

27 August 2019

Enquiries: Daniel Lamond
Our Ref: OP 2971/2018 (912939)
Your Ref:

Administration Office
64 - 66 Front St Mossman
P 07 4099 9444
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B R Eldridge & A P Eldridge
C/- Patrick Clifton, GMA Certification
PO Box 2760
NERANG QLD 4211

Dear Sir

**Operational Works for Dam Construction – 22 Mountain View Drive
Shannonvale – Lot 4 on SP134229**

Reference is made to the above development application. Please find attached the Decision Notice.

Please quote Council's application number OP 2971/2018 in all subsequent correspondence relating to this development application.

Should you require any clarification regarding this, please contact Daniel Lamond on telephone 4099 9444.

Yours faithfully

Paul Hoyer
Manager Environment and Planning

encl.

- Decision Notice

**DECISION NOTICE —
APPROVAL WITH CONDITIONS
(GIVEN UNDER SECTION 63 OF *THE PLANNING ACT 2016*)**

Douglas Shire Council has assessed your application and decided it as follows:

1. Applicant's details

Name: B R Eldridge & A P Eldridge
Postal Address: C/- Patrick Clifton, GMA Certification Group Pty Ltd
PO Box 2760
NERANG QLD 4870

2. Location details

Street Address: 22 Mountain View Drive, Shannonvale
Real Property Description: Lot 4 on SP134229
Local Government Area: Douglas Shire Council

3. Details of proposed development

Operational Works (Dam construction)

4. Decision

Date of decision: 27 August 2019
Decision details: Preliminary Approval

5. Approved plans and specifications

There are no approved plans.

6. Conditions

This approval is subject to the conditions in Schedule 1 and the Standard Conditions at Schedule 3.

7. Further development permits

Development Permit for Operational Works

8. Properly made submissions

Not applicable — No part of the application required public notification.

9. Currency period for the approval

This development approval will lapse six (6) months from the date the approval takes effect.

10. Rights of appeal

The rights of applicants to appeal to a tribunal or the Planning and Environment Court against decisions about a development application are set out in chapter 6, part 1 of the *Planning Act 2016*. For particular applications, there may also be a right to make an application for a declaration by a tribunal (see chapter 6, part 2 of the *Planning Act 2016*).

A copy of the relevant appeal provisions are included in Schedule 2.

SCHEDULE 1 – CONDITIONS AND ADVICE

CONDITIONS IMPOSED BY THE ASSESSMENT MANAGER

1. Preliminary approval limit

This preliminary approval is for a period of six (6) months from the date the approval takes effect. In the event that the conditions are not complied with, the existing dam must be demolished after pumping the retained water to a lawful point of discharge in accordance with the general environmental duty under the *Environmental Protection Act 1994*.

2. Integrity of Embankment

Provide stability certification in accordance with the FNQROC Development Manual Section D2.11 Clause 9; All batters steeper than 1 in 2 and higher than 1.5m must be certified by a Geotechnical Engineer.

3. Construction Method

Provide certification of the dam construction by an appropriately qualified geotechnical engineer in accordance with the FNQROC Development Manual Sections D2.08 Clause 1, D2.11 and Section CP1 and good engineering practices which must have regard to the following:-

- a. Material Quality Test for the backfill material (e.g. testing and analysis by an accredited facility);
- b. Compaction Tests for the backfill (e.g. testing and analysis by an accredited facility);
- c. Evidence of the thickness of compacted backfill layers (e.g. photos);
- d. Evidence of removal of topsoil and organic matter prior to placement of backfill (e.g. photos);
- e. Evidence of how the base of the embankment has been keyed into foundation ground (e.g. photos);
- f. Evidence of how the base of the embankment has been keyed into foundation ground (e.g. photos).

The certifying geotechnical engineer is to detail how the above items were considered in the assessment to the satisfaction of the Chief Executive Officer.

Provide the above construction methods used and testing records to Council for record keeping purposes.

4. Lawful Point of Discharge

Demonstrate that the dam achieves a lawful point of discharge in accordance with the FNQROC Development Manual Section D4.10 Clause 1 and D4.20 Clause 3.a by providing;

- a. A ground level survey for the area between the spillway and culverts. The survey must be used as the basis for hydraulic engineering calculations demonstrating whether the flows from the spillway are wholly contained within the applicant's lot before entering the culvert at the intersection.;

- b. Evidence that flows from the spillway do not run along (and erode) the toe of the embankment;
- c. Evidence detailing whether scour protection (on the spillway and downstream to the culverts) is or is not required.

The above detail must be submitted to Council for endorsement by the Chief Executive Officer.

5. Approved Design Drawings

Provide an as-constructed survey of the dam wall in accordance with the requirements of the FNQROC Development Manual CP1.22 Clause 2.

ADVICES

1. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.
2. For information relating to the *Planning Act 2016* log on to www.dsdmip.qld.gov.au. To access the *FNQROC Development Manual*, Local Laws and other applicable Policies, log on to www.douglas.qld.gov.au.
3. Council can support a request for a Negotiated Decision Notice to elevate this preliminary approval to a development permit in the event that the conditions of the preliminary approval are complied with.

REASONS FOR DECISION

1. To ensure the proposed development meets the requirements of the relevant benchmarks from the 2018 Douglas Shire Planning Scheme and in particular, the requirements of the FNQROC Development Manual.

SCHEDULE 2 – PLANNING ACT EXTRACT ON APPEAL RIGHTS

CHAPTER 6, PART 1 APPEAL RIGHTS

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states—
 - (a) matters that may be appealed to—
 - (i) either a tribunal or the P&E Court; or
 - (ii) only a tribunal; or
 - (iii) only the P&E Court; and
 - (b) the person—
 - (i) who may appeal a matter (the appellant); and
 - (ii) who is a respondent in an appeal of the matter; and
 - (iii) who is a co-respondent in an appeal of the matter; and
 - (iv) who may elect to be a co-respondent in an appeal of the matter.
- (2) An appellant may start an appeal within the appeal period.
- (3) The **appeal period** is—
 - (a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency; or
 - (b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
 - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or
 - (d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
 - (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or
 - (f) for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

Note — See the P&E Court Act for the court's power to extend the appeal period.

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—
 - (a) the adopted charge itself; or
 - (b) for a decision about an offset or refund—
 - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
 - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

230 Notice of appeal

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—
 - (a) is in the approved form; and
 - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.

- (3) The appellant or, for an appeal to a tribunal, the registrar must, within the service period, give a copy of the notice of appeal to—
 - (a) the respondent for the appeal; and
 - (b) each co-respondent for the appeal; and
 - (c) for an appeal about a development application under schedule 1, table 1, item 1—each principal submitter for the development application; and
 - (d) for an appeal about a change application under schedule 1, table 1, item 2—each principal submitter for the change application; and
 - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); and
 - (f) for an appeal to the P&E Court—the chief executive; and
 - (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The **service period** is—
 - (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
 - (b) otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

SCHEDULE 1 APPEALS

1 Appeal rights and parties to appeals

- (1) Table 1 states the matters that may be appealed to—
 - (a) the P&E court; or
 - (b) a tribunal.
- (2) However, table 1 applies to a tribunal only if the matter involves—
 - (a) the refusal, or deemed refusal of a development application, for—
 - (i) a material change of use for a classified building; or
 - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
 - (b) a provision of a development approval for—
 - (i) a material change of use for a classified building; or
 - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
 - (c) if a development permit was applied for—the decision to give a preliminary approval for—
 - (i) a material change of use for a classified building; or
 - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
 - (d) a development condition if—
 - (i) the development approval is only for a material change of use that involves the use of a building classified under the Building Code as a class 2 building; and
 - (ii) the building is, or is proposed to be, not more than 3 storeys; and
 - (iii) the proposed development is for not more than 60 sole-occupancy units; or
 - (e) a decision for, or a deemed refusal of, an extension application for a development approval that is only for a material change of use of a classified building; or
 - (f) a decision for, or a deemed refusal of, a change application for a development approval that is only for a material change of use of a classified building; or
 - (g) a matter under this Act, to the extent the matter relates to—

- (i) the Building Act, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission; or
 - (ii) the Plumbing and Drainage Act, part 4 or 5; or
 - (h) a decision to give an enforcement notice in relation to a matter under paragraphs (a) to (g); or
 - (i) a decision to give an infrastructure charges notice; or
 - (j) the refusal, or deemed refusal, of a conversion application; or
 - (k) a matter that, under another Act, may be appealed to the tribunal; or
 - (l) a matter prescribed by regulation.
- (3) Also, table 1 does not apply to a tribunal if the matter involves—
- (a) for a matter in subsection (2)(a) to (d)—
 - (i) a development approval for which the development application required impact assessment; and
 - (ii) a development approval in relation to which the assessment manager received a properly made submission for the development application; or
 - (b) a provision of a development approval about the identification or inclusion, under a variation approval, of a matter for the development.
- (4) Table 2 states the matters that may be appealed only to the P&E Court.
- (5) Table 3 states the matters that may be appealed only to the tribunal.
- (6) In each table—
- (a) column 1 states the appellant in the appeal; and
 - (b) column 2 states the respondent in the appeal; and
 - (c) column 3 states the co-respondent (if any) in the appeal; and
 - (d) column 4 states the co-respondents by election (if any) in the appeal.
- (7) If the chief executive receives a notice of appeal under section 230(3)(f), the chief executive may elect to be a co-respondent in the appeal.

Extract of Schedule 1 of the Planning Act 2016

Table 1			
Appeals to the P&E Court and, for certain matters, to a tribunal			
1. Development applications An appeal may be made against— <ul style="list-style-type: none"> (a) the refusal of all or part of the development application; or (b) the deemed refusal of the development application; or (c) a provision of the development approval; or (d) if a development permit was applied for—the decision to give a preliminary approval. 			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant	The assessment manager	If the appeal is about a concurrence agency's referral response—the concurrence agency	1 A concurrence agency that is not a co-respondent 2 If a chosen assessment manager is the respondent—the prescribed assessment manager 3 Any eligible advice agency for the application 4 Any eligible submitter for the application

**Table 2
Appeals to the P&E Court only**

2. Eligible submitter appeals
 An appeal may be made against the decision to give a development approval, or an approval for a change application, to the extent that the decision relates to—
 (a) any part of the development application for the development approval that required impact assessment; or
 (b) a variation request.

Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 For a development application—an eligible submitter for the development application 2 For a change application—an eligible submitter for the change application	1 For a development application—the assessment manager 2 For a change application—the responsible entity	1 The applicant 2 If the appeal is about a concurrence agency's referral response—the concurrence agency	Another eligible submitter for the application

3. Eligible submitter and eligible advice agency appeals
 An appeal may be made against a provision of a development approval, or failure to include a provision in the development approval, to the extent the matter relates to—
 (a) any part of the development application or the change application, for the development approval, that required impact assessment; or
 (b) a variation request.

Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 For a development application—an eligible submitter for the development application 2 For a change application—an eligible submitter for the change application 3 An eligible advice agency for the development application or change application	1 For a development application—the assessment manager 2 For a change application—the responsible entity	1 The applicant 2 If the appeal is about a concurrence agency's referral response—the concurrence agency	Another eligible submitter for the application

Note:

Attached is a Rights of Appeal Waiver form (Schedule 3). Please complete and return this form if you are satisfied with the approval and agree to the conditions contained therein and you wish to waive the 20 day appeal period available under the *Planning Act 2016*.