a co-respondent to the appeal by filing in the court a notice of election in the approved form.

485 Respondent and co-respondents for appeals under div 8

- (1) Subsections (2) to (8) apply for appeals under sections 461 to 464.
- (2) The assessment manager is the respondent for the appeal.
- (3) If the appeal is started by a submitter, the applicant is a co-respondent for the appeal.
- (4) Any submitter may elect to become a co-respondent for the appeal.
- (5) If the appeal is about a concurrence agency's response, the concurrence agency is a co-respondent for the appeal.
- (6) If the appeal is only about a concurrence agency's response, the assessment manager may apply to the court to withdraw from the appeal.
- (7) The respondent and any co-respondents for an appeal are entitled to be heard in the appeal as a party to the appeal.
- (8) A person to whom a notice of appeal is required to be given under section 482 and who is not the respondent or a co-respondent for the appeal may elect to be a co-respondent.
- (9) For an appeal under section 465—
 - (a) the assessment manager is the respondent; and
 - (b) if the appeal is started by a concurrence agency that gave the assessment manager a notice under section 385—the person asking for the extension the subject of the appeal is a co-respondent; and
 - (c) any other person given notice of the appeal may elect to become a co-respondent.
- (10) For an appeal under section 466—

- (a) the responsible entity for making the change to which the appeal relates is the respondent; and
- (b) if the responsible entity is the assessment manager—
 - (i) if the appeal is started by a person who gave a notice under section 373 or a pre-request response notice—the person who made the request for the change is a co-respondent; and
 - (ii) any other person given notice of the appeal may elect to become a co-respondent.
- (11) For an appeal under section 467, the respondent is the entity given notice of the appeal.

488 How an entity may elect to be a co-respondent

An entity that is entitled to elect to be a co-respondent to an appeal may do so, within 10 business days after notice of the appeal is given to the entity, by following the rules of court for the election.

490 Lodging appeal stops particular actions

- (1) If an appeal, other than an appeal under section 465, 466 or 467, is started under division 8, the development must not be started until the appeal is decided or withdrawn.
- (2) If an appeal is about a condition imposed on a compliance permit, the development must not be started until the appeal is decided or withdrawn.
- (3) Despite subsections (1) and (2), if the court is satisfied the outcome of the appeal would not be affected if the development or part of the development is started before the appeal is decided, the court may allow the development or part of the development to start before the appeal is decided.

A1

APPENDIX 13 (p.20)



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A2

APPENDIX DLP-41)



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B(p-21)



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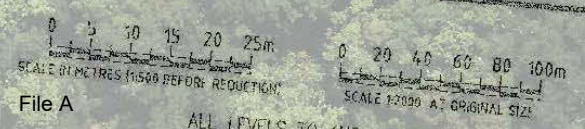


Aerial image identifying possible dredge spoil leaching through seawall at Webber Esplanade.



ARRANGMENT PLAN
SCALE 1:500

0	AS BUILT ISSUE			
Rev	Description	Drawn	Approved	Date
1	Issue for construction	CTPI 4	CTP	20.05.14





Department of
**State Development,
Infrastructure and Planning**

Our reference: SPD-0414-006809

Date: 26 May 2014

Cook Shire Council
C/- Reel Planning
PO Box 2088
Milton Qld 4064

Dear CTPI 49-Sch4

Notice of decision—changed approval (responsible entity)

Operational Works (tidal work in, on, or above tidal waters) - Webber Esplanade, Cooktown
(Lot 82 on BS246 & Lot 83 on BS161)

(Given under section 376 of the *Sustainable Planning Act 2009*)

The Department of State Development, Infrastructure and Planning received representations under section 369 of the *Sustainable Planning Act 2009* (SPA) on 30 April 2014 for the original decision described below.

Applicant details

Applicant name: Cook Shire Council C/- Reel Planning

Site details

Real property description: Lot 82 on BS246 & Lot 83 on BS161

Local government area: Cook Shire Council

Application details

Proposed development: Development Permit for Operational Works (tidal work in, on, or above tidal waters – revetment wall)

Original decision

Date of original decision: 15 August 2006
Original decision details: Approved subject to conditions

A changed decision notice for this request is attached.

Copies of the following documents are also attached:

- relevant appeal provisions in the *Sustainable Planning Act 2009*
- any plans and specifications approved in relation to the decision notice.

If you require any further information, please contact Charlton Best, Senior Planning Officer, on 07 4048 1499 or via email at CairnsSARA@dsdip.qld.gov.au, who will be pleased to assist.

Yours sincerely

CTPI 49-Sch4

Angela Foster
Manager (Planning)

enc: Changed decision notice
Approved plans and specifications
Attachment 1—Changed Assessment Manager conditions
Attachment 2—SPA appeal provisions

Our reference: SPD-0414-006809

Changed decision notice

(Given under section 376 of the *Sustainable Planning Act 2009*)

Applicant details

Applicant name: Cook Shire Council
 Applicant contact details: C/- Reel Planning
 PO Box 2088
 Milton Qld 4064

Application details

Level of assessment: Code assessment
 Date of request for change: 30 April 2014

Site details

Street address: Webber Esplanade, Cooktown
 Real property description: Lot 82 on BS246 & Lot 83 on BS161
 Site area: 3668m²
 Name of owner: State of Queensland

Nature of the changes

The nature of the changes agreed to are:

1. Changes to previously approved plans and specifications in order to accurately reflect the layout of the constructed Revetment Wall.

Original decision

Date of original decision: 15 August 2006
 Original decision details: Approved subject to conditions

Changed decision

Date of changed decision: 26 May 2014
 Changed decision details: Approved subject to conditions

Conditions

This approval is subject to:

- the changed assessment manager conditions in Attachment 1

The department has, for particular conditions of this approval, nominated an entity to be the assessing authority for that condition under section 255D(3) of the *Sustainable Planning Act 2009*.

Aspects of development and development approval granted

Nature of Development	Approval Type	Brief Description of Proposal	Level of Assessment
Operational Works	Development Permit	Tidal work in, on, or above tidal waters – revetment wall	Code Assessment

Findings on material questions of fact

- The development proposal is considered to meet or proposes acceptable outcomes or actions that meet with the performance outcomes specified in the statutory planning instrument, the State Development Assessment Provisions.
- The request to change the assessment manager's approval was received on 30 April 2014.
- The provision of conditions relating to the permit ensures that suitable coastal and environmental outcomes are reached.

Evidence or other material on which the findings were based

- All supporting material submitted by the applicant.
- State Development Assessment Provisions published by the Department of State Development, Infrastructure and Planning – Modules 10 and 14.
- Development Approval IPDC00316405D11.
- Coastal Protection and Management Act 1995*.
- Coastal Protection and Management Regulation 2003*.
- Environmental Protection Act 1994*.
- Environmental Protection Regulation 2008*
- Sustainable Planning Regulation 2009*.
- Sustainable Planning Act 2009*.
- Department of Environment and Heritage Protection guidelines
<http://www.ehp.qld.gov.au/coastal/development/guidelines.html>
- Department of Environment and Heritage Protection policy documents
http://www.ehp.qld.gov.au/coastal/development/operational_policies.html
- Department of Environment and Heritage Protection information sheets
http://www.ehp.qld.gov.au/coastal/development/information_sheets.html
- Coastal technical series http://www.ehp.qld.gov.au/coastal/ecology/beaches-dunes/beach_conservation.html

Rights of appeal

The rights of applicants to appeal to the Planning and Environment Court against decisions about a development application are set out in chapter 7, part 1, division 8 of the *Sustainable Planning Act 2009*. For particular applications, there may also be a right to appeal to the Building and Development Dispute Resolution Committee (see chapter 7, part 2 of the *Sustainable Planning Act 2009*).

Copies of the relevant appeal provisions are attached.

Published on DES Disclosure Log
RTI Act 2009

Our reference: SPD-0414-006809

Attachment 1—Changed Assessment Manager conditions

No.	Conditions	Condition timing
General – Approved Plans		
1.	<p>Development must be carried out generally in accordance with the following plans and/or documents, except as modified by these assessment manager conditions:</p> <ul style="list-style-type: none"> • ‘Cook Shire Council – Webber Esplanade – Cooktown – Revetment Wall – As Built Design General Arrangement Plan’, Reference No CSC-C001, Version A1, dated 20/05/2014. • ‘Cook Shire Council – Webber Esplanade – Cooktown – Revetment Wall – As Built Design Sections Sheet 1 of 2’, Reference No CSC-C002, Version A1, dated 20/05/2014. • ‘Cook Shire Council – Webber Esplanade – Cooktown – Revetment Wall – As Built Design Sections Sheet 2 of 2’, Reference No CSC-C003, Version A1, dated 20/05/2014. 	From the date this approval takes effect.
Coastal – Structures		
2.	All works are to be constructed in accordance with the drawings and specifications listed in this changed approval notice.	From the date this approval takes effect.
3.	<p>A report from a Registered Professional Engineer of Queensland must be submitted to the Department of Environment and Heritage Protection within three (3) months of the date of completion of the works certifying that:</p> <ul style="list-style-type: none"> • The works (including any other associated works) have been constructed in accordance with the drawings listed in this Technical Advice and these conditions; • The works: <ul style="list-style-type: none"> ○ are structurally adequate for anticipated usage; and ○ comply with all relevant codes including the Environmental Protection Agency's operational policy • The bed and banks of the waterway for a distance of 15 metres around the site of the works are clear of all debris. 	From the date this approval takes effect.
4.	This approval does not constitute a ruling on the structural safety of the works. It is the responsibility of the applicant to ensure adequacy of the design, construction and ongoing maintenance of the works.	From the date this approval takes effect.
5.	All treated timber (creosote and/or CCA) used in or adjacent to tidal land or waters, must comply with Australian Standard 1604.1-2000.	From the date this approval takes effect.

6.	All timber treated with creosote and/or CCA including double treated timber piles must be washed of all excess preservative prior to its use. Contaminated wash waters must not be deposited into tidal waters or cause contamination to land. All treated timber must be sawn or drilled over a catchment sheet or other surface suitable to catch waste materials and the waste materials must be disposed of to a licensed waste facility.	From the date this approval takes effect.
7.	All temporary works associated with the construction of the revetment wall are to be removed from the site at the completion of the works and all wastes shall be collected from the site by the permittee and disposed of at a licensed waste facility.	From the date this approval takes effect.
8.	The following measures must be taken during the removal of any existing revetment structures: <ul style="list-style-type: none"> • The demolished structures and other debris located at the site must be completely removed and all material disposed of above the level of highest astronomical tide; • All reasonable and practicable measures must be taken to prevent or minimise damage to coastal resources including that disturbance to the bed and banks of the waterway is minimised to the greatest extent practicable; and • Any material or any debris that falls or is deposited on tidal lands during the demolition of the structure must be removed at the completion of the works. 	From the date this approval takes effect.
9.	Any stormwater outlet from the site must be constructed and maintained to prevent or minimise localised erosion or scouring, and, any erosion or scouring that occur must be repaired as soon as reasonably practicable.	From the date this approval takes effect.
10.	The chief executive administering the Coastal Protection and Management Act 1995 may order the works to be removed or modified: <ul style="list-style-type: none"> • Create a navigation hazard or other danger to the public; or • Cause erosion or land degradation; or • Are unstable or have not been constructed according to the approved plans. 	From the date this approval takes effect.
11.	All reasonable and practicable measures must be taken to prevent pollution of adjacent waters as a result of silt run-off, oil and grease spills from machinery, concrete truck washout and alike. Concrete agitator wash out must only be conducted in a specified area to facilitate the removal of waste concrete from the area to landfill. Wastewater from cleaning equipment must not be discharged directly or in-directly to any watercourses or stormwater systems.	From the date this approval takes effect.
12.	Other than as expressly provided by this development approval, any sand required for the works is to be obtained from outside the erosion prone area.	From the date this approval takes effect.

13.	Prevent the release of sediment to waters or a build-up of sediment in any stormwater drain.	From the date this approval takes effect.
14.	<p>All rock, stone, gravel, sand or other material used in the construction of the revetment wall must be:</p> <ul style="list-style-type: none"> • Suitable for the purpose having regard to the location of the land and to the proposed use of the land; and • Free from contaminants. 	From the date this approval takes effect.
Heritage		
15.	The demolition of the Pilot's Jetty is to be preceded by the assessment and documentation of this structure by suitably qualified heritage personnel.	From the date this approval takes effect.
16.	The demolition of the structure is to be undertaken under supervision by suitably qualified heritage personnel.	From the date this approval takes effect.
17.	Any artefacts of cultural heritage significance revealed during demolition works are to be documented and conserved and placed in the charge of the appropriate entity.	From the date this approval takes effect.

Attachment 2—SPA Appeal Provisions

Sustainable Planning Act 2009—Representation and appeal provisions

The following relevant appeal provisions are provided in accordance with s336(a) of the *Sustainable Planning Act 2009*.

Chapter 6 Integrated development assessment system (IDAS)

Part 8 Dealing with decision notices and approvals

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

360 Application of div 1

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

361 Applicant may make representations about decision

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

362 Assessment manager to consider representations

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

363 Decision about representations

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

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

364 Giving new notice about charges for infrastructure

- (1) This section applies if the development approved by the negotiated decision notice is different from the development approved in the decision notice or deemed approval in a way that affects the amount of an infrastructure charge, regulated infrastructure charge or adopted infrastructure charge.
- (2) The local government may give the applicant a new infrastructure charges notice under section 633, regulated infrastructure charges notice under section 643 or adopted infrastructure charges notice under section 648F to replace the original notice.

366 Applicant may suspend applicant's appeal period

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

Chapter 7 Appeals, offences and enforcement

Part 1 Planning and Environment Court

Division 8 Appeals to court relating to development applications and approvals

461 Appeals by applicants

- (1) An applicant for a development application may appeal to the court against any of the following—
- (a) the refusal, or the refusal in part, of the development application;
 - (b) any condition of a development approval, another matter stated in a development approval and the identification or inclusion of a code under section 242;
 - (c) the decision to give a preliminary approval when a development permit was applied for;
 - (d) the length of a period mentioned in section 341;
 - (e) a deemed refusal of the development application.
- (2) An appeal under subsection (1)(a), (b), (c) or (d) must be started within 20 business days (the **applicant's appeal period**) after—
- (a) if a decision notice or negotiated decision notice is given—the day the decision notice or negotiated decision notice is given to the applicant; or
 - (b) otherwise—the day a decision notice was required to be given to the applicant.

- (3) An appeal under subsection (1)(e) may be started at any time after the last day a decision on the matter should have been made.

462 Appeals by submitters—general

- (1) A submitter for a development application may appeal to the court only against—
 - (a) the part of the approval relating to the assessment manager's decision about any part of the application requiring impact assessment under section 314; or
 - (b) the part of the approval relating to the assessment manager's decision under section 327.
- (2) To the extent an appeal may be made under subsection (1), the appeal may be against 1 or more of the following—
 - (a) the giving of a development approval;
 - (b) any provision of the approval including—
 - (i) a condition of, or lack of condition for, the approval; or
 - (ii) the length of a period mentioned in section 341 for the approval.
- (3) However, a submitter may not appeal if the submitter—
 - (a) withdraws the submission before the application is decided; or
 - (b) has given the assessment manager a notice under section 339(1)(b)(ii).
- (4) The appeal must be started within 20 business days (the **submitter's appeal period**) after the decision notice or negotiated decision notice is given to the submitter.

463 Additional and extended appeal rights for submitters for particular development applications

- (1) This section applies to a development application to which chapter 9, part 7 applies.
- (2) A submitter of a properly made submission for the application may appeal to the court about a referral agency's response made by a concurrence agency for the application.
- (3) However, the submitter may only appeal against a referral agency's response to the extent it relates to—
 - (a) development for an aquacultural ERA; or
 - (b) development that is—
 - (i) a material change of use of premises for aquaculture; or
 - (ii) operational work that is the removal, damage or destruction of a marine plant.
- (3) Despite section 462(1), the submitter may appeal against the following matters for the application even if the matters relate to code assessment—
 - (a) a decision about a matter mentioned in section 462(2) if it is a decision of the chief executive;
 - (b) a referral agency's response mentioned in subsection (2).

464 Appeals by advice agency submitters

- (1) Subsection (2) applies if an advice agency, in its response for an application, told the assessment manager to treat the response as a properly made submission.
- (2) The advice agency may, within the limits of its jurisdiction, appeal to the court about—
 - (a) any part of the approval relating to the assessment manager's decision about any part of the application requiring impact assessment under section 314; or
 - (b) any part of the approval relating to the assessment manager's decision under section 327.
- (3) The appeal must be started within 20 business days after the day the decision notice or negotiated decision notice is given to the advice agency as a submitter.
- (4) However, if the advice agency has given the assessment manager a notice under section 339(1)(b)(ii), the advice agency may not appeal the decision.

465 Appeals about decisions relating to extensions for approvals

- (1) For a development approval given for a development application, a person to whom a notice is given under section 389, other than a notice for a decision under section 386(2), may appeal to the court against the decision in the notice.

- (2) The appeal must be started within 20 business days after the day the notice of the decision is given to the person.
- (3) Also, a person who has made a request under section 383 may appeal to the court against a deemed refusal of the request.
- (4) An appeal under subsection (3) may be started at any time after the last day the decision on the matter should have been made.

466 Appeals about decisions relating to permissible changes

- (1) For a development approval given for a development application, the following persons may appeal to the court against a decision on a request to make a permissible change to the approval—
 - (a) if the responsible entity for making the change is the assessment manager for the application—
 - (i) the person who made the request; or
 - (ii) an entity that gave a notice under section 373 or a pre-request response notice about the request;
 - (b) if the responsible entity for making the change is a concurrence agency for the application—the person who made the request.
- (2) The appeal must be started within 20 business days after the day the person is given notice of the decision on the request under section 376.
- (3) Also, a person who has made a request under section 369 may appeal to the court against a deemed refusal of the request.
- (4) An appeal under subsection (3) may be started at any time after the last day the decision on the matter should have been made.

467 Appeals about changing or cancelling conditions imposed by assessment manager or concurrence agency

- (1) A person to whom a notice under section 378(9)(b) giving a decision to change or cancel a condition of a development approval has been given may appeal to the court against the decision in the notice.
- (2) The appeal must be started within 20 business days after the day the notice of the decision is given to the person.

Division 11 Making and appeal to Court

481 How appeals to the court are started

- (1) An appeal is started by lodging written notice of appeal with the registrar of the court.
- (2) The notice of appeal must state the grounds of the appeal.
- (3) The person starting the appeal must also comply with the rules of the court applying to the appeal.
- (4) However, the court may hear and decide an appeal even if the person has not complied with subsection (3).

482 Notice of appeal to other parties—development applications and approvals

- (1) An appellant under division 8 must give written notice of the appeal to—
 - (a) if the appellant is an applicant—
 - (i) the chief executive; and
 - (ii) the assessment manager; and
 - (iii) any concurrence agency; and
 - (iv) any principal submitter whose submission has not been withdrawn; and
 - (v) any advice agency treated as a submitter whose submission has not been withdrawn; or
 - (b) if the appellant is a submitter or an advice agency whose response to the development application is treated as a submission for an appeal—
 - (i) the chief executive; and
 - (ii) the assessment manager; and
 - (iii) any referral agency; and

- (iv) the applicant; or
- (c) if the appellant is a person to whom a notice mentioned in section 465(1) has been given—
 - (i) the chief executive; and
 - (ii) the assessment manager for the development application to which the notice relates; and
 - (iii) any entity that was a concurrence agency for the development application to which the notice relates; and
 - (iv) the person who made the request under section 383 to which the notice relates, if the person is not the appellant; or
- (d) if the appellant is a person mentioned in section 466(1)—
 - (i) the chief executive; and
 - (ii) the responsible entity for making the change to which the appeal relates; and
 - (iii) the person who made the request to which the appeal relates under section 369, if the person is not the appellant; and
 - (iv) if the responsible entity is the assessment manager—any entity that was a concurrence agency for the development application to which the notice of the decision on the request relates; or
- (e) if the appellant is a person to whom a notice mentioned in section 467 has been given—the entity that gave the notice.
- (2) The notice must be given within—
 - (a) if the appellant is a submitter or advice agency whose response to the development application is treated as a submission for an appeal—2 business days after the appeal is started; or
 - (b) otherwise—10 business days after the appeal is started.
- (3) The notice must state—
 - (a) the grounds of the appeal; and
 - (b) if the person given the notice is not the respondent or a co-respondent under section 485—that the person may, within 10 business days after the notice is given, elect to become a co-respondent to the appeal by filing in the court a notice of election in the approved form.

485 Respondent and co-respondents for appeals under div 8

- (1) Subsections (2) to (8) apply for appeals under sections 461 to 464.
- (2) The assessment manager is the respondent for the appeal.
- (3) If the appeal is started by a submitter, the applicant is a co-respondent for the appeal.
- (4) Any submitter may elect to become a co-respondent for the appeal.
- (5) If the appeal is about a concurrence agency's response, the concurrence agency is a co-respondent for the appeal.
- (6) If the appeal is only about a concurrence agency's response, the assessment manager may apply to the court to withdraw from the appeal.
- (7) The respondent and any co-respondents for an appeal are entitled to be heard in the appeal as a party to the appeal.
- (8) A person to whom a notice of appeal is required to be given under section 482 and who is not the respondent or a co-respondent for the appeal may elect to be a co-respondent.
- (9) For an appeal under section 465—
 - (a) the assessment manager is the respondent; and
 - (b) if the appeal is started by a concurrence agency that gave the assessment manager a notice under section 385—the person asking for the extension the subject of the appeal is a co-respondent; and
 - (c) any other person given notice of the appeal may elect to become a co-respondent.
- (10) For an appeal under section 466—

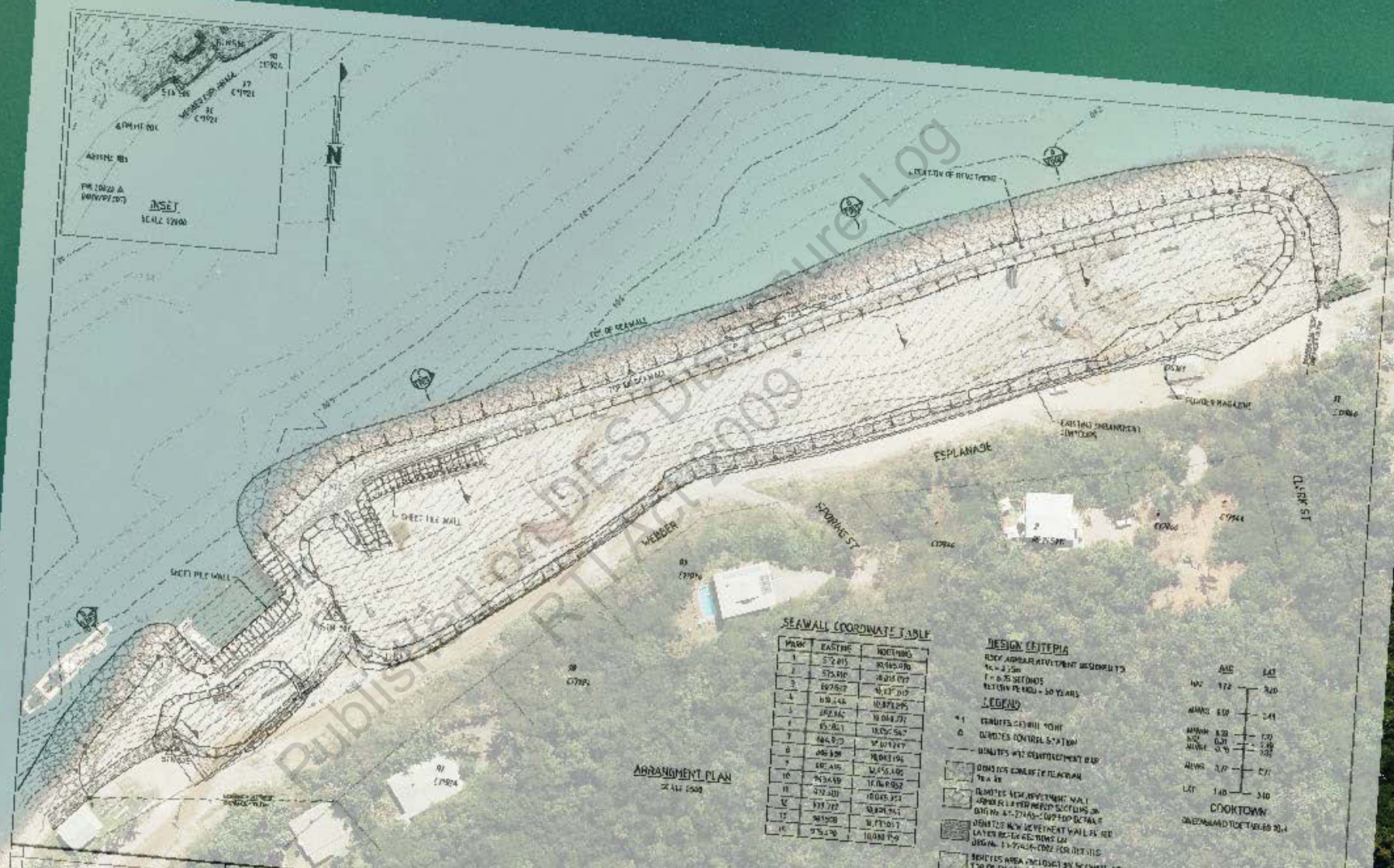
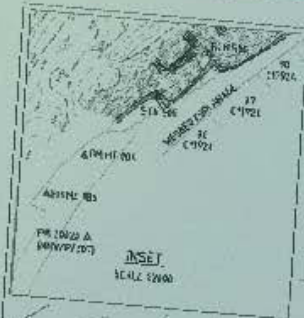
- (a) the responsible entity for making the change to which the appeal relates is the respondent; and
- (b) if the responsible entity is the assessment manager—
 - (i) if the appeal is started by a person who gave a notice under section 373 or a pre-request response notice—the person who made the request for the change is a co-respondent; and
 - (ii) any other person given notice of the appeal may elect to become a co-respondent.
- (11) For an appeal under section 467, the respondent is the entity given notice of the appeal.

488 How an entity may elect to be a co-respondent

An entity that is entitled to elect to be a co-respondent to an appeal may do so, within 10 business days after notice of the appeal is given to the entity, by following the rules of court for the election.

490 Lodging appeal stops particular actions

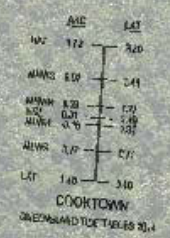
- (1) If an appeal, other than an appeal under section 465, 466 or 467, is started under division 8, the development must not be started until the appeal is decided or withdrawn.
- (2) If an appeal is about a condition imposed on a compliance permit, the development must not be started until the appeal is decided or withdrawn.
- (3) Despite subsections (1) and (2), if the court is satisfied the outcome of the appeal would not be affected if the development or part of the development is started before the appeal is decided, the court may allow the development or part of the development to start before the appeal is decided.



SEAWALL COORDINATE TABLE

MARK	EASTING	NORTHING
1	572 015	80 945 070
2	575 500	80 915 070
3	579 500	80 875 070
4	583 500	80 835 070
5	587 500	80 795 070
6	591 500	80 755 070
7	595 500	80 715 070
8	599 500	80 675 070
9	603 500	80 635 070
10	607 500	80 595 070
11	611 500	80 555 070
12	615 500	80 515 070
13	619 500	80 475 070
14	623 500	80 435 070
15	627 500	80 395 070

- DESIGN CRITERIA**
- ROCK ARMOUR REVETMENT DESIGNED TO 100 YEARS
 - DESIGN WAVE HEIGHT = 2.5m
 - DESIGN WAVE PERIOD = 10 SECONDS
 - DESIGN WAVE DIRECTION = 180 DEGREES
 - DESIGN WAVE VELOCITY = 1.5m/s
 - DESIGN WAVE FORCE = 1.5kN/m²
 - DESIGN WAVE MOMENT = 1.5kNm/m
 - DESIGN WAVE TORQUE = 1.5kNm
 - DESIGN WAVE POWER = 1.5kW
 - DESIGN WAVE ENERGY = 1.5kJ
 - DESIGN WAVE IMPULSE = 1.5Ns
 - DESIGN WAVE PRESSURE = 1.5kPa
 - DESIGN WAVE STRESS = 1.5MPa
 - DESIGN WAVE STRAIN = 1.5%
 - DESIGN WAVE DISPLACEMENT = 1.5mm
 - DESIGN WAVE ROTATION = 1.5deg
 - DESIGN WAVE TORSION = 1.5Nm
 - DESIGN WAVE BENDING = 1.5kNm
 - DESIGN WAVE SHEAR = 1.5kN
 - DESIGN WAVE TENSION = 1.5kN
 - DESIGN WAVE COMPRESSION = 1.5kN
 - DESIGN WAVE TORSION = 1.5Nm
 - DESIGN WAVE BENDING = 1.5kNm
 - DESIGN WAVE SHEAR = 1.5kN
 - DESIGN WAVE TENSION = 1.5kN
 - DESIGN WAVE COMPRESSION = 1.5kN
- LEGEND**
- DESIGN WAVE DIRECTION
 - DESIGN WAVE VELOCITY
 - DESIGN WAVE FORCE
 - DESIGN WAVE MOMENT
 - DESIGN WAVE TORQUE
 - DESIGN WAVE POWER
 - DESIGN WAVE ENERGY
 - DESIGN WAVE IMPULSE
 - DESIGN WAVE PRESSURE
 - DESIGN WAVE STRESS
 - DESIGN WAVE STRAIN
 - DESIGN WAVE DISPLACEMENT
 - DESIGN WAVE ROTATION
 - DESIGN WAVE TORSION
 - DESIGN WAVE BENDING
 - DESIGN WAVE SHEAR
 - DESIGN WAVE TENSION
 - DESIGN WAVE COMPRESSION

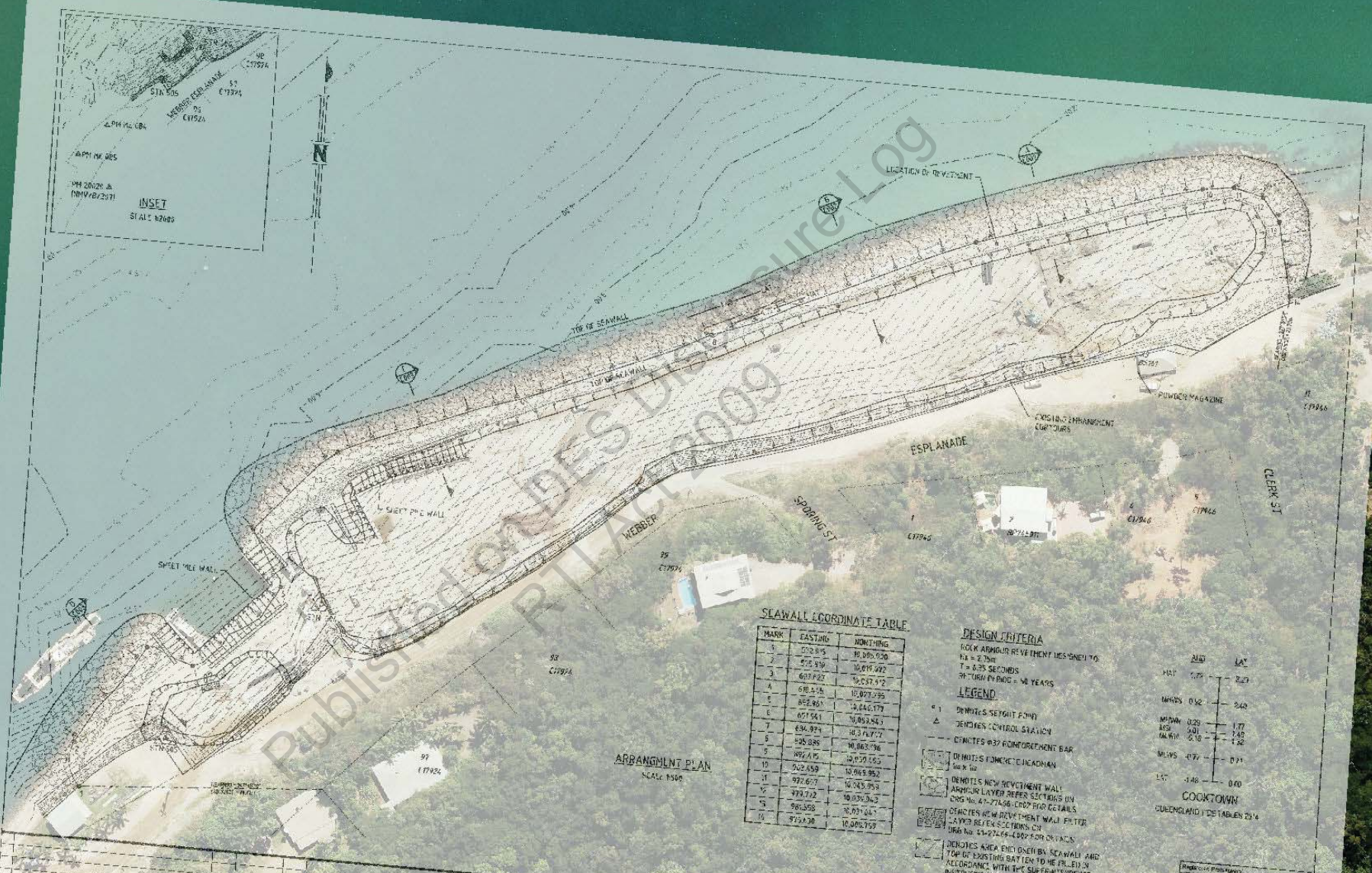


DO NOT SCALE

CTPI 49-Sch4

COOK SHIRE COUNCIL
WERBER ESPLANADE - COOKTOWN
REVENUE WALL - AS BUILT DESIGN
GENERAL ARRANGEMENT PLAN
 Drawing No: **CSC-C001**
 Date: **1/1/2001**

Author	CTPI
Checker	CTPI
Engineer	CTPI
Surveyor	CTPI
Drawn	CTPI
Scale	1:100
Sheet	1 of 1

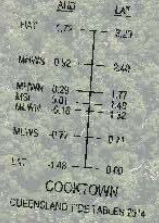


SEAWALL COORDINATE TABLE

MARK	EASTING	NORTHING
1	5728.5	10,000.030
2	575.316	10,019.992
3	607.822	10,057.312
4	618.215	10,002.395
5	652.851	10,040.179
6	657.561	10,062.961
7	634.874	10,375.702
8	626.885	10,068.736
9	692.612	10,025.755
10	702.659	10,065.952
11	722.612	10,045.353
12	770.712	10,036.363
13	781.555	10,011.041
14	773.316	10,002.759

DESIGN CRITERIA
 ROCK ARMOUR RETENTION DESIGNED TO:
 H_a = 2.7m
 T = 6.35 SECONDS
 RETURN PERIOD = 10 YEARS

LEGEND
 1 DEMONSTRATES SETOUT POINT
 2 DEMONSTRATES CONTROL STATION
 3 DEMONSTRATES 0.3% COMFORTMENT BAR
 4 DEMONSTRATES 100% COMFORTMENT BAR
 5 DEMONSTRATES NEW RETENTION WALL
 6 DEMONSTRATES EXISTING RETENTION WALL
 7 DEMONSTRATES EXISTING RETENTION WALL
 8 DEMONSTRATES EXISTING RETENTION WALL
 9 DEMONSTRATES EXISTING RETENTION WALL
 10 DEMONSTRATES EXISTING RETENTION WALL
 11 DEMONSTRATES EXISTING RETENTION WALL
 12 DEMONSTRATES EXISTING RETENTION WALL
 13 DEMONSTRATES EXISTING RETENTION WALL
 14 DEMONSTRATES EXISTING RETENTION WALL



3 AS BUILT RECORD
 10/05/2014
 10/05/2014
 10/05/2014



Cook Shire Council

DO NOT SCALE

CTPI 49-Sch4

COOK SHIRE COUNCIL
WEBSTER ESPLANADE - COOKTOWN
RETENTION WALL - AS BUILT DESIGN
GENERAL ARRANGEMENT PLAN
 Drawing No: CSC-C001
 Rev: 0

Map of Cook Shire Council
 Drawing No: 10/05/2014
 Revision: 0
 Date: 10/05/2014

Date : 12/02/2016 10:18:21 AM

From : "BRAIN Tim (EHP)"

To : "QUICK Calvin" , "Compliance Manager Industry & Development"

Cc : "OFFNER Sarah" , "CAVICCHIOLO Mark" , "Managers (Compliance)"

Subject : RE: DRAFT FOR REVIEW: Webber Esplanade, Cooktown - Tidal Works Notice and Assessment Report

Attachment : Signed decision memo.pdf;image001.png;image002.png;image004.png;

Hi Calvin

As we discussed in the meeting about the Tidal Works Notice on the 21st of Jan (?), the definition of 'repair' makes the use of a Tidal Works Notice at this stage fairly difficult. The other aspect is that the Notice was to require an investigation rather than physical works. As we discussed, SPA provisions (Show Cause) seem more appropriate but we'll see how we go. I have attached a decision memo about this which has a bit more explanation. I've closed this as a separate task to the Show Cause in our system.

All the best

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, 22 January 2016 4:36 PM

To: Compliance Manager Industry & Development

Cc: BRAIN Tim (EHP); CLEARY Amanda; OFFNER Sarah; CAVICCHIOLO Mark

Subject: DRAFT FOR REVIEW: Webber Esplanade, Cooktown - Tidal Works Notice and Assessment Report

Hi Tim,

Please see attached a draft of the tidal works notice and assessment report regarding the Webber Esplanade, Cooktown.

As discussed yesterday, I will look at our compliance options regarding this matter under the *Sustainable Planning Act 2009*, specifically the possibility of an enforcement notice.

I look forward to your thoughts regarding this.

I am happy to discuss.

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

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