

7 December 2023

Enquiries: Jenny Elphinstone
Our Ref: CA 2017_2393/2 (Doc ID 1200787)
Your Ref: 17-224

Administration Office
64 - 66 Front St Mossman
P 07 4099 9444
F 07 4098 2902

Crystalbrook Super Yacht Marina Port Douglas Pty Ltd
C/- Urban Sync Pty Ltd
PO Box 2970
CAIRNS QLD 4870

Email: admin@urbansync.com.au

Attention Mr Matt Ingram

Dear Sir

**Development Application for Extension Application for Combined Approval
At 51 Wharf Street Port Douglas
On Land Described as LOT: 96 SP: 134234**

Please find attached the Decision Notice for the above-mentioned development application. Please note, the original submitter's appeal closed on the 16 May 2018 and this is the date of effect for the approval.

Please quote Council's application number: CA 2017_2393/2 in all subsequent correspondence relating to this development application.

Should you require any clarification regarding this, please contact Jenny Elphinstone on telephone 07 4099 9444.

Yours faithfully



For
Paul Hoyer
Manager Environment & Planning

cc. State Assessment and Referral Agency (SARA) E: CairnsSARA@dilgp.qld.gov.au
encl.

- Notice of Decision
 - Reasons for Decision
- Advice For Making Appeals (Notice of Decision)



Notice of Decision Approval

Given under s 87 of the Planning Act 2016

Applicant Details

Name: Crystalbrook Super Yacht Marina Port Douglas Pty Ltd
Postal Address: C/- Urban Sync Pty Ltd
PO Box 2970
CAIRNS QLD 4870
Email: admin@urbansync.com.au

Property Details

Street Address: 51 Wharf Street Port Douglas
Real Property Description: Lot 96 on SP134234
Local Government Area: Douglas Shire Council

Details of Proposed Development

An Extension Application for four years to 13 March 2028 for the Development Permit for Combined Application for Material Change of Use and Operational Works - Marina (Mooring facility, amenities building and ancillary works and Civil works for the mooring facility and amenities building).

Decision

Date of Decision: 7 December 2023
Decision Details: The extension application to extend the currency period for the Development Permit for Combined Application for Material Change of Use and Operational Works - Marina (Mooring facility, amenities building and ancillary works and Civil works for the mooring facility and amenities building) is approved up to and including the 17 May 2028.

Existing Approval

Copy of the existing approval is attached.

Rights to make Representations & Rights of Appeal

The rights of applicants to make representations and rights 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*. A copy of the relevant appeal provisions is attached.



PO Box 723 Mossman Qld 4873
www.douglas.qld.gov.au
enquiries@douglas.qld.gov.au
ABN 71 241 237 800

14 March 2018

Enquiries: Jenny Elphinstone
Our Ref: CA 2393/2017 (Doc ID 846546)
Your Ref: 14-224

Administration Office
64 - 66 Front St Mossman
P 07 4099 9444
F 07 4098 2902

Crystalbrook Superyacht Marina, Port Douglas Pty Ltd
C/- Urban Sync Pty Ltd
PO Box 2970
CAIRNS QLD 4870

Attention Mr Stuart Ricketts

Dear Sir

**COMBINED DEVELOPMENT APPLICATION FOR A MATERIAL CHANGE OF USE
AND OPERATIONAL WORKS - MARINA (MOORING FACILITY, AMENITIES
BUILDING AND ANCILLARY WORKS AND CIVIL WORKS FOR THE MOORING
FACILITY AND AMENITIES BUILDING) AT WHARF STREET AND DICKSON INLET
PORT DOUGLAS, ON LAND DESCRIBED AS LOT 96 ON SP134234
AND PART OF PART OF LOT 4 ON SP288958**

Thank you for lodging the above Development Application with Council on 30 November 2017.

Please find attached the Decision Notice for the above-mentioned development application.

Please quote Council's application number: CA 2393/2017 (47.2017.2393.1) in all subsequent correspondence relating to this development application. Should you require any clarification regarding this, please contact Jenny Elphinstone on telephone 07 4099 9482.

Yours faithfully

PAUL HOYE
Manager Sustainable Communities

cc. CairnsSARA@dlp.qld.gov.au

encl.

- Decision Notice
- Approved drawing(s) and / or document(s) plans

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

Thank you for your development application detailed below which was properly made on 30 November 2017. Please be aware that Douglas Shire Council has assessed your application and decided it as follows:

1. Applicant's details

Name: Crystalbrook Superyacht Marina, Port Douglas Pty Ltd
Postal Address: C/- Urban Sync Pty Ltd
PO Box 2970
CAIRNS QLD 4870

2. Location details

Street Address: Port Street and Dickson Inlet, Port Douglas
Real Property Description: Lot 96 on SP134234 and part of Lot 4 on SP288958
Local Government Area: Douglas Shire Council

3. Details of proposed development

Combined development application for a material change of use and operational works - marina (mooring facility, amenities building and ancillary works and civil works for the mooring facility and amenities building).

4. Decision

Date of decision: 13 March 2018
Decision details: Approved in full with conditions. These conditions are set out in Schedule 1 and are clearly identified to indicate whether the assessment manager or a concurrence agency imposed them.

5. Approved plans and specifications

Copies of the following plans, specifications and/or drawings are enclosed.

The term 'approved drawing(s) and / or document(s)' or other similar expressions means:

Drawing or Document	Reference	Date
General Arrangement	5307-101A	14 September 2017
Marina Setout	53307-102A	14 September 2017
Elevation	5307-103A	14 September 2017
Pile Layout and Profile	5307-104A	14 September 2017
Services Layout	5307-105A	14 September 2017
1.2m Clear Width x 20m Long Hinged Aluminium Gangway	5307-106/A	14 September 2017
Concrete Abutment Details	5307-107A	14 September 2017
Typical Pile Bracket Details	5307-108A	14 September 2017
Typical Bracket Details	5307-109/A	14 September 2017
Standard Pontoon Details	5307-109/A	14 September 2017
Toilet Building Proposal	Modus Australia MA2958	Received 14 March 2017

6. Conditions

This approval is subject to the conditions in Schedule 1. These conditions are clearly identified to indicate whether the assessment manager or concurrence agency imposed them.

7. Further development permits

Development Permit for Building Work

8. Properly made submissions

There was one properly made submission.

Name of principal submitter	Residential or Business Address	Electronic Address
Quicksilver Connections Limited	C/ Mr Tony Barker Managing Director Quicksilver Group PO BOX 5702 CAIRNS QLD 4870	

9. Referral Agency

State Assessment & Referral Agency (Department of State Development, Manufacturing, Infrastructure and Planning, email address: CairnsSARA@dilgp.qld.gov.au)

10. Currency period for the approval

Under section 85(1)(a)(i) of the *Planning Act 2016*, the relevant period for the Approval is to be six (6) years starting from the day the approval takes effect.

11. Reasons for Decision

The reasons for this decision are:

1. Section 60 of the *Planning Act 2016*:
 - a. Conditions and advices as per A and B Above;
 - b. to ensure the development satisfies the benchmarks of the 2006 Douglas Shire Planning Scheme (as amended); and
 - c. to ensure compliance with the *Planning Act 2016* and Planning Regulation 2017.
2. Findings on material questions of fact:
 - a. the development application was properly lodged with the Douglas Shire Council on 30 November 2017 under section 51 of the *Planning Act 2016* and the Development Assessment Rules; and
 - b. the development application contained a report which Council reviewed together with Council's own investigation in making its assessment manager decision.
3. Evidence or other material on which findings were based:
 - a. the development triggered assessable development under the Assessment Table associated with the Port Douglas and Environs Locality, 2006 Douglas Shire Planning Scheme (as amended);
 - b. Council undertook an assessment in accordance with the provisions of section 60 of the *Planning Act 2016*; and
 - c. the applicant's reasons have been considered and the following findings are made:
 - i. The proposed development is consistent with the Desired Environmental Outcomes contained within the 2006 Douglas Shire Planning Scheme (as amended);
 - ii. The proposed development complies with the relevant codes contained within the 2006 Douglas Shire Planning Scheme (as amended);
 - iii. The development application was publicly notified between 18 January 2018 and 12 February 2018. One submission was received in response to public notification. This submission has been considered

and addressed via conditions of approval requiring an alternative location for the proposed amenities building and wash-down bay.

- iv. The State Assessment and Referral Agency Concurrence Agency Conditions have been attached along with Council's Conditions of Approval.

12. Applicant's rights to make representations and rights of appeal

The rights of applicants to make representations and the rights 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*).

Schedule 2 is an extract from the *Planning Act 2016* that sets down the applicant's rights to make representations and the applicant's appeal rights.

SCHEDULE 1 – CONDITIONS AND ADVICE

PART 1A—CONDITIONS IMPOSED BY THE ASSESSMENT MANAGER

1. Carry out the approved development generally in accordance with the approved drawing(s) and/or document(s), and in accordance with:
 - a. The specifications, facts and circumstances as set out in the application submitted to Council; and
 - b. The following conditions of approval and the requirements of Council's Planning Scheme and the FNQROC Development Manual.

Except where modified by these conditions of approval

Timing of Effect

2. The conditions of the Development Permit must be effected prior to Commencement of Use, except where specified otherwise in these conditions of approval.

Amendment to Design

3. The proposed amenities building and wash-down bay must be relocated so that it is within the proposed lease area in accordance with the Deed of Agreement (Relocation of the Mooring Facility). For certainty, this relocation will be to a location on the eastern side of the tree-line that exists along the western boundary of Lot 96.

Amended drawings must be provided to both the Port Douglas Fishermen's Association Inc. and Douglas Shire Council prior to a development permit for Building Works being issued.

Deed of Agreement

4. If there is found to be any conflict between the Approved Drawing(s) and Document(s) and the Deed of Agreement (Relocation of the Mooring Facility), the Deed of Agreement will prevail.

Filling

5. The bulk earthworks required for flood immunity shall be set at no lower than 3.3m AHD.

Damage to Council Infrastructure

6. In the event that any part of Council's existing sewer / water or road infrastructure is damaged as a result of construction activities occurring on the site, the applicant/owner must notify Council immediately of the affected infrastructure and have it repaired or replaced at the applicant / owners cost, prior to the Commencement of Use.

Storage of Machinery and Plant

7. The storage of any machinery, material and vehicles must not cause a nuisance to surrounding properties to the satisfaction of the Chief Executive Officer.

Demolish Structures

8. All structures not associated with the approved development (including disused services and utilities) must be demolished and/or removed from the subject land prior to Commencement of Use.

Construction Access

9. All construction works and delivery of materials must take place using the existing access location into Lot 96 from Spinnaker Close or via Dickson Inlet. Wharf Street is not to be used for the set down of materials or to aid with the construction of the development without the express approval of the Chief Executive Officer

Vehicular Access

10. Vehicular access to the proposed use shall be via Spinnaker Close and not over the Balley Hooley Railway Line in Wharf Street.

OPERATIONAL WORKS

The standard conditions are shown in Appendix A and must be read in conjunction with any approved plans and project specific conditions identified below.

ASSESSMENT MANAGER CONDITIONS – PROJECT SPECIFIC:

Environmental Management Plan

1. The Principal Contractor appointed to undertake the works must prepare and Implement an Environmental management plan (EMP) for the proposed works.

A copy of the EMP is to be submitted to Council prior to the pre-start meeting taking place.

Sediment and Erosion Control

2. A copy of the contractor's Erosion and Sediment Control (ESC Plan) Plan is to be submitted to Council and endorsed by the Consulting Engineer. Measures nominated by the ESC Plan must be in accordance with *Best Practice Erosion and Sediment Control (BPESC) guidelines for Australia (International Erosion Control Association)* and the *Environment Protection (Water) Policy* and Clauses CP1.06, CP1.13 and D5.10 of Council's *FNQROC Development Manual* and reflected in the EMP prepared for the site.

The ESC Plan must be relevant to the construction methodology proposed and must be updated where necessary as works progress.

During the construction period, the Consulting Engineer and Council shall randomly audit and inspect ESC Plan measures for compliance with the Engineer endorsed contractor's ESC Plan.

It is the contractor's responsibility to ensure that the ESC Plan is updated and amended to reflect any changes in the construction methodology. All such amendments shall be approved by the Engineer and presented to Council.

The contractor shall be held responsible for any rectification works required to clean up dust, pollutants and sediments that may leave the site as a result of construction activities.

The contractor or their representative shall be responsible for communicating with third parties affected by any dust, pollutants or sediment leaving the site as a result of any construction activity that is associated with the project site.

Acid Sulphate Soils

3. Following vegetation clearing but prior to undertaking bulk earthworks, acid sulfate soil sampling and associated testing must be undertaken for soils below the long-term Inlet levels. Should ASS or PASS be present, treatment and disposal of this material must be undertaken in accordance with the Management Actions identified in the EMP.

Vegetation

4. Existing vegetation must be retained in all areas except those affected by the approved works. Any further clearing requires an Operational Works Approval.

Council must be notified two (2) business days prior to the proposed date of commencement of works in order to assist in fielding enquiries from the public.

Public Notification of Works

5. The contractor or nominated representative must provide:
 - a. Public notification of the development in local newspapers in accordance with Section CP1.11 of the *FNQROC Development Manual*.
 - b. Signage identifying the location of the project, details of the construction project, contact numbers (including out-of-office hours emergency numbers) must be provided at the entrance point of the development. All signage must be appropriately positioned, prior to the commencement of any works on the site.

For information relating to the *Planning Act 2016* log on to www.dsdip.qld.gov.au . To access the *FNQROC Development Manual*, Local Laws and other applicable Policies log on to www.douglas.qld.gov.au .

APPENDIX A – STANDARD CONDITIONS

General

1. The proposed works are permitted subject to any alterations:
 - a. found necessary by Chief Executive Officer at the time of examination of Engineering drawings or during construction of the works because of particular engineering requirements and.
 - b. to ensure the works comply in all respects with the requirements of the *FNQROC Development Manual* and good engineering practice; and
 - c. to comply with project specific conditions and the following standard conditions of approval.

All works must be carried out in accordance with the approved plans, conditions and specifications, to the requirements and satisfaction of the Chief Executive Officer.

2. Council's examination of the documents should not be taken to mean that the documents have been checked in detail and Council takes no responsibility for their accuracy. If during construction, inadequacies of the design are discovered, it is the responsibility of the Principal Consulting Engineer to resubmit amended plans to Council for approval and rectify works accordingly.
3. Notwithstanding any approval given to engineering documents, where a discrepancy occurs between these documents and Council's standards, then Council's standards shall apply. All works must be performed in accordance with Council standards and Local Laws and other statutory requirements.
4. If in fact there are errors, omissions or insufficient detail on the plans for the purpose of construction, these deficiencies shall be made good during construction and Council reserves the right to withhold approval of construction until such deficiencies are made good to its satisfaction.

Portable Long Service Leave Notification

5. As per the QLeave – Building and Construction Industry Authority Guidelines, if the works are over \$150 000, Council must sight a copy of the receipted Portable Long Service Notification and Payment form prior to commencement of work.

Third Party Agreement

6. The developer must obtain written agreement from third parties and/or Referral Agencies for any works proposed on adjacent properties. The agreement(s) must be provided prior to the associated works commencing on site. All agreements must be available for Council scrutiny, upon request.

Commencement of Works

7. Council is to receive written Notice of Intention to Commence Works and all matters relevant to the Pre-Start meeting are to be attended to in accordance with Section CP1.07, CP1.08 and Section CP1.09, of the *FNQROC Development Manual*.

Hours of Work

8. Work involving the operation of construction plant and equipment of any description, shall only be carried out on site during the following times:
 - a. 7:00 am to 6:00 pm, Monday to Friday;
 - b. 7:00 am to 1:00 pm, Saturdays; and
 - c. no work is permitted on Sundays or Public Holidays.

Any variations to the above working hours must be authorised by the Chief Executive Officer, prior to the commencement of such works.

Public Notification of the Works

9. The developer or the nominated representative must provide:
 - a. Public notification of the development in local newspapers in accordance with Section CP1.11 of the *FNQROC Development Manual*.
 - b. Signage identifying the location of the project, general allotment layout, contact numbers (including out-of-office hours emergency numbers) must be provided at all entrance points to the development. All signage must be appropriately positioned, prior to the commencement of any works on the site.

Site Inspections

10. Council requires a number of major inspections to be completed as Witness and Hold Points for Consulting Engineers and Council officers during the construction of the works. Inspections undertaken during construction shall be in accordance with Section CP1.16 (Inspection and Testing) of the *FNQROC Development Manual*. These Witness and Hold points are to be included in the contractors Inspection and Test Plan (ITP) and be made available for inspection, prior to the commencement of any works on the site.

Vegetation Protection

11. Any trees identified on drawings to be retained, are to be protected in accordance with approved plans. This must include, but is not limited to, the erection and continued maintenance of suitable physical barrier(s) placed around the tree to protect the tree and the root system. Additional protection of tree trunks by the fixing of timber planks using wire loops is also required unless approved otherwise by Council. Any damage caused to nominated trees as a result of construction activity, will require inspection by Council and will require a specified number of suitable replacements trees of suitable maturity to be provided to replace the loss in amenity.

Water

12. Douglas Shire Council must be contacted to perform any direct connection to live water mains whether being as a permanent connection, a connection for irrigation purposes or for construction water. Unless otherwise approved in writing, separate applications on the prescribed forms shall be made to Douglas Shire Council for connections, together with payment of the relevant fee. All connections are to be provided subject to the terms and conditions of Douglas Shire Council's 'Application for a Water Service Connection'.
 - a. Amended drawings in accordance with these conditions must be approved prior to the pre-start meeting.

- b. The Inspection and Test Plan (ITP) must be approved prior to the pre-start meeting. At project completion the completed and validated ITP must be submitted and approved prior to the issue of a Works Acceptance Certificate.
- c. Minimum clearances between water mains and other services must be in accordance with the *Water Supply Code of Australia* in particular the minimum clearance between water mains and sewer mains must be 500 mm with the sewer under the water main.
- d. As-constructed water drawings must be approved prior to Issue of a Works Acceptance Certificate. The as-constructed submission is to include the 'Statement of Compliance – As-constructed Documentation' and must be the final issue.

Roads and Footpaths

- 13. All works are to be designed and constructed in accordance with AS 1428.1-2001: '*Design for access and mobility*' – General requirements for access – New building work, and associated standard AS/NZS 1428.4 2002, '*Design for Access and Mobility*' – Tactile Indicators. The design is required to provide equal access for people with disability and include the provision of suitable ramps and landing areas and the installation of Tactile Ground Surface Indicators (TGSIs) where required.

Cultural Heritage

- 14. The *Aboriginal Cultural Heritage Act 2003* (the Act) seeks to protect artefacts and cultural sites that are of significance to Aboriginal people. The Act requires anyone carrying out an activity to exercise a Duty of Care. Guidelines have been produced to enable assessment of sites under the Act. These are available from the Department of Environment Heritage Protection and can be downloaded from their website at www.ehp.qld.gov.au. The work identified in the project documentation is likely to require assessment of the site under the Act.

REFERRAL AGENCY CONDITIONS & REQUIREMENTS

Referral Agency	Referral Agency Reference	Date	Council Electronic Reference
State Assessment & Referral Agency (Department of State Development, Manufacturing, Infrastructure and Planning)	1712-2859 SRA	22 January 2018	840996

Refer to Attachment 2: Referral Agency Requirements. (Please note that these conditions / requirements may be superseded by subsequent negotiations with the relevant referral agencies).

PART 1B—ADVICE NOTES

ADVICE

1. All building site managers must take all action necessary to ensure building materials and / or machinery on construction sites are secured immediately following the first cyclone watch and that relevant emergency telephone contacts are provided to Council officers, prior to commencement of works.
2. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.
3. Infrastructure Charges are applicable to the berthing components issued under the Development Permit issued for MCUC449.

LAND USE DEFINITIONS*

In accordance with the *Douglas Shire Planning Scheme 2006*, the approved land use of Marina is defined as:

'Marina':

'Means premises used to moor or store marine vessels (including power driven yachts and fishing vessels) on, or adjacent to the water. The use may include ancillary facilities for refuelling, servicing, repair, land storage and the sale of marine craft and for the sale of related boating gear and equipment.

The use includes:

- slipway;
- marine infrastructure;
- offices and storerooms;
- laundry, toilet and shower facilities;
- general store not exceeding 250m²;
- marine retail, including dive stores;
- marine related tourism activities;
- ancillary marina facilities used in connection with the marina;
- sale of freshly caught seafood produce from marine vessels (specifically the vessel the seafood was caught from).'

*This definition is provided for convenience only. This Development Permit is limited to the specifications, facts and circumstances as set out in the application submitted to Council and is subject to the abovementioned conditions of approval and the requirements of Council's Planning Scheme and the FNQROC Development Manual.

PART 1C—CONCURRENCE AGENCY CONDITIONS

RA6-N



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

Our reference: 1712-2859 SRA
Your reference: CA2393/2017
Applicant reference: 17-224

22 January 2018

Chief Executive Officer
Douglas Shire Council
PO Box 723
Mossman QLD 4873
enquiries@douglas.qld.gov.au

Attention: Simon Clarke

Dear Sir / Madam

Referral agency response—with conditions
(Given under section 56 of the *Planning Act 2016*)

The development application described below was properly referred to the Department of State Development, Manufacturing, Infrastructure and Planning on 6 December 2017.

Applicant details

Applicant name:	Crystalbrook Superyacht Marina, Port Douglas Pty Ltd c/- Urban Sync
Applicant contact details:	PO Box 2970 Cairns QLD 4870 louise@urbansync.com.au

Location details

Street address:	Wharf Street and Port Street, Port Douglas
Real property description:	Lot 4 on SP288958 and Lot 96 on SP134234
Local government area:	Douglas Shire Council

Application details

Development permit	Material change of use for a Marina (8 berths and facilities) and Operational work for prescribed tidal works
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Page 1 of 4

Far North Queensland regional office
Ground Floor, Cnr Grafton and Hartley
Street, Cairns
PO Box 2358, Cairns QLD 4870

Referral triggers

The development application was referred to the department under the following provisions of the Planning Regulation 2017:

- 10.17.3.1.1 Tidal works or work in a coastal management district
- 10.17.3.2.1 Tidal works or work in a coastal management district

Conditions

Under section 56(1)(b)(i) of the *Planning Act 2016* (the Act), the conditions set out in Attachment 1 must be attached to any development approval.

Reasons for decision to impose conditions

The department must provide reasons for the decision to impose conditions. These reasons are set out in Attachment 2.

A copy of this response has been sent to the applicant for their information.

For further information please contact Joanne Manson, A/Manager (Planning), SARA Far North QLD on 4037 3228 or via email CairnsSARA@dlgp.qld.gov.au who will be pleased to assist.

Yours sincerely



Graeme Kenna
Manager (Planning)

cc Crystalbrook Superyacht Marina, Port Douglas Pty Ltd, c/- Urban Sync, email: louise@urbansync.com.au

enc Attachment 1—Conditions to be imposed
Attachment 2—Reasons for decision to impose conditions

Attachment 1—Conditions to be imposed

No.	Conditions	Condition timing
Operational work		
Schedule 10, Part 17, Division 3, Table 2, Item 1 – Tidal works or work in a coastal management district - The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of the Department of Transport and Main Roads (Maritime Safety QLD) to be the enforcement authority for the development to which this development approval relates for the administration and enforcement of any matter relating to the following conditions:		
1.	Any navigational aid that is damaged due to the construction, operation or maintenance of the approved development must be promptly repaired or replaced at the applicant's cost. In the event that any damage is caused to any aid to navigation, the Harbour Master must be immediately contacted on telephone 4052 7412 and via email rhmcalms@msq.qld.gov.au .	At all times
2.	<p>(a) Provide written notice to the Regional Harbour Master (Cairns) via email rhmcalms@msq.qld.gov.au, when the development authorised under this approval is scheduled to commence.</p> <p>Each notice must state this application number, the location and name of registered place and the condition number under which the notice is being given.</p> <p>(b) Provide written notice to the Regional Harbour Master (Cairns) via email rhmcalms@msq.qld.gov.au, when the development authorised under this approval has been completed.</p> <p>Each notice must state this application number, the location and name of registered place and the condition number under which the notice is being given.</p>	<p>(a) At least two (2) weeks prior to the commencement of works.</p> <p>(b) Within two (2) weeks of the completion of works.</p>
3.	All vessels, structures, plant and equipment associated with the construction of the approved works must be lit/marketed in accordance with the following specifications and requirements such that undertaking the construction works does not cause a risk to the safe navigation of ships: <ul style="list-style-type: none"> Lighting provided must not obscure, disguise or otherwise interfere with the effectiveness of navigational lighting. 	While the works are occurring.
4.	The structure must be lit/marketed in accordance with the following specifications, such that it does not cause a risk to the safe navigation of other ships: <ul style="list-style-type: none"> Lighting provided must not obscure, disguise or otherwise interfere with the effectiveness of navigational lighting. 	At all times
5.	The construction, operation or maintenance of the structure, and any ship moored at this structure, must not impede the safe navigation of other ships or restrict safe access to or from neighbouring structures.	At all times
6.	<p>(a) Any debris or similar obstruction encountered whilst undertaking the work must be disposed of at the applicant's cost.</p> <p>AND</p> <p>(b) All piles and/or structures to be demolished, both above and below the waterline must be completely extracted/removed.</p>	At all times

Attachment 2—Reasons for decision to impose conditions

The reasons for this decision are:

- To ensure that the development does not interfere with any existing aids to navigation.
- To facilitate the monitoring of the development works for compliance.
- To ensure that at all times, all lights on or above the development site do not interfere with safe navigation in surrounding waterways.
- To ensure the development does not encroach or impede on the navigation corridor to ensure the safe passage of vessels.
- To ensure the development does not encroach on the navigable waterway in a way that impedes the safe passage of vessels.



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

Department of State Development, Manufacturing, Infrastructure and Planning
Statement of reasons for application 1712-2859 SRA

(Given under section 56 of the *Planning Act 2016*)

Departmental role: Referral agency

Applicant details

Applicant name: Crystalbrook Superyacht Marina, Port Douglas Pty Ltd
c/- Urban Sync

Applicant contact details: PO Box 2970
Cairns QLD 4870
louise@urbansync.com.au

Location details

Street address: Wharf Street and Port Street, Port Douglas

Real property description: Lot 4 on SP288958 and Lot 96 on SP134234

Local government area: Douglas Shire Council

Development details

Development permit: Material change of use for a Marina (8 Berths and Facilities) and
Operational work for Prescribed Tidal Works

Assessment matters

Aspect of development requiring code assessment	Applicable codes
1. Operational work	State Development Assessment Provisions, version 2.1, effective 11 August 2018 <ul style="list-style-type: none"> State code 7: Maritime safety State code 8: Coastal development and tidal works

Reasons for the department's decision

The reasons for the decision are:

- The proposed development is relatively small scale and is located in an existing marina.
- As conditioned, the proposal complies the relevant performance outcomes in State code:7 Maritime safety.
- The proposed development meets the purpose of State code 8: Coastal development and tidal works in that the development is not impacted by coastal erosion, maintains coastal processes and conserves coastal resources.
- The proposed development enhances the appropriate use of State coastal land.

Decision

Nature of Approval	Nature of response	Date of decision
		Far North Queensland regional office Ground Floor, Cnr Grafton and Hartley Street, Cairns PO Box 2358, Cairns QLD 4870

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Development Permit

Subject to conditions

22 January 2018

Relevant material

- Development application
- State Development Assessment Provisions published by the Department of Infrastructure, Local Government and Planning (v2.1)
- *Planning Act 2016*
- Planning Regulation 2017
- Development Assessment Rules version 1.1
- Technical agency assessment responses

SCHEDULE 2 – PLANNING ACT 2016 EXTRACT APPLICANTS RIGHTS ON MAKING REPRESENTATIONS AND APPEAL RIGHTS

Planning Act 2016
Chapter 3 Development assessment

[s 75]

- (c) as if a reference in section 76 to a development application were a reference to a change application; and
- (d) as if the reference in section 76(3)(b) to section 63(2) and (3) were a reference to section 83(4); and
- (e) with any other necessary changes.

75 Making change representations

- (1) The applicant may make representations (*change representations*) to the assessment manager, during the applicant's appeal period for the development approval, about changing—
 - (a) a matter in the development approval, other than—
 - (i) a matter stated because of a referral agency's response; or
 - (ii) a development condition imposed under a direction made by the Minister under chapter 3, part 6, division 2; or
 - (b) if the development approval is a deemed approval—the standard conditions taken to be included in the deemed approval under section 64(8)(c).
- (2) If the applicant needs more time to make the change representations, the applicant may, during the applicant's appeal period for the approval, suspend the appeal period by a notice given to the assessment manager.
- (3) Only 1 notice may be given.
- (4) If a notice is given, the appeal period is suspended—
 - (a) if the change representations are not made within a period of 20 business days after the notice is given to the assessment manager—until the end of that period; or
 - (b) if the change representations are made within 20 business days after the notice is given to the assessment manager, until—

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- (i) the applicant withdraws the notice, by giving another notice to the assessment manager; or
 - (ii) the applicant receives notice that the assessment manager does not agree with the change representations; or
 - (iii) the end of 20 business days after the change representations are made, or a longer period agreed in writing between the applicant and the assessment manager.
- (5) However, if the assessment manager gives the applicant a negotiated decision notice, the appeal period starts again on the day after the negotiated decision notice is given.

76 Deciding change representations

- (1) The assessment manager must assess the change representations against and having regard to the matters that must be considered when assessing a development application, to the extent those matters are relevant.
- (2) The assessment manager must, within 5 business days after deciding the change representations, give a decision notice to—
 - (a) the applicant; and
 - (b) if the assessment manager agrees with any of the change representations—
 - (i) each principal submitter; and
 - (ii) each referral agency; and
 - (iii) if the assessment manager is not a local government and the development is in a local government area—the relevant local government; and
 - (iv) if the assessment manager is a chosen assessment manager—the prescribed assessment manager; and
 - (v) another person prescribed by regulation.

- (2) The person is taken to have engaged in the representative's conduct, unless the person proves the person could not have prevented the conduct by exercising reasonable diligence.
- (3) In this section—
 - conduct* means an act or omission.
 - representative* means—
 - (a) of a corporation—an executive officer, employee or agent of the corporation; or
 - (b) of an individual—an employee or agent of the individual.
 - state of mind*, of a person, includes the person's—
 - (a) knowledge, intention, opinion, belief or purpose; and
 - (b) reasons for the intention, opinion, belief or purpose.

Chapter 6 Dispute resolution

Part 1 Appeal rights

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states—
 - (a) matters that may be appealed to—
 - (i) either a tribunal or the P&E Court; or
 - (ii) only a tribunal; or
 - (iii) only the P&E Court; and
 - (b) the person—
 - (i) who may appeal a matter (the *appellant*); and
 - (ii) who is a respondent in an appeal of the matter; and

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

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- (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.
- (7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department's website for this purpose.

231 Other appeals

- (1) Subject to this chapter, schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
- (2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section—
decision includes—

- (a) conduct engaged in for the purpose of making a decision; and
- (b) other conduct that relates to the making of a decision; and
- (c) the making of a decision or the failure to make a decision; and
- (d) a purported decision; and
- (e) a deemed refusal.

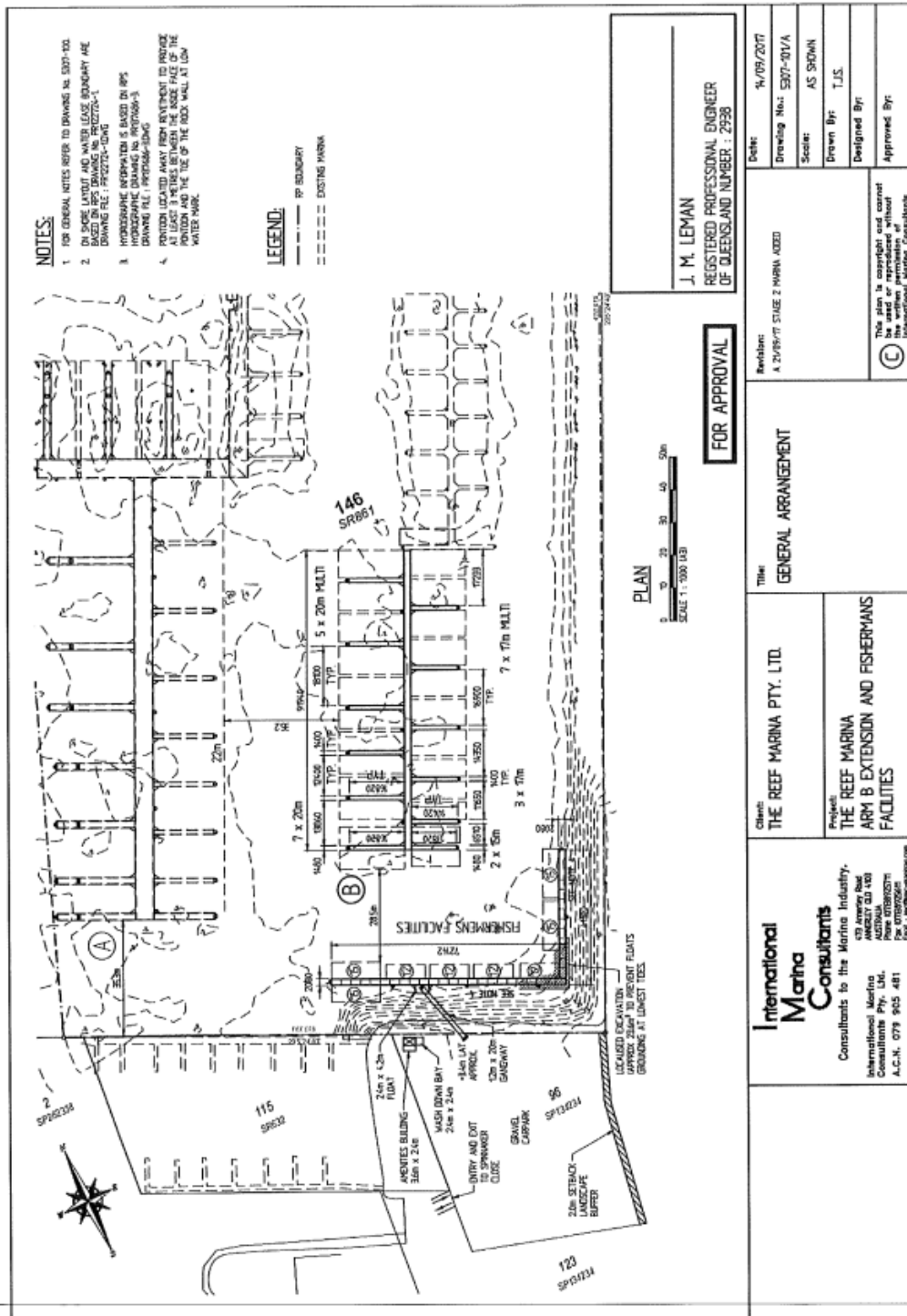
non-appealable, for a decision or matter, means the decision or matter—

- (a) is final and conclusive; and
- (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the *Judicial Review Act 1991* or otherwise, whether by the Supreme Court, another court, any tribunal or another entity; and
- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, any tribunal or another entity on any ground.

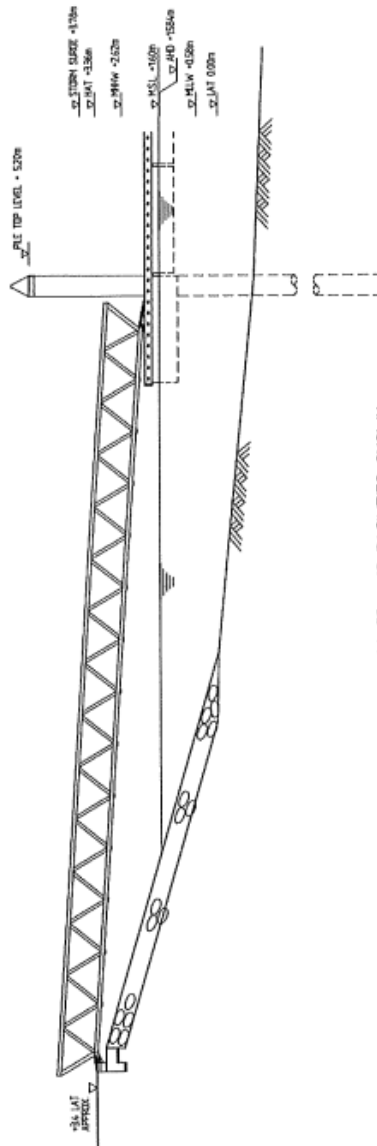
232 Rules of the P&E Court

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with rules of the P&E Court.

APPROVED DRAWING(S) AND / OR DOCUMENT(S)



- 1 FOR GENERAL NOTES REFER TO DRAWING NO. 5307-102.
- 2 ALL LEVELS ARE SHOWN IN METRES AND ARE REDUCED TO LOWEST ASTRONOMICAL TIDE (LAT. 40° 00' 00" N AND 6° 45' 00" E).

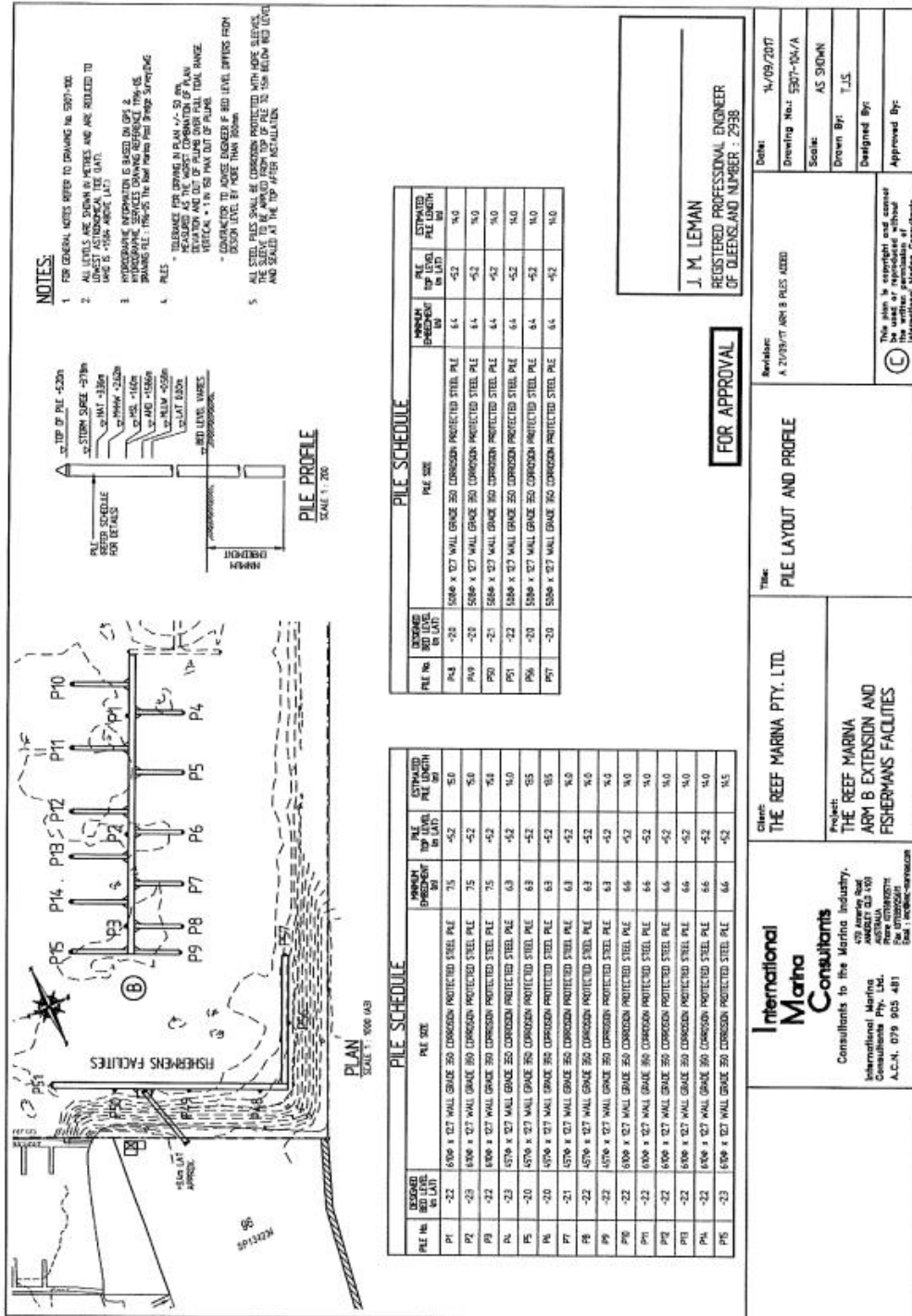


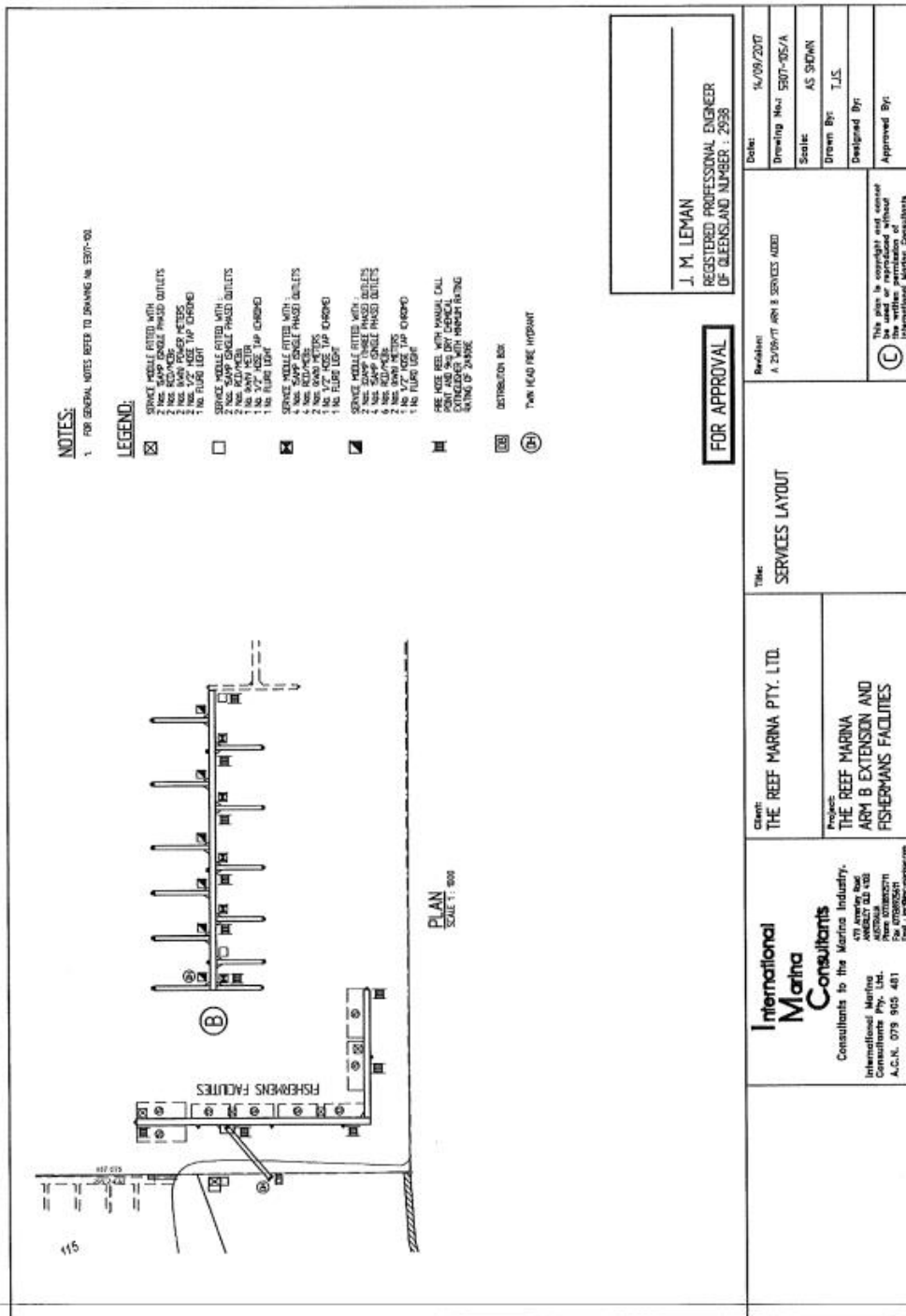
ELEVATION - FISHERMANS FACILITIES SHOWN

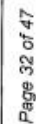
FOR APPROVAL

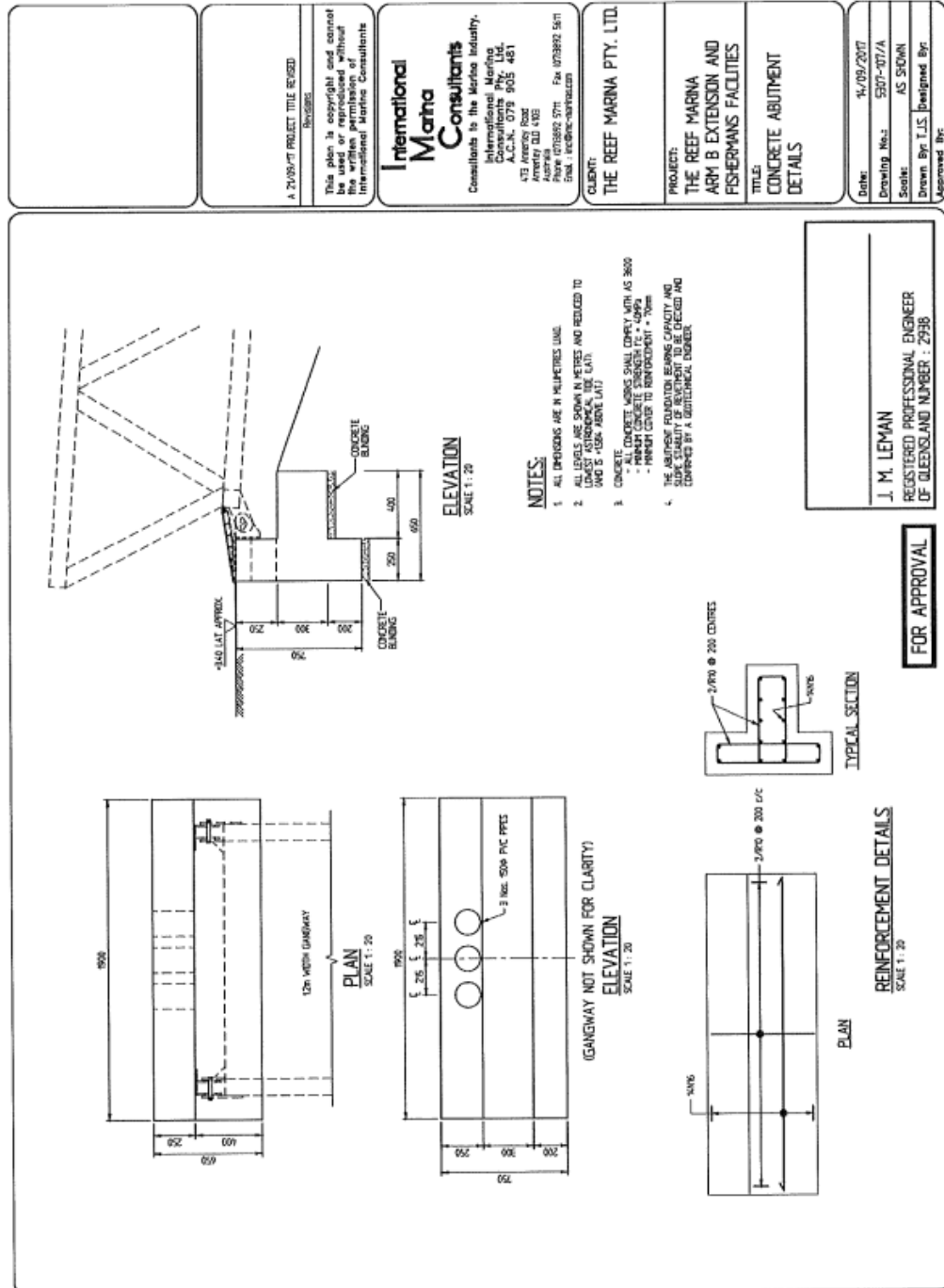
J. M. LEMAN
REGISTERED PROFESSIONAL ENGINEER
OF QUEENSLAND NUMBER : 29318

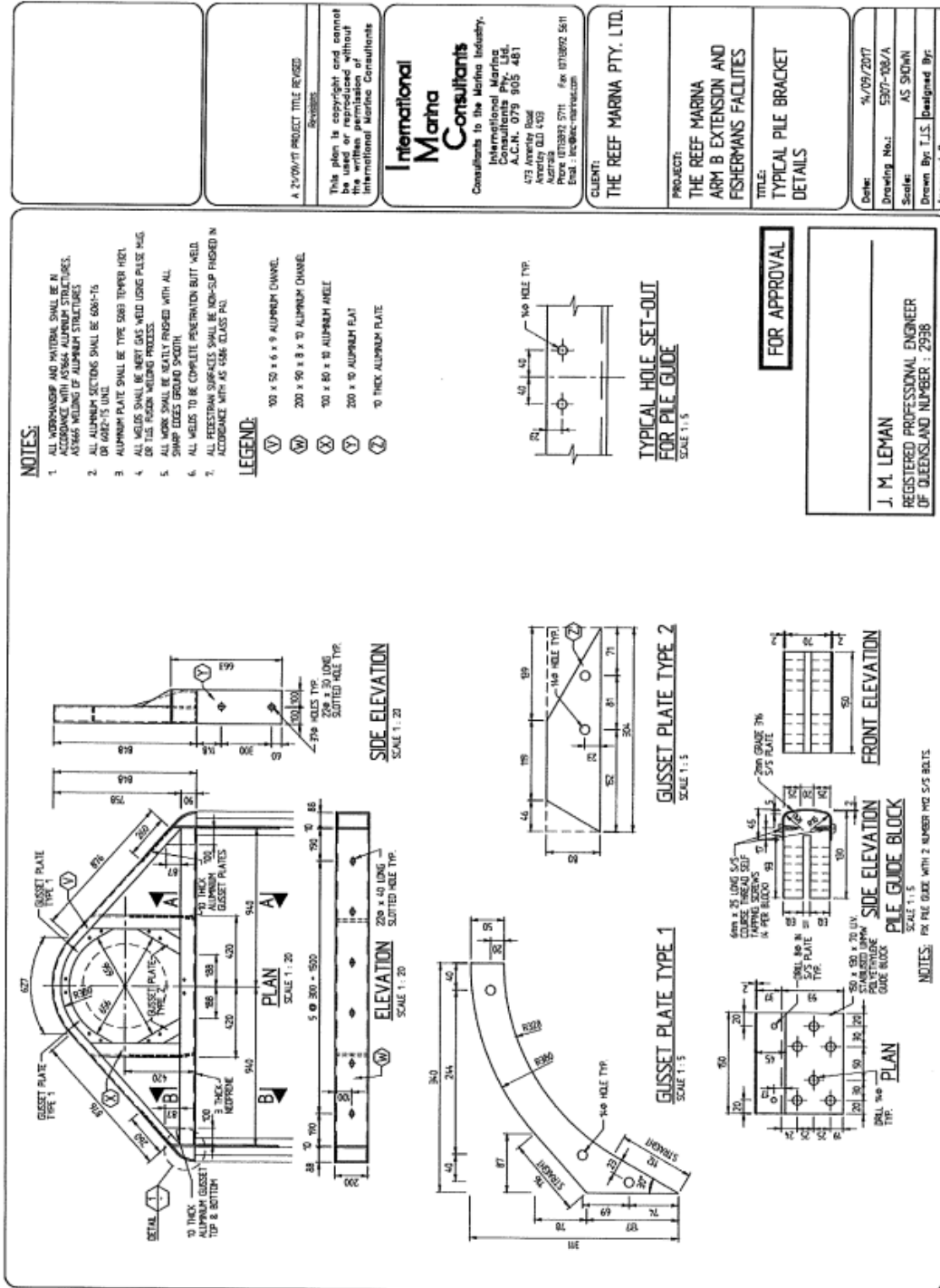
<p>International Marina Consultants Consultants to the Marina Industry.</p> <p>479, Awerley Road PO BOX 220 MORNINGTON VIC 3770 A.C.N. 079 905 481 Fax 03 5969 9999</p>	<p>Client: THE REEF MARINA PTY. LTD.</p>	<p>Project: THE REEF MARINA ARM B EXTENSION AND FISHERMANS FACILITIES</p>	<p>Title: ELEVATION</p>	<p>Revisions: A 23/05/17 PROJECT TITLE REVISED</p>	<p>Date: 16/05/2017 Drawing No.: 5307-103/A Scale: AS SHOWN Drawn By: T.J.S. Designed By: Approved By:</p>
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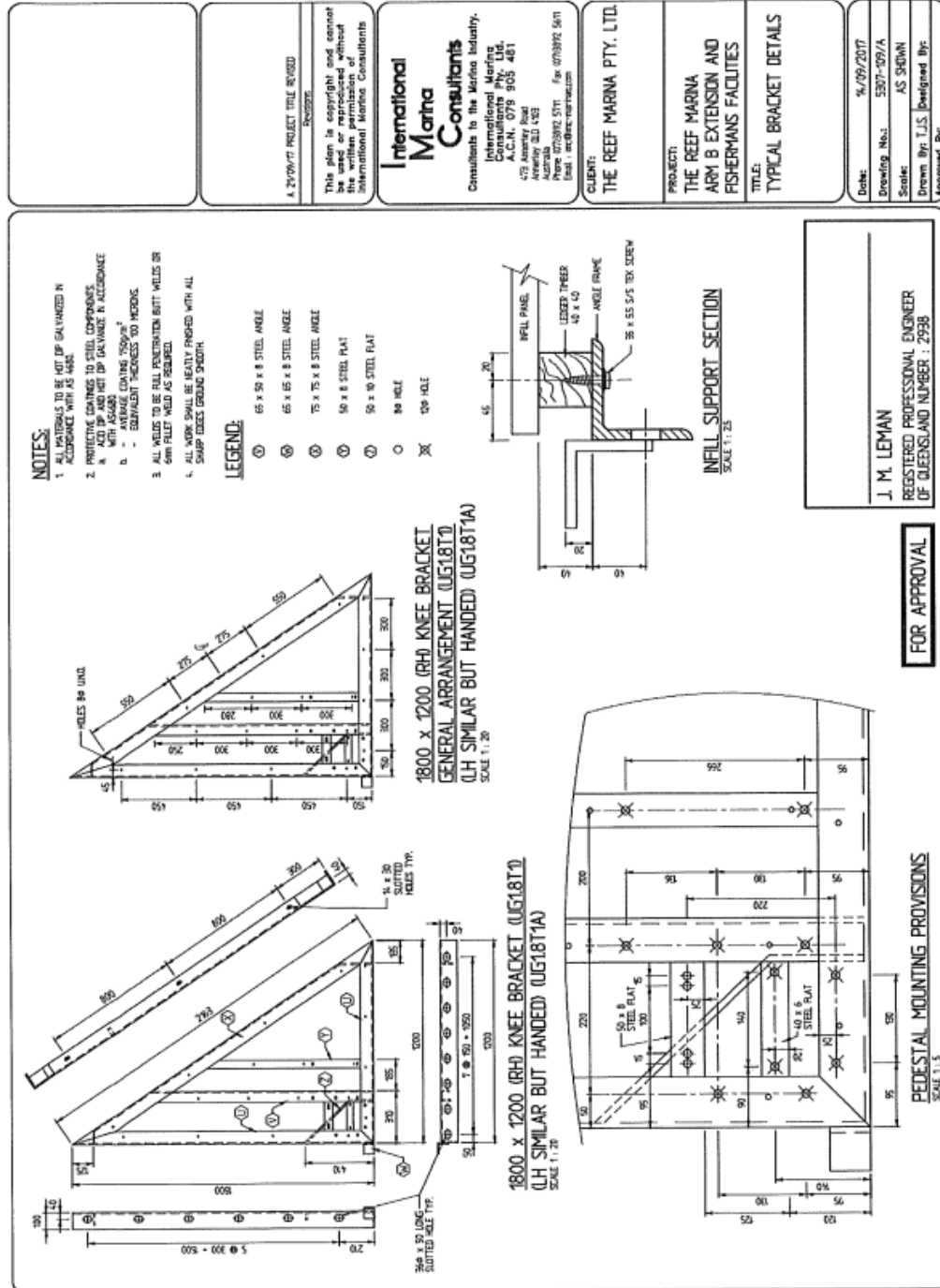


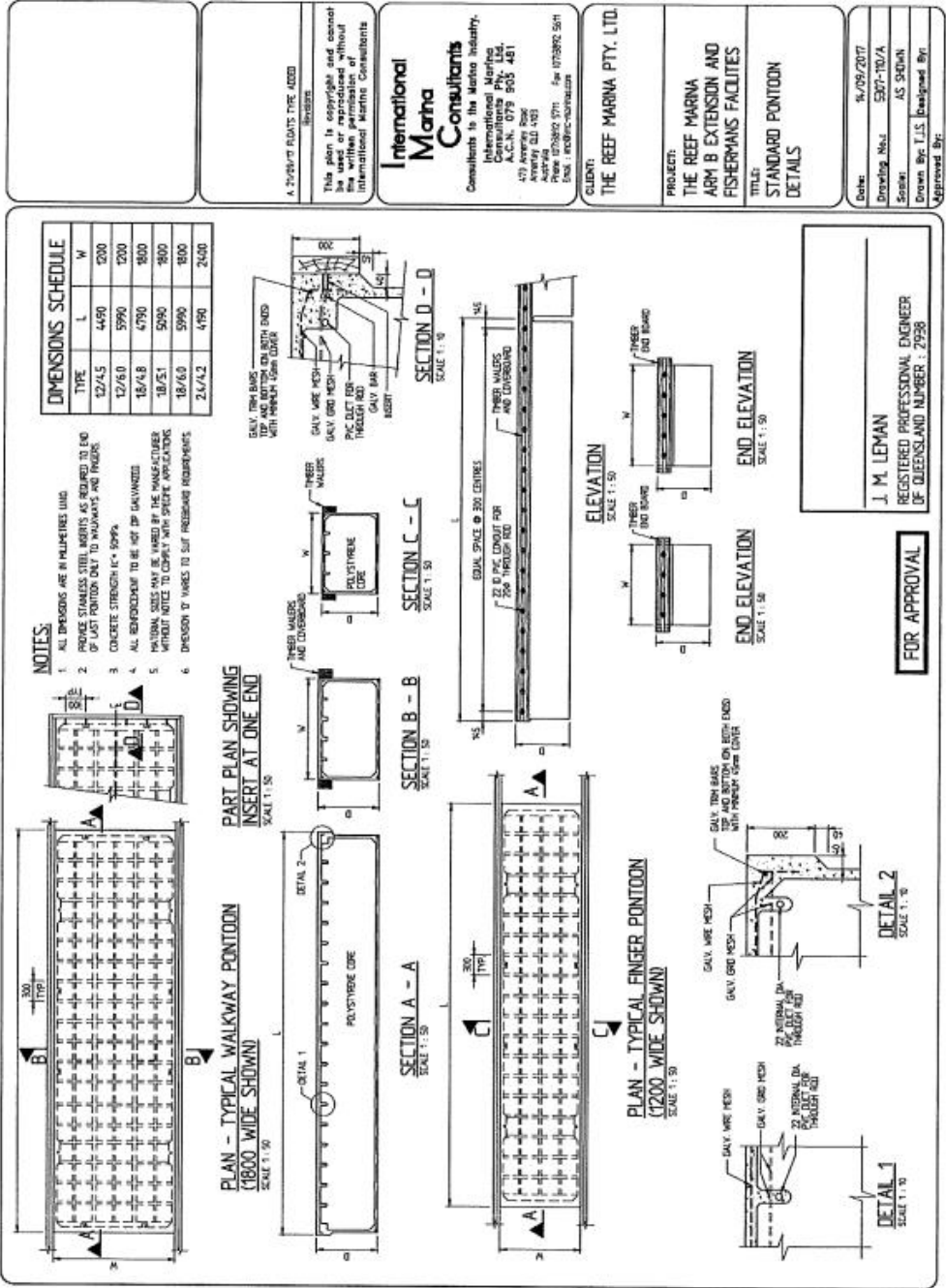












Toilet Building Proposal

For

PRIME CONSTRUCTIONS

Fisherman Mooring Pontoon, Port Douglas

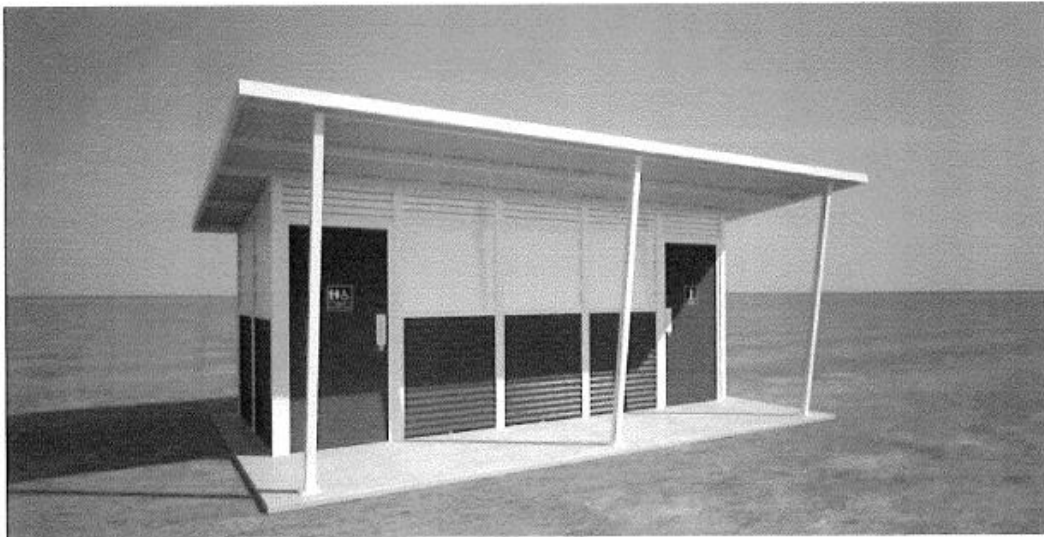


Table of Contents

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Building Colours	7
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Sample of the Modus Public Amenity range



..... Many more options available. Speak to a consultant for further details.

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Why Modus Australia Toilet Buildings?

✓ **Cost Effective**

Less expensive than standard brick and tile

✓ **Easy to Erect**

Minimal trade skills required

✓ **Low Maintenance**

All coated steel – timber free

✓ **Vandal Resistant**

Materials selected for strength and durability

✓ **Robust**

Suitable for cyclonic areas



Experience

MODUS AUSTRALIA has been manufacturing and supplying Restrooms and Toilet Buildings for over a decade, and has a valuable client base covering a wide range of entities including Local Governments, Roads Authorities, Communities, Project Developers, National Parks and Mining Companies.

Compliance

MODUS AUSTRALIA has dealt extensively with government bodies and regulatory authorities, and can provide all the relevant documentation and technical support to meet the statutory requirements relating to the supply and installation of its products.

MODUS AUSTRALIA provides a range of products that comply with the relevant Australian Standards applicable to their categories.

Durability

MODUS AUSTRALIA is committed to providing durable, vandal resistant Toilet Buildings that minimize ongoing maintenance and withstand the wear and tear of public use.

Accessibility

MODUS AUSTRALIA offers a range of Toilet Buildings that are compliant with Access & Mobility Australian Standard No. 1428-2009.

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Monday, 18 September 2017

Prime Constructions
Attention: Glenn Marshall

MODUS AUSTRALIA
32 Turbot Street
Brisbane QLD 4000
ABN: 53 147 987 095
ACN: 147 987 095
info@modusaustalia.com.au
www.modusaustalia.com.au

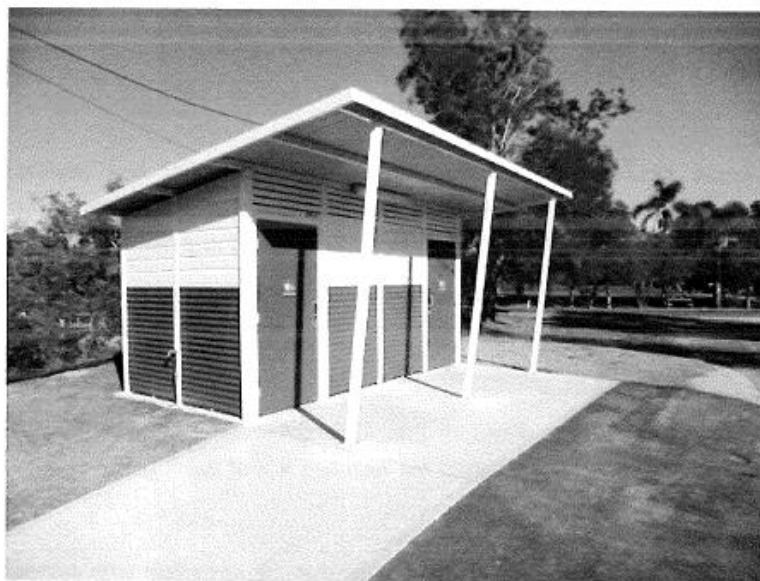
Dear Glenn,

Thank you for your valued enquiry regarding our Toilet Buildings. Please see the below proposal for your consideration. We trust it meets with your satisfaction.

Scope of Supply

YARRA Custom Toilet & Shower Building, Universal Access

The Yarra® Toilet Building distinguishes itself from a standard toilet building with a distinctive skillion style roof line, designed to integrate seamlessly into any environment whilst adding an architectural compliment to its surroundings. Available in a variety of configurations; installed, or in a simply-erected, modular kit form system.



Yarra-2 Toilet Building

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Wall Panel System

Proprietary walling system comprises of highly corrosion resistant hot dip galvanized metal frames @ 1200mm wide. Panels are clad externally with Colorbond Custom Orb sheeting to mid height and powdercoated aluminium fascia planking above. Horizontal slats are located above door height at front, for ventilation of the building. Walls are lined internally with durable MiniORB sheeting in Zinalume finish for superior strength and serviceability. All Colorbond material to be in the 'Ultra' finish.

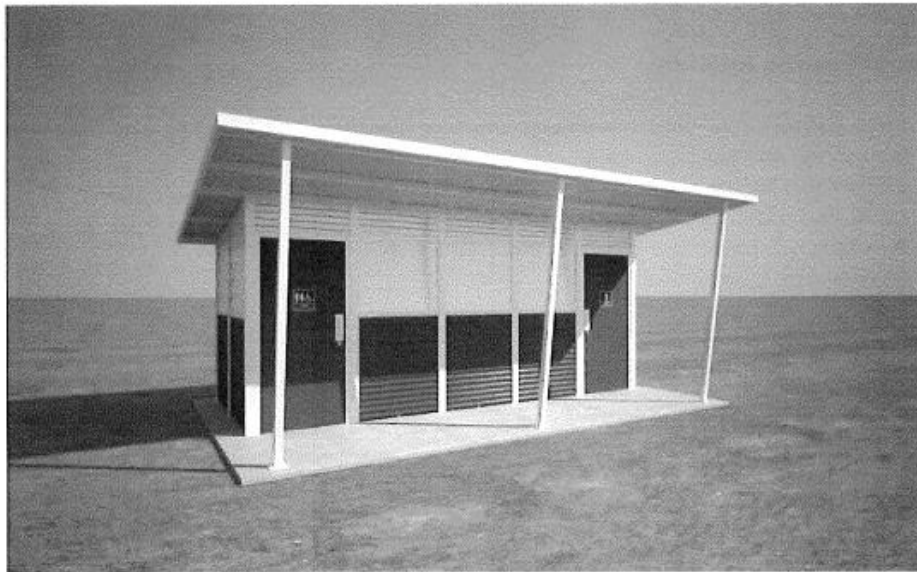
Roof

The skillion building roof is sheeted in Colorbond Custom Orb material and includes a portion light sheet over each cubicle to allow ingress of natural light.
Please Note: Roof beams & verandah columns to be in 2 Pack Epoxy finish.

Easy Installation

Each wall panel has preset nutserts in each side of the steel frames, which are fitted to the vertical joining channels provided. These are bolted to the ground as per the setout instructions which are included with the building kit. The doors are supplied complete with hinges, locks, handles and signage. Purlins are bolted to the top of the building frame, and roof sheeting and trims are then fitted to complete the building.

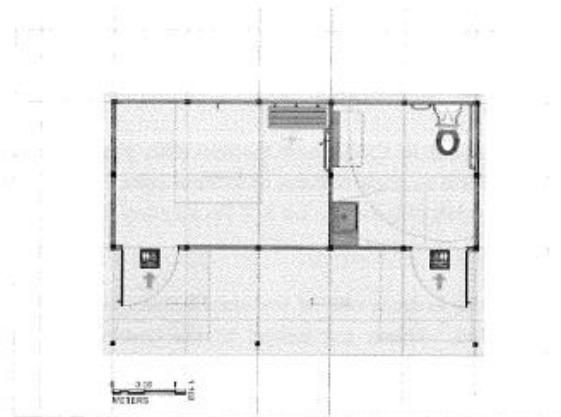
*All fixings to be Stainless Steel



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Building Configuration



Internal Fixtures Include:

- 1 x Porcelain Toilet Pan & Cistern
- 1 x Large Stainless Steel Wash Hand Basin with Knee Operated Time Flow Tap
- 2 x Sets of Stainless Steel Grab Rails
- 1 x Single Toilet Roll Dispenser
- 1 x Universal Shower Unit
- 1 x Wall Mounted Fold Down Bench for Universal Shower
- 1 x Baby Change Station

Additional Fixtures Include:

- 1 x Distribution Enclosure with Main Switch and MCB/RCD
- 5 x 600mm Batten Lights
- 1 x Gas Hot Water System

(Please Note: Only items in the above list are included in the building price. Pipes, conduits, cables, switches etc. are not included).

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Building Colours

LEGEND

● Also available in COLORBOND® Ultra steel for coastal and industrial environments. All other colours are available in COLORBOND® Ultra steel on request, please speak with your supplier.

○ Also available in COLORBOND® Stainless steel for severe coastal and industrial environments. Please speak to your supplier for more information regarding availability.

For further details on the legend, please refer to the back page.

CLASSIC colour range¹



CLASSIC CREAM*
SA = 0.32, BCA = L



PAPERBARK*
SA = 0.42, BCA = H



PALE EUCALYPT*
SA = 0.60, BCA = H



WOODLAND GREY* ○
SA = 0.71, BCA = D



DEEP OCEAN* ○
SA = 0.75, BCA = D



COTTAGE GREEN*
SA = 0.75, BCA = D



HONEY RED*
SA = 0.69, BCA = D

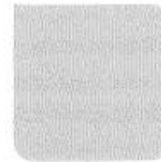


NIGHT SKY*
SA = 0.90, BCA = D

CONTEMPORARY colour range¹



SURREALIST* ○○
SA = 0.32, BCA = L



EVENING HAZE*
SA = 0.43, BCA = H



SHALE GREY**
SA = 0.43, BCA = H



DUNE* ○○
SA = 0.47, BCA = H



COVE**
SA = 0.54, BCA = H



WINDSPRAY* ○○
SA = 0.54, BCA = H



GULLY**
SA = 0.55, BCA = D



MANGROVE*
SA = 0.64, BCA = D



WALLABY* ○
SA = 0.64, BCA = D



JASPER*
SA = 0.68, BCA = D



BASALT**
SA = 0.69, BCA = D



IRONSTONE*
SA = 0.74, BCA = D



TERRAIN*
SA = 0.69, BCA = D



MONUMENT* ○
SA = 0.75, BCA = D

[View Online](#)

PLEASE NOTE

- Pricing allows for the above colours from the standard range only.
- Ultra colours subject to availability at time of order.

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Investment Value

Technical Information supplied with building:

- ✓ Plumbing pre-lay plan
- ✓ Concrete Pad Specifications
- ✓ Building Assembly Instructions
- ✓ Engineering Drawings

Building Supplied in Kit Form	\$ 43, 785.00 + GST
Delivery to Port Douglas	\$ 1, 845.00 + GST
Total Sum of Building Supply	\$ 45, 630.00 + GST

Please note, the above price is for supply only & does not include a building application submission and signing off by a licensed building contractor.

If you have any queries regarding this proposal, please do not hesitate to contact me to discuss.

We look forward to assisting you with your requirements in the near future.

Best Regards,



Geoff Cook
Sales Consultant

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Conditions of Quotation

The following conditions of quotation are deemed to be a part of any subcontract or orders issued to Landmark Engineering & Design Pty Ltd trading as Modus Australia, hereafter referred to as 'Modus'. Acceptance of this proposal will deem acceptance of these conditions by the customer. Any party who acts as an agent for another party such as the developer, builder or owner, must take all responsibility to accept the conditions of contract and payment of goods, and accept that they have full authority to liaise or negotiate with Modus regarding this agreement.

TITLE

Ownership of the goods shall not pass to the customer until the customer has paid all monies owing for the particular goods. If goods have been supplied, Modus reserved the right to relake possession of such goods. Risk passes to the customer when Modus delivers the goods, either to the customer's store or to specified carrier's depot.

PRICES

GST of 10% is applicable to all quoted prices. All quotations are valid for 30 days from the quotation date, after which price confirmation should be obtained. Where a contract extends beyond six (6) months from the date of acceptance, Modus reserves the right to renegotiate prices after (6) months. Due to the variable nature of raw material prices and in line with industry practice, Modus reserves the right to remove the availability of price holding on current projects. Any breakdown pricing provided will not constitute the basis for a variation extra or reduction due to establishment cost which remains unchanged in spite of quantity changes.

PAYMENT TERMS

Payment terms will be 20% deposit on acceptance of quotation, and remaining 80% upon delivery. Custom products may require up to 50% deposit at the discretion of Modus, and larger projects may require monthly progress claims. Final invoices are raised upon despatch of goods and require payment within 14 days. Ownership of goods will not transfer to the customer until all outstanding monies relating to such goods are paid.

INCLUSIONS

Proposals are based on supplying scope strictly as per the information and do not include for any additional items or scope. All proposals are based on providing standard proprietary Modus products (unless stated otherwise in the quotation). Quotations allow for standard available finishes in non-warranty option unless stated in the quotation. All quotations includes for delivery in metropolitan area where delivery is included in the quote. For any delivery outside metropolitan area an additional fee will apply.

EXCLUSIONS

Project specific engineering calculations and signoff are excluded from our pricing except if clearly stated in our quotation. However, these can be arranged if requested. Submission of a building application and sign off by a registered builder is excluded from our quotation. All Modus quotations are subject to availability of materials at time of order placement, and delivery times will be subject to negotiation at time of order. Quotations do not allow for Cyclonic treatment, corrosion resistant coastal treatment, state specific approvals, forms and certifications; these are all excluded unless clearly stated.

VARIATIONS

Variations to the contract will only be carried when an official variation order is received by Modus. Any delays by the Customer which result in increased cost to Modus will be charged to the customer including any increases in materials, labour and other charges.

WITHHOLDING OF DELIVERIES

Modus reserves the right to withhold any delivery if the customer is subject to any insolvency proceedings or if Modus forms the opinion

that the customer's credit worthiness or credit standing has deteriorated significantly.

DELAYS IN DELIVERY

All proposals are subject to availability of materials at time of order placement, and delivery times will be subject to negotiation at time of order. Modus will strive to ensure deliveries are made on time, however any times quoted for delivery are to be treated as estimates only and involving no contractual obligations. Modus shall not be liable for any loss or damage occasioned by reason of any delay in delivery of goods.

DELIVERY

All quotations include for delivery in metropolitan area where delivery is included in the quote. For any delivery outside metropolitan area an additional fee will apply. All freight will be delivered on pallets; the customer is to provide forklift truck and driver for off-loading.

DESIGNS

Where the customer asks Modus to follow any design or instructions, the customer hereby indemnifies Modus against all damages, penalties, costs and expenses arising from any infringement of a patent, trademark, registered design, copyright or common law right. The customer warrants that any design or instructions given to Modus will not cause Modus to infringe any patent, registered design, trademark, copyright or common law right.

MODUS INTELLECTUAL PROPERTY

The customer acknowledges that Modus is the owner and holds all rights, title and interest in the Modus' various patents, inventions, designs, copyright, trademarks, trade names, business names, corporate names, logos, get up, circuit layouts, know-how, trade secrets and confidential information held by Modus ("Modus IP"). The customer will not attempt to seek or claim any interest in Modus IP or assist any other party to assert any interest in Modus IP. The customer acknowledges that any improvement or enhancement of Modus' IP which may result from work performed by the customer shall remain the exclusive property of Modus and the customer irrevocably assigns to Modus all right, title and interest the customer may have in any improvements or enhancements to Modus IP. The customer will not hinder Modus in any application or other measure taken by Modus to protect or exploit improvements to Modus IP.

DAMAGE IN TRANSPORT

Modus must be advised within 48 hours of delivery, of any damage to goods in transport. This must be supported with photos clearly showing the damaged areas and providing evidence for all claims.

WARRANTY CLAIMS

Modus provides its standard 12-month warranty in relation to the type of goods supplied. The Modus warranty will provide a guarantee for faulty workmanship or product failure in the course of its intended use. There will be no coverage for damage caused by acts of vandalism or usage of the product outside of its intended use. Other than Modus standard warranty in relation to the goods supplied, and except to the extent that conditions and warranties implied by law cannot be excluded, all representations, warranties, terms and conditions in relation to the goods (whether implied or otherwise) are hereby excluded to the maximum extent permitted by law. The customer shall satisfy itself that the goods and materials if supplied in accordance with this agreement will be suitable for the purpose for which they are intended to be used and no warranty to

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that effect is given by Modus. The customer agrees that if it is aware (or should be aware) that the goods, the subject of any order, are for any particular purpose (including, but not limited to, use as a component part of another product) or are required to possess special or uniform characteristics, the customer will clearly identify that purpose or those characteristics in any order for the goods. To the maximum extent permitted by law, Modus' liability to the customer (and any party claiming through the customer against Modus for any claim for loss or damage (including legal expenses) made in connection with this agreement for breach of contract, tort (including negligence), under statute, in equity, at common law or otherwise shall be limited at Modus' discretion to the following:

- Replacement of the goods or supply of equivalent goods, or
- Repair the goods, or
- Crediting the customer for the price of the goods as at the date of delivery, or
- To paying the customer the cost of repairing the goods (with prior approval by Modus).

Modus' liability on equipment not wholly manufactured by Modus is limited to the benefit of any guarantees and warranties given by Modus' suppliers and Modus undertakes to use its reasonable endeavours to make such guarantees and warranties available to the customer. Where Modus has supplied services, Modus' liability is limited to the provision of the services again or payment of the cost of having the relevant services provided again at Modus' option. Modus will not be liable for any loss or damage caused by the negligence of the customer or any third party acting on behalf of the customer. This includes any loss or damage caused by the supply by the customer or third party acting on behalf of the customer of incorrect manufacturing instructions, drawings or material specifications, and faulty installation or misuse of the product by the customer or a third party. Modus will not be liable for any consequential loss or damage, which may be sustained by the customer. In the event that the Customer makes a claim against Modus, then the liability to the Customer shall be limited to the amount recoverable by Modus from its insurances. Any excess will be borne by the claimant.

DEFAULT

The customer will be in default if any of the following occurs:

- customer breaches these terms and conditions; and/or
- payment for the goods has not been received by Modus by the due date of payment; and/or
- the customer is subject to any insolvency proceedings.

If the customer defaults, Modus may:

- treat the whole of this agreement and any other agreement with the customer as repudiated and sue for breach of contract; and/or
- claim the return of any goods in the customer's possession where title has not passed to the customer; and/or
- refuse to supply any goods to the customer; and/or
- without notice to the customer withdraw or vary any credit Modus has provided to the customer; and/or
- without notice to the customer make all monies owing by the customer to Modus on any account immediately due and payable.

INTERGRATION

Modus recommends that the concrete pad to be level at wall locations, and the construction of building to be strictly as per instructions provided. Modus takes no responsibility where works are carried out in contrary to these recommendations.

COMPLIANCE

The customer is responsible to ensure that the building location and type are fully compliant with government regulations for its intended use.

NO RELIANCE

The customer acknowledges and agrees that it has not relied on any prior representation or promises made by Modus except as set forth herein.

FORCE MAJEURE

Modus shall not be responsible for any delay or failure of performance occasioned or caused by strikes, riots, fire, insurrection, embargoes, failure of carriers, inability to obtain materials or transportation facilities, acts of God or of the public enemy, governmental tariffs and quotas, compliance with any law, regulation or other governmental or court order whether or not valid, or other causes beyond the control of Modus, irrespective of whether the cause could be alleviated by the payment of money, or the performance is prevented or delayed because of the failure of Modus' machinery, or failure of a supplier to Modus. An extension of time will be required where these occurrences take place.

NO WAIVER

No failure or delay by Modus in exercising any right, power or privilege to which it is entitled shall operate as a waiver nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise. The terms of this agreement and obligations and acknowledgements hereunder may only be waived or modified by Modus by an agreement in writing between the parties hereto.

SEVERANCE

In the event of any part of this agreement becoming void or unenforceable, then that part shall be severed from this agreement and the remaining terms and provisions hereof shall remain in full force and effect.

APPLICABLE LAW

This agreement shall be governed by and construed in accordance with the laws of the State of Western Australia. The parties hereby agree to submit to the non-exclusive jurisdiction of the Courts of Western Australia and the Federal Court of Australia.

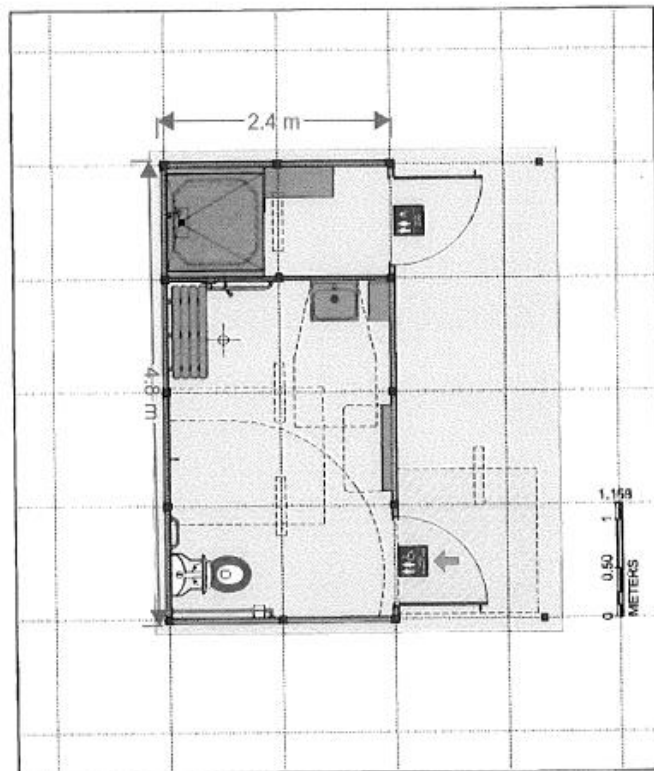
SURVIVAL

The clauses in this agreement headed DESIGNS, MODUS INTELLECTUAL PROPERTY, WARRANTY CLAIMS, NO RELIANCE, and FORCE MAJEURE shall survive the termination or expiration of this agreement.

COST EFFECTIVE RESTROOM SOLUTIONS

1300 945 930
modusaustralia.com.au

option 2



Reasons for Decision

1. The reasons for this decision are:
 - a. Sections 86 and 87 of the *Planning Act 2016*;
 - b. to ensure the development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme Version 1.0; and
 - c. to ensure compliance with the *Planning Act 2016*.
2. Findings on material questions of fact:
 - a. the development application was properly lodged to the Douglas Shire Council 8 November 2023 under section 86 of the *Planning Act 2016*;
 - b. the development application contained information from the applicant which Council reviewed together with Council's own assessment against the 2017 State Planning Policy and the 2018 Douglas Shire Planning Scheme Version 1.0 in making its assessment manager decision.
3. Evidence or other material on which findings were based:
 - a. the development triggered assessable development under the Assessment Table associated with the Industry Zone Code;
 - b. Council undertook an assessment in accordance with the provisions of sections 87 of the *Planning Act 2016*; and
 - c. the applicant's reasons have been considered and the following findings are made:
 - i. Subject to conditions, the development satisfactorily meets the Planning Scheme benchmarks.

Chapter 6 Dispute resolution

Part 1 Appeal rights

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states—
 - (a) matters that may be appealed to—
 - (i) either a tribunal or the P&E Court; or
 - (ii) only a tribunal; or
 - (iii) only the P&E Court; and
 - (b) the person—
 - (i) who may appeal a matter (the *appellant*); and
 - (ii) who is a respondent in an appeal of the matter; and
 - (iii) who is a co-respondent in an appeal of the matter; and
 - (iv) who may elect to be a co-respondent in an appeal of the matter.
- (2) An appellant may start an appeal within the appeal period.
- (3) The *appeal period* is—
 - (a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency; or
 - (b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
 - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or

- (d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
- (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or
- (f) for an appeal relating to the *Plumbing and Drainage Act 2018*—
 - (i) for an appeal against an enforcement notice given because of a belief mentioned in the *Plumbing and Drainage Act 2018*, section 143(2)(a)(i), (b) or (c)—5 business days after the day the notice is given; or
 - (ii) for an appeal against a decision of a local government or an inspector to give an action notice under the *Plumbing and Drainage Act 2018*—5 business days after the notice is given; or
 - (iii) for an appeal against a failure to make a decision about an application or other matter under the *Plumbing and Drainage Act 2018*—at anytime after the period within which the application or matter was required to be decided ends; or
 - (iv) otherwise—20 business days after the day the notice is given; or
- (g) for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

Note—

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

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.

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

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, section 1, table 1, item 1—each principal submitter for the application whose submission has not been withdrawn; and
 - (d) for an appeal about a change application under schedule 1, section 1, table 1, item 2—each principal submitter for the application whose submission has not been withdrawn; and

- (e) each person who may elect to be a co-respondent for the appeal other than an eligible submitter for a development application or change application the subject of the appeal; and
 - (f) for an appeal to the P&E Court—the chief executive; and
 - (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The *service period* is—
 - (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
 - (b) otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent to an appeal by filing a notice of election in the approved form—
 - (a) if a copy of the notice of appeal is given to the person—within 10 business days after the copy is given to the person; or
 - (b) otherwise—within 15 business days after the notice of appeal is lodged with the registrar of the tribunal or the P&E Court.
- (7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department's website for this purpose.

231 Non-appealable decisions and matters

- (1) Subject to this chapter, section 316(2), schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.

- (2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section—
decision includes—
 - (a) conduct engaged in for the purpose of making a decision; and
 - (b) other conduct that relates to the making of a decision; and
 - (c) the making of a decision or the failure to make a decision; and
 - (d) a purported decision; and
 - (e) a deemed refusal.**non-appealable**, for a decision or matter, means the decision or matter—
 - (a) is final and conclusive; and
 - (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the *Judicial Review Act 1991* or otherwise, whether by the Supreme Court, another court, any tribunal or another entity; and
 - (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, any tribunal or another entity on any ground.

232 Rules of the P&E Court

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with rules of the P&E Court.