

28 April 2025

**Enquiries:** Daniel Lamond  
**Our Ref:** OP 2022\_5127/1 (1293003)  
**Your Ref:**

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

G Smith  
PO Box 6365  
CAIRNS QLD 4870

Dear Sir/Madam

**Development Application for Operational Works (Access Crossover)  
At 34 Murphy Street PORT DOUGLAS  
On Land Described as LOT: 126 SP: 144708**

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

Please quote Council's application number: OP 2022\_5127/1 in all subsequent correspondence relating to this development application.

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

Yours faithfully



**Neil Beck**  
**A/ Manager Environment & Planning**

encl.

- Decision Notice
  - Approved Drawing(s) and/or Document(s)
  - Reasons for Decision
- Advice For Making Representations and Appeals (Decision Notice)



## Decision Notice

### Approval (with conditions)

*Given under s 63 of the Planning Act 2016*

#### Applicant Details

Name: G Smith

Postal Address: PO Box 6365  
CAIRNS QLD 4870

Email: gregs@babindaelectrics.com.au

#### Property Details

Street Address: 34 Murphy Street PORT DOUGLAS

Real Property Description: LOT: 126 SP: 144708

Local Government Area: Douglas Shire Council

#### Details of Proposed Development

Development Permit for Operational Works (Access Crossover)

#### Decision

Date of Decision: 28 April 2025

Decision Details: Approved (subject to conditions)

#### Approved Drawing(s) and/or Document(s)

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

Drawing	Reference	Date
General Arrangement Plan	CMG Consulting Engineers Drawing 45853-C01	27 January 2025
Earthworks Plan	CMG Consulting Engineers Drawing 45853-C02	27 January 2025
Sections	CMG Consulting Engineers Drawing 45853-C03	27 January 2025

Drainage Plan	CMG Consulting Engineers Drawing 45853-C04	27 January 2025
Concrete Detail Plan	CMG Consulting Engineers Drawing 45853-C05	27 January 2025
Concrete Lined Catch Drain and Drainage Pit	CMG Consulting Engineers Drawing 45853-C06	27 January 2025
Stormwater Management Plan	CMG Consulting Engineers Drawing 45853-C07	27 January 2025
Erosion and Sediment control Plan (ESCP)	CMG Consulting Engineers Drawing 45853-C08	27 January 2025
Sediment Fence	CMG Consulting Engineers Drawing 45853-C09	27 January 2025

### **Assessment Manager Conditions & Advices**

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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;
  - (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.

#### **Landscaping**

3. Landscape the backfilled trench area affected by stormwater pipe install and earthworks areas with small native shrub species planted two metres apart at maximum distances.

#### **Stormwater**

4. Implement the stormwater solution as detailed on the certified drainage plan such that no external properties are affected and that a lawful point of discharge is achieved.

#### **Sediment and Erosion Control**

5. All earthworks must be carried out in accordance with section CP1.13 and D5 of the FNQROC Development Manual and;

Measures nominated in the ESCP drawing 45853-C08 and 45853-C09 must be implemented prior to commencement of any earthworks and;

The ESC Plan must be brought into compliance with the Institution of Engineers' Australia Guidelines for Soil Erosion and Sediment Control and the Environment Protection (Water)

### **Further Development Permits**

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Not applicable

### **Currency Period for the Approval**

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This approval, granted under the provisions of the *Planning Act 2016*, shall lapse four (4) years from the day the approval takes effect in accordance with the provisions of Section 85 of the *Planning Act 2016*.

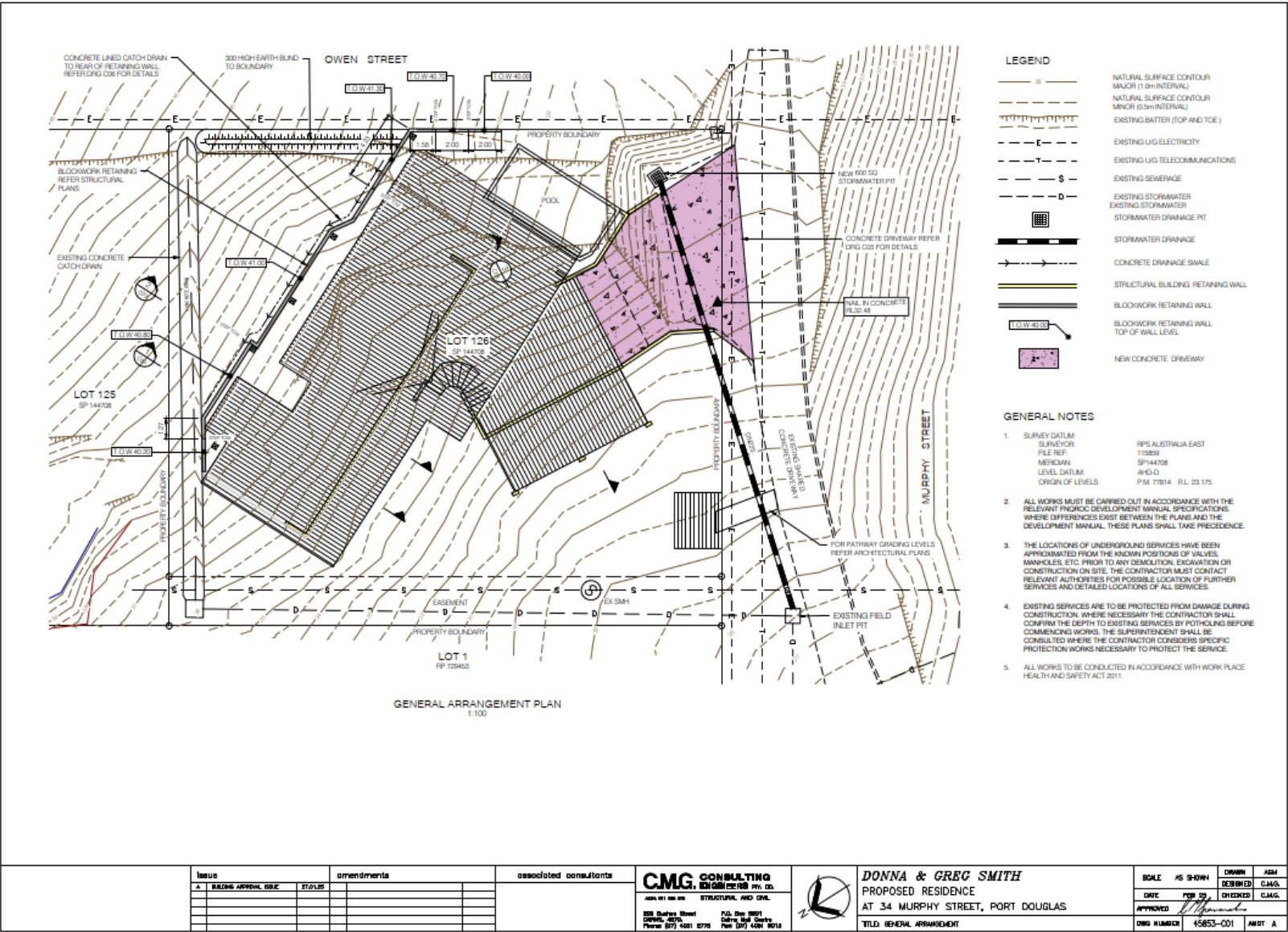
### **Rights to make Representations & Rights of Appeal**

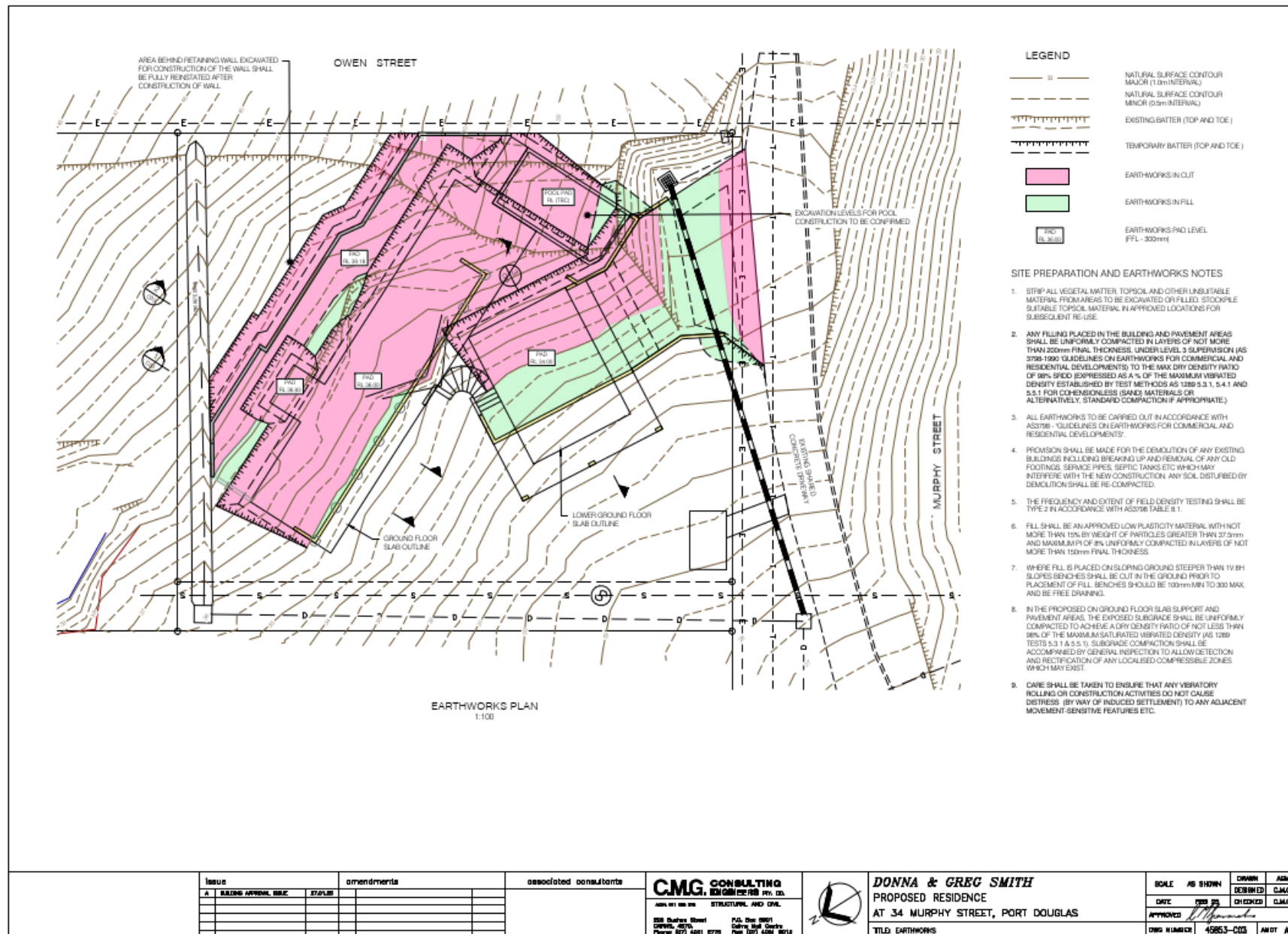
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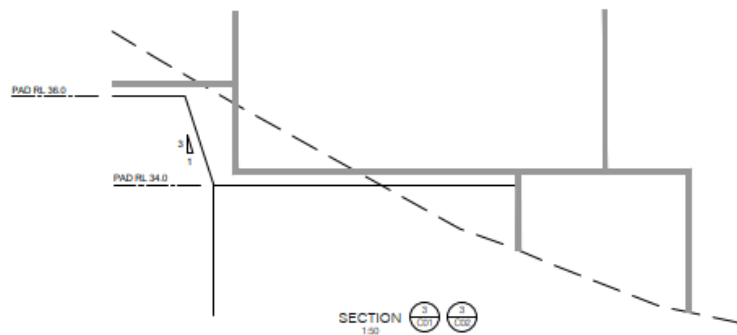
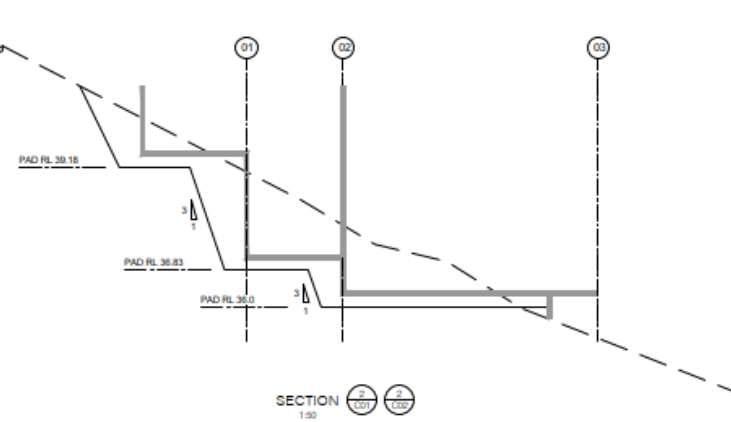
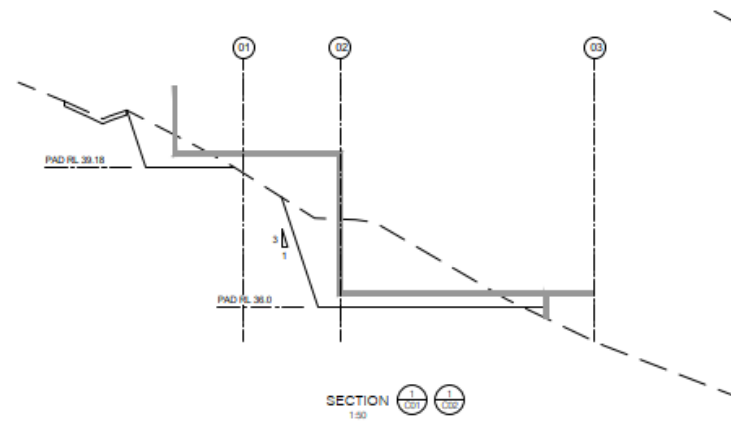
The rights of applicants to make representations and rights to appeal to a Tribunal or the Planning and Environment Court against decisions about a development application are set out in Chapter 6, Part 1 of the *Planning Act 2016*.

A copy of the relevant appeal provisions is attached.

Approved Drawing(s) and/or Document(s)

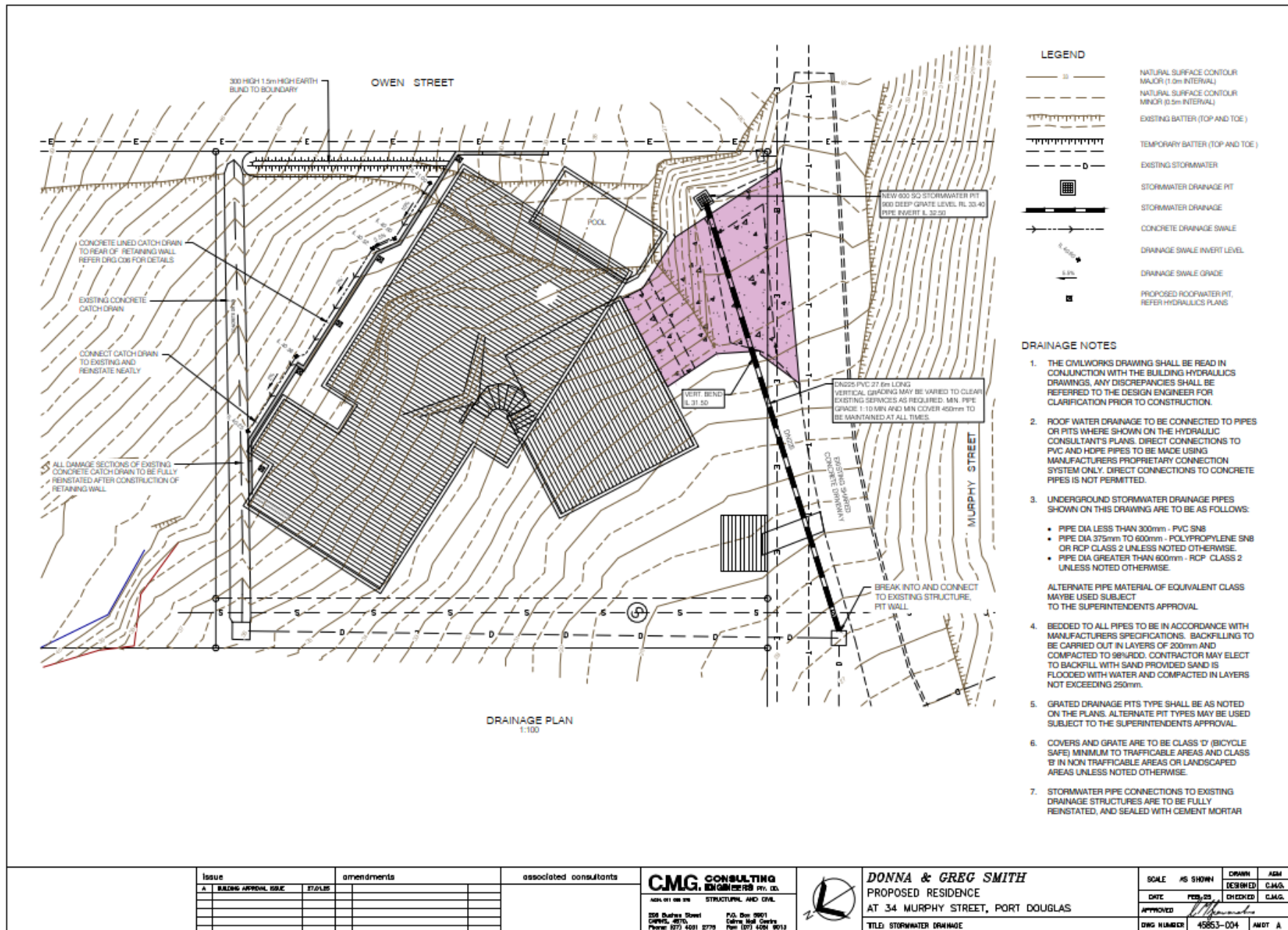




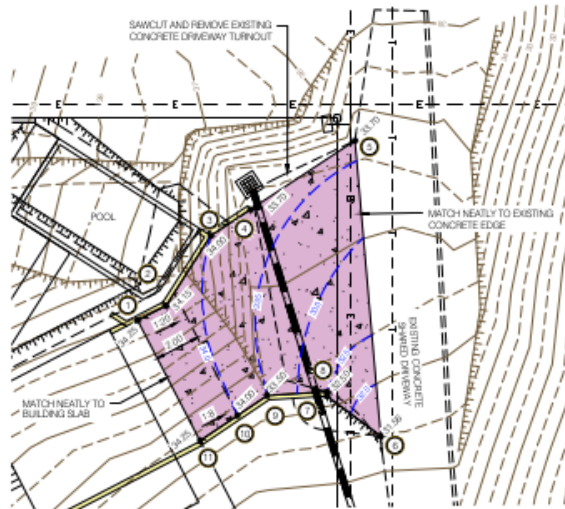


Issue	amendments	associated consultants	CMG CONSULTING ENGINEERS Pty. Ltd.	DONNA & GREG SMITH	SCALE AS SHOWN	DRAWN	ADM.
A BUILDING APPROVAL ISSUE	ST/6/15		ADD: 011 086 016 STRUCTURAL AND CIVIL	PROPOSED RESIDENCE	DATE FEB 22	DESIGNED	CMG.
			558 Bathers Street P.O. Box 9801	AT 34 MURPHY STREET, PORT DOUGLAS	APPROVED	CHECKED	CMG.
			0870 4570 0870 4570	TITLE: SITE SECTIONS	CMG NUMBER	45853-C03	AMOT A







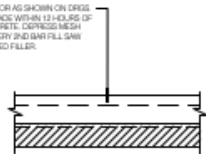


CONCRETE DRIVEWAY  
SETOUT AND GRADING PLAN  
1:100

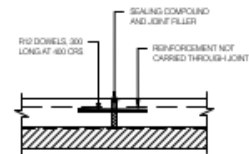
SETOUT COORDINATES

PT	EASTING	NORTHING
1	983.039	2043.684
2	983.031	2043.452
3	984.481	2043.117
4	984.513	2043.017
5	984.587	2037.464
6	982.946	2043.035
7	985.730	2044.086
8	985.687	2044.486
9	987.161	2046.011
10	987.123	2046.381
11	987.079	2050.389

SAW CUT 50mm DEEP OR AS SHOWN ON DRS.  
SAW CUT SHALL BE MADE WITHIN 13 HOURS OF  
PLACEMENT OF CONCRETE. COMPRESS MESH  
LOCALLY AND CUT EVERY 2ND BAR FILL SAW  
CUT WITH AN APPROVED FILLER.



SAWN JOINT DETAIL (SJ)

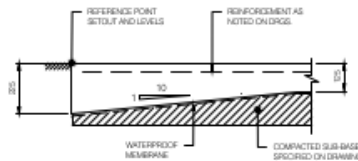


EXPANSION JOINT DETAIL (EJ)

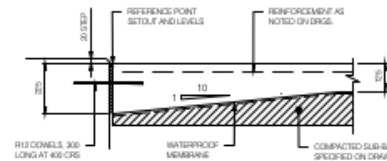
CONCRETE PAVEMENT JOINT DETAILS  
1:10



CONCRETE DRIVEWAY  
JOINTING PLAN  
1:100



EDGE THICKENING (ET1)  
1:10



ABUTTING BUILDING SLAB  
1:10

LEGEND

- NEW CONCRETE PAVEMENT  
125mm THICKNESS N25 CONCRETE WITH  
SL20 MESH 40 TOP COVER
- SETOUT POINT
- FINISHED SURFACE LEVEL
- SURFACE GRADE
- FINISHED SURFACE CONTOUR  
(INTERVAL 0.5m)
- EXPANSION JOINT
- SAWN JOINT
- EDGE THICKENING

CONCRETE PAVEMENT NOTES

- STRIP ALL VEGETABLE MATTER, TOP SOIL AND OTHER UNSUITABLE MATERIAL FROM AREAS TO BE SEALED OR UNDER BUILDINGS. EXCAVATE OR FILL AS NECESSARY TO SUBGRADE LEVEL. COMPACT SURFACES EXPOSED BY SURFACE STRIPPING AND BY EXCAVATION TO 98% SDD, OR 70% DENSITY INDEX FOR COHESIONLESS MATERIALS. TO A DEPTH OF AT LEAST 250mm. COMPACT FILL TO 98% SDD IN LAYERS OF THICKNESS APPROPRIATE TO THE COMPACTION PLANT EMPLOYED. SHOULD ANY SOFT OR UNSUITABLE MATERIAL BE IDENTIFIED, SEEK ADVICE OF THE DESIGN ENGINEER.
- CONSTRUCT PAVEMENT CONTROL JOINTS IN LOCATIONS AND TO DETAILS SHOWN ON THE DRAWINGS.
- CONSTRUCT CONCRETE PAVEMENT AFTER COMPLETION OF BUILDING CONSTRUCTION. AND/OR KEEP ALL CONSTRUCTION TRAFFIC OFF PAVEMENT. IF CONSTRUCTION TRAFFIC IS TO USE THE PAVEMENT, THEN PAVEMENT THICKNESS MUST BE INCREASED TO THE APPROVAL OF THE SUPERINTENDENT AT THE CONTRACTORS EXPENSE.

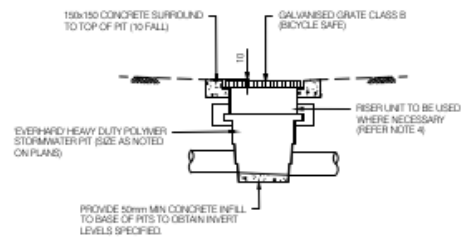
Issue	amendments
A	BUILDING APPROVAL ISSUE
	ST/PLS

associated consultants

**CMG CONSULTING**  
NGL 011 08 516 STRUCTURAL AND CIVIL  
208 Balfour Street  
CITY OF 4010  
Phone: (07) 4001 2779 Fax: (07) 4001 9013

**DONNA & GREG SMITH**  
PROPOSED RESIDENCE  
AT 34 MURPHY STREET, PORT DOUGLAS  
TITLE: DRIVEWAY GRADING

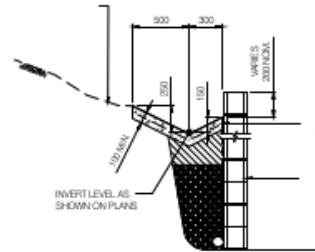
SCALE	AS SHOWN	DRAWN	ASM
DATE	FEB/23	CHECKED	CJAG
APPROVED			
DRWG NUMBER	45853-C05	AMDT	A




**DRAINAGE PIT 450/600/900**  
**SQ GRATE**  
1:20

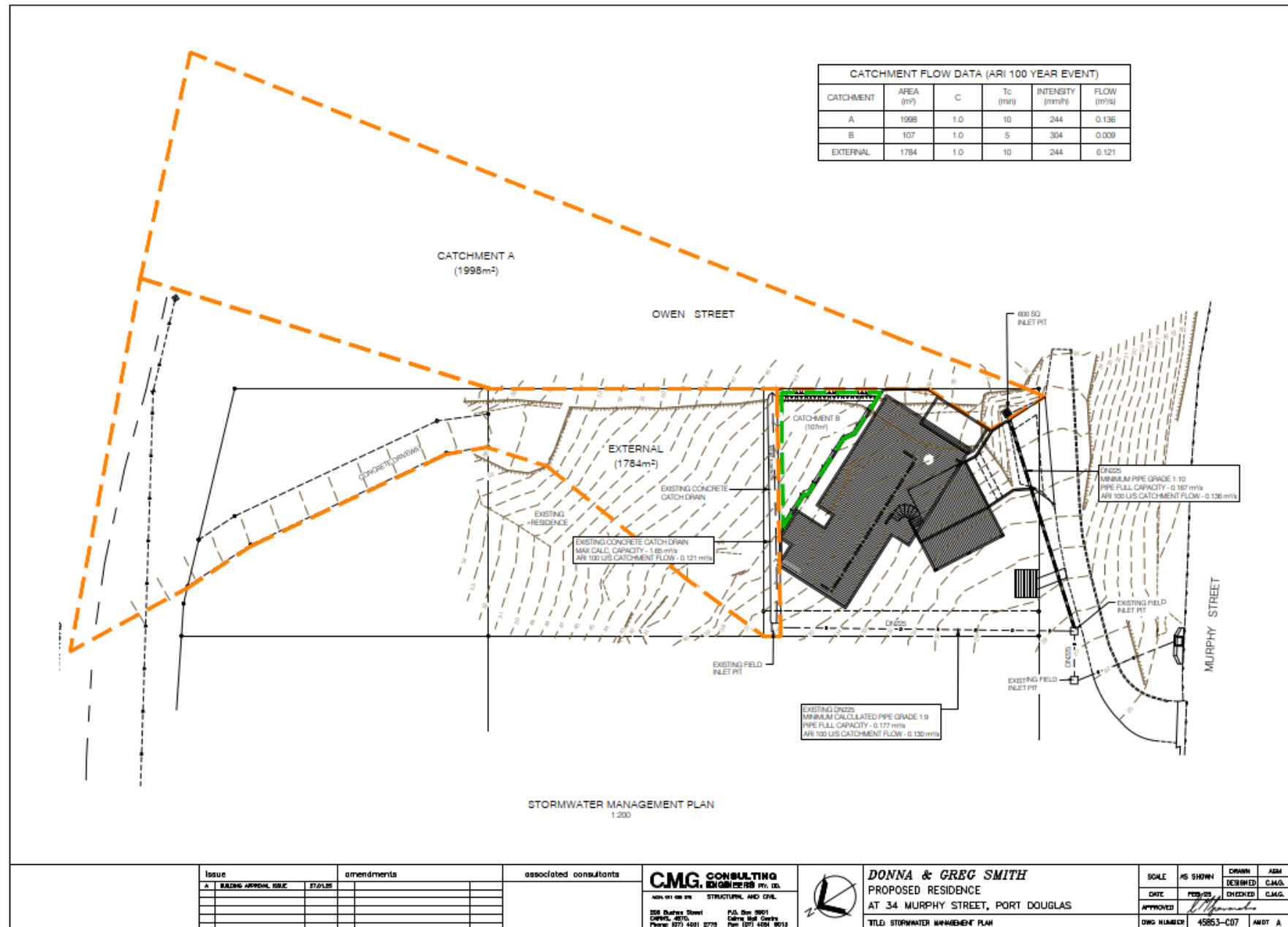
**NOTES**

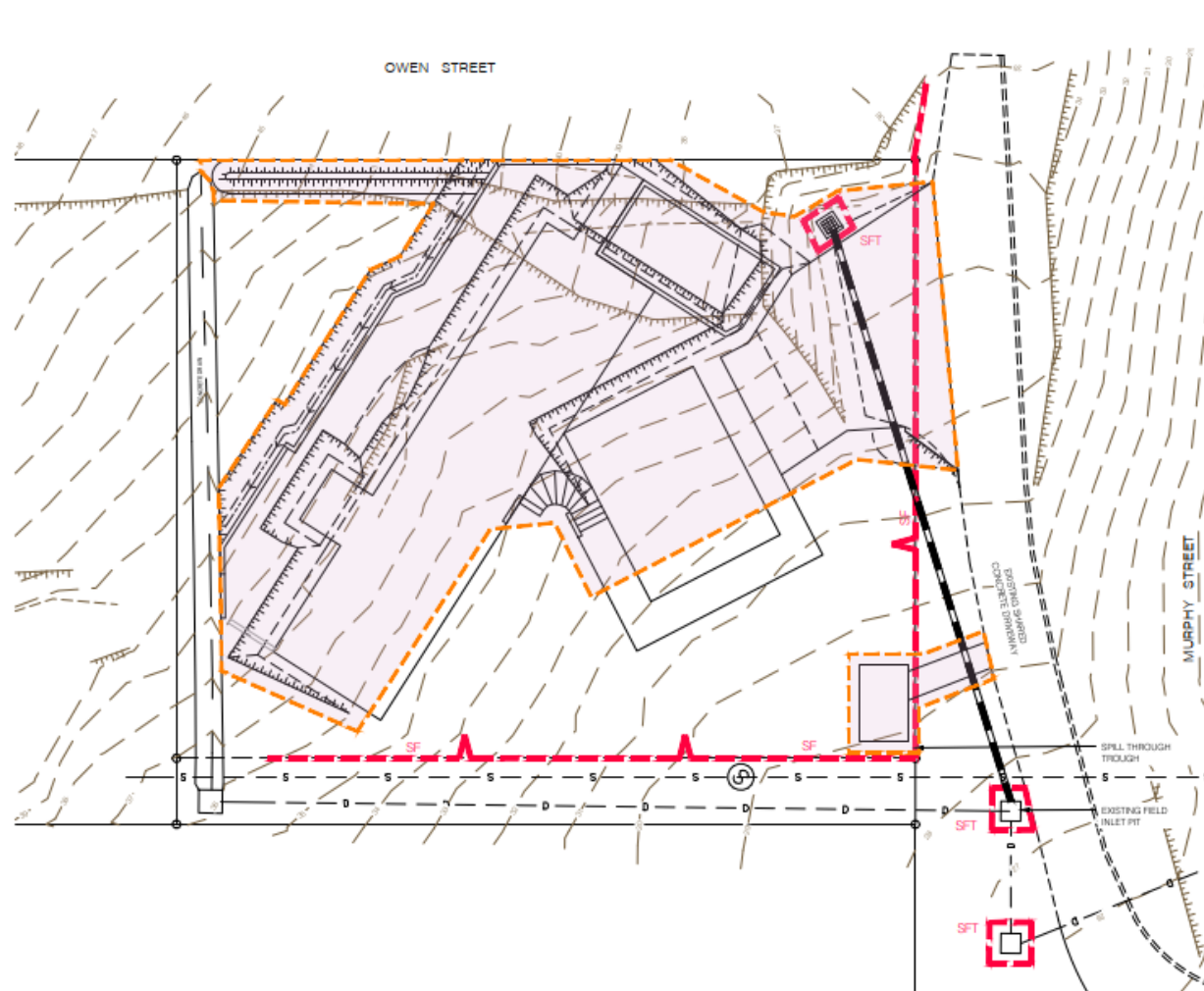
1. ALL PIPES FITTED THROUGH PIT WALL TO BE SEALED WITH A SUITABLE SILICON BASED ADHESIVE/SEALANT.
2. PIPE DIAMETERS (DN225) OR GREATER TO HAVE MASS CONCRETE BACKFILL 150mm MINIMUM THICKNESS OUTSIDE OF PIT WALL.
3. BACKFILL AROUND PIT WITH MODERATELY COMPACTED CLEAN STABILISED SOIL AND SAND.
4. A MAXIMUM OF 1 RISER UNIT MAY BE USED. PIT TO RISER CONNECTION TO BE SUPPORTED BY CONCRETE POURED IN THE BACKFILL TO ENVELOPE THE PIT RIM.



**CONCRETE LINED**  
**CATCH DRAIN**  
1:20

Issue		amendments		associated consultants	<div>CMG CONSULTING ENGINEERS PTY. LTD.</div> <div>4585 01 458 576 STRUCTURAL AND CIVIL</div> <div>550 Buxton Street Geelong, VIC 3210 Phone: (07) 4201 2779</div> <div>P.O. Box 8901 Calvin Hall Centre Phone: (07) 4204 9013</div>	<div>DONNA &amp; GREG SMITH</div> <div>PROPOSED RESIDENCE</div> <div>AT 34 MURPHY STREET, PORT DOUGLAS</div> <div>TITLE: STORMWATER DETAILS</div>	SCALE	AS SHOWN	DRAWN	ADM
A	BUILDING APPROVAL DATE	STUDIOS					DATE	DESIGNED	CHECKED	C.M.G.
							APPROVED			
							DWG NUMBER	45853-CD6	AMDT	A





#### LEGEND

	NATURAL SURFACE CONTOUR (1.0m INTERVAL)
	EXISTING BATTER (TOP AND TOE)
	TEMPORARY BATTER (TOP AND TOE)
	EXISTING STORMWATER
	STORMWATER DRAINAGE PIT
	STORMWATER DRAINAGE
	STORMWATER SWALE
	EXTENT OF DISTURBANCE
	SEDIMENT FENCE
	SEDIMENT FENCE TRAP

#### EROSION AND SEDIMENT CONTROL NOTES

1. THIS EROSION AND SEDIMENT CONTROL PLAN DETAILS THE PRIMARY MEASURES THAT ARE TO BE CONSTRUCTED. THE CONTRACTOR SHALL AS A RESULT OF THE PROPOSED CONSTRUCTION SEQUENCING, INSTALL ANY ADDITIONAL MEASURES CONSIDERED NECESSARY TO LIMIT SOIL EROSION AND THE TRANSPORTATION OF SEDIMENT OFF THE PROPOSED SITE.
2. NO EARTHWORKS SHALL COMMENCE ON THE SITE PRIOR TO INSTALLING APPROPRIATE EROSION AND SEDIMENT CONTROL MEASURES.
3. THE CONTRACTOR IS TO TAKE ALL NECESSARY PRECAUTIONS TO CONTROL EROSION AND DOWNSTREAM SEDIMENTATION DURING ALL STAGES OF CONSTRUCTION.
4. ALL PARTIALLY CONSTRUCTED DRAINAGE STRUCTURES MUST BE PROTECTED AGAINST SEDIMENT INFILTRATION DURING CONSTRUCTION.
5. ALL COMPLETED DRAINAGE STRUCTURES TO BE PROTECTED AGAINST SEDIMENT INFILTRATION UNTIL UPSTREAM CATCHMENT IS ESTABLISHED.
6. ALL PERMANENT AND TEMPORARY UNLINED SWALES AND DRAINS TO HAVE APPROPRIATE TEMPORARY EROSION PROTECTION.
7. ALL SEDIMENT CONTROL DEVICES SHALL BE MONITORED, CLEANED AND/OR REPAIRED AFTER EACH RAINFALL EVENT RESULTING IN RUNOFF.
8. AT ALL TIMES THE CONTRACTOR SHALL MONITOR THE PREVAILING WEATHER CONDITIONS AND IMPLEMENT APPROPRIATE MEASURES TO PROTECT ANY AREAS DOWNSTREAM.
9. REVEGETATION SHALL BE UNDERTAKEN AS SOON AS POSSIBLE AFTER TOPSOILING.

EROSION AND SEDIMENT CONTROL PLAN  
1:100

Issue	amendments
A BUILDING APPROVAL ISSUE	37/01/15

associated consultants

**CMG CONSULTING**  
ENGINEERS PTY. LTD.  
ACCA 011 006 876 STRUCTURAL AND CIVIL  
255 Bathers Street P.O. Box 9001  
Cairns 4870 Cairns Mail Centre  
Phone: (07) 4001 2779 Fax: (07) 4001 9013



**DONNA & GREG SMITH**  
PROPOSED RESIDENCE  
AT 34 MURPHY STREET, PORT DOUGLAS  
TITLE: EROSION AND SEDIMENT CONTROL

SCALE	AS SHOWN	DRAWN	ADM
		DESIGNED	C.M.G.
CHE	PERMITS	CHECKED	C.M.G.
APPROVED			
DWG NUMBER	45853-C08	AMDT	A

## MATERIALS

**FABRIC:**

**FABRIC:** POLYPROPYLENE, POLYAMIDE, NYLON, POLYESTER, OR POLYETHYLENE WOVEN OR NON-WOVEN FABRIC, AT LEAST 700mm IN WIDTH AND A MINIMUM UNIT WEIGHT OF 140GSM. ALL FABRICS TO CONTAIN ULTRAVIOLET INHIBITORS AND STABILISERS TO PROVIDE A MINIMUM OF 6 MONTHS OF USEABLE CONSTRUCTION LIFE (ULTRAVIOLET STABILITY EXCEEDING 70%).

**FABRIC REINFORCEMENT:**

WIRE OR STEEL MESH MINIMUM 14-GAUGE WITH A MAXIMUM MESH SPACING OF 200mm.

SUPPORT POSTS/STAKES:

1500mmf (MIN) HARDWOOD, 2500mmf (MIN) SOFTWOOD, OR 1.5kg/m (MIN) STEEL STAR PICKETS SUITABLE FOR ATTACHING FABRIC.

## INSTALLATION

1. REFER TO APPROVED PLANS FOR LOCATION, EXTENT AND REQUIRED TYPE OF FABRIC IF SPECIFIED, IF THERE ARE QUESTIONS OR PROBLEMS WITH THE LOCATION, EXTENT, FABRIC TYPE, OR METHOD OF INSTALLATION, CONTACT THE ENGINEER IMMEDIATELY.
2. TO THE MAXIMUM DEGREE PRACTICAL, AND WHERE THE PLANS OBLIGATE, ENSURE THE FENCE IS LOCATED:
  - a. TOTALLY WITHIN THE PROPERTY BOUNDARIES.
  - b. ALONG A LINE OF CONSTANT ELEVATION OR OTHER PRACTICAL, DRAINAGE PATTERN.
  - c. AT LEAST 2m FROM THE TOE OF ANY FILLING OPERATIONS THAT MAY RESULT IN SHIFTING SLOPES, DRAINING THE FENCE.
3. INSTALL FABRIC WITHIN THE FENCE AT MAXIMUM 20m INTERVALS IF THE FENCE IS INSTALLED ALONG THE CONTOUR, OR 15m TO MAXIMUM SPACING (DEPENDS ON SLOPE) IF THE FENCE IS INSTALLED AT AN ANGLE TO THE CONTOUR. THE RETURNS SHALL CONSIST OF EITHER:
  - a. A SECTION EXTENDING 1.5m UP AND 1.5m DOWN THE SLOPE, OR
  - b. SANDBAG OR ROCK/AGGREGATE CHOKES, MAXIMUM 10cm AND MAXIMUM 12cm FENCE HEIGHT, AND EXTENDING AT LEAST 1.5m UP THE SLOPE.
4. ENSURE THE EXTREME ENDS OF THE FENCE ARE TURNED UP THE SLOPE AT LEAST 15cm, OR AS NECESSARY, TO MINIMIZE WATER RUNOFF AROUND THE FENCE.
5. ENSURE THE SEDIMENT FENCE IS INSTALLED IN A MANNER THAT AVOIDS THE COMBINATION OF FLOW AND EROSION OF THE FENCE, AND THAT IT IS PROTECTED FROM THE EFFECTS OF THE FLOW.
6. FIT THE SEDIMENT FENCE TO BE INSTALLED BY THE EDGE OF EXISTING TREES. ENSURE CARE IS TAKEN TO PROTECT THE TREES AND THEIR ROOT SYSTEMS DURING INSTALLATION OF THE FENCE. DO NOT ATTACH THE FABRIC TO THE TREES.
7. UNLESS THE FENCE IS TO BE SUPPORTED ON THE APPROVED PLANS, EXCAVATE A 200mm wide by 200mm deep TRENCH ALONG THE PROPOSED FENCE LINE, PLACING THE EXCAVATED MATERIAL ON THE UPSLOPE SIDE OF THE TRENCH.
8. UNLESS OTHERWISE SPECIFIED, ATTACH THE FABRIC APPROPRIATELY SECURE THE STAKES INTO THE GROUND SLOPE NOT GREATER THAN 3m IF SUPPORTED BY A TOP SUPPORT WIRE OR WEIR MESH BACKING, OTHERWISE NOT GREATER THAN 2m.
9. UNLESS OTHERWISE SPECIFIED, ATTACH THE SUPPORT WIRE OR MESH TO THE UPSLOPE SIDE OF THE STAKES WITH THE MESH EXTENDING AT LEAST 200mm INTO THE EXCAVATED TRENCH. ENSURE THE MESH AND FABRIC IS ATTACHED TO THE UPSLOPE SIDE OF THE STAKES EVEN WHEN DIRECTING A FENCE AROUND A CORNER OR AROUND A CHOKER.
10. WHEREVER POSSIBLE, CONSTRUCT THE SEDIMENT FENCE FROM A CONTINUOUS ROLL OF FABRIC, TO JOIN FABRIC EITHER:
  - a. ATTACH END TO TWO OVERLAPPING STAKES WITH THE FABRIC FOLDING AROUND THE ASSOCIATED STAKE ONE TURN, AND WITH THE TWO STAKES TIED TOGETHER WITH WIRE, OR
  - b. OVERLAP THE FABRIC TO THE NEXT ADJACENT SUPPORT POST.
11. SECURELY ATTACH THE FABRIC TO THE SUPPORT POSTS USING 25 x 12mm STAPLES, OR THE WIRE AT MAXIMUM 100mm SPACING.
12. SECURELY ATTACH THE FABRIC TO THE SUPPORT WIRE/MESH IF ANY AT A MAXIMUM SPACING OF 1m.
13. UNLESS OTHERWISE SPECIFIED, THE SEDIMENT FENCE SHALL NOT BE MORE THAN 1.5m TALL, BUT THROUGH WEIR IS INSTALLED, ENSURE THE CREST OF THE WEIR IS AT LEAST 30cm ABOVE GROUND LEVEL.
14. BACKFILL THE TRENCH AND TAMP THE FILL TO FIRMLY ANCHOR THE BOTTOM OF THE FABRIC AND MESH TO PREVENT WATER FROM FLOWING UNDER THE FENCE.

#### ADDITIONAL REQUIREMENTS FOR THE INSTALLATION OF SPILL-THROUGH WEIR

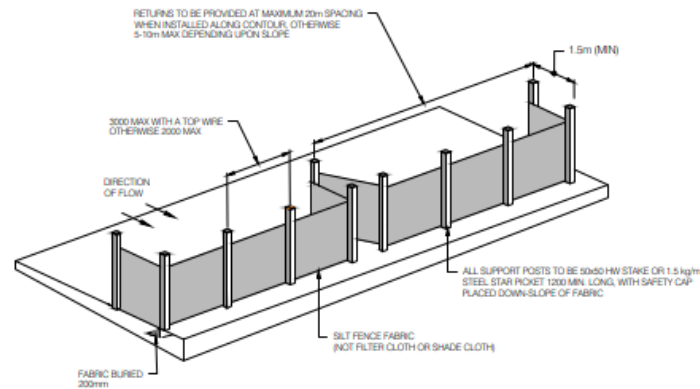
1. LOCATE THE SPILL-THROUGH WEIR SUCH THAT THE WEIR CREST WILL BE LOWER THAN THE GROUND LEVEL AT EACH END OF THE FENCE.
2. ENSURE THE CREST OF THE SPILL-THROUGH WEIR IS AT LEAST 300mm (12 INCH) ABOVE THE GROUND ELEVATION.
3. SECURELY TIE A HORIZONTAL CROSS MEMBER (WEIR) TO THE SUPPORT POSTS/STAKES EACH SIDE OF THE WEIR. CUT THE FABRIC DOWN THE SIDE OF EACH POST AND FOLD THE FABRIC OVER THE CROSS MEMBER AND APPROPRIATELY SECURE THE FABRIC.
4. INSTALL STABLE SOIL BRUSH IMMEDIATELY DOWN-SLOPE OF THE SPILL-THROUGH WEIR TO CONTROL SOIL EROSION AND APPROPRIATELY DISCHARGE THE CONCENTRATED FLOW PASSING OVER THE WEIR.

## MAINTENANCE

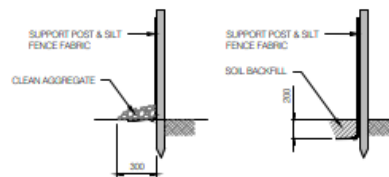
1. INSPECT THE SEDIMENT FENCE AT LEAST WEEKLY AND AFTER ANY SIGNIFICANT RAIN. MAKE NECESSARY REPAIRS IMMEDIATELY.
2. REPAIR ANY TORN SECTIONS WITH A CONTINUOUS PIECE OF FABRIC FROM POST TO POST.
3. WHEN MAKING REPAIRS, ALWAYS RESTORE THE SYSTEM TO ITS ORIGINAL CONFIGURATION UNLESS AN AMENDED LAYOUT IS REQUIRED OR SPECIFIED.
4. IF THE FENCE IS SAGGING BETWEEN STAKES, INSTALL ADDITIONAL SUPPORT POSTS.
5. REMOVE ACCUMULATED SEDIMENT IF THE SEDIMENT DEPOSIT EXCEEDS A DEPTH OF 1/3 THE HEIGHT OF THE FENCE.
6. DISPOSE OF SEDIMENT IN A SUITABLE MANNER THAT WILL NOT CAUSE AN EROSION OR POLLUTION HAZARD.
7. REPLACE THE FABRIC IF THE SERVICE LIFE OF THE EXISTING FABRIC EXCEEDS 6 MONTHS.

## REMOVAL

1. WHEN DISTURBED AREAS UP-SLOPE OF THE SEDIMENT FENCE ARE SUFFICIENTLY STABILISED TO RESTRAIN EROSION, THE FENCE MUST BE REMOVED.
2. REMOVE MATERIALS AND COLLECTED SEDIMENT AND DISPOSE OF IN A SUITABLE MANNER THAT WILL NOT CAUSE AN EROSION OR POLLUTION HAZARD.
3. REHABILITATE/REVEGETATE THE DISTURBED GROUND AS NECESSARY TO MINIMISE THE EROSION HAZARD.



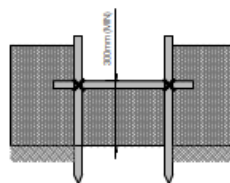
SEDIMENT FENCE  
N.T.S.



## METHOD A

## METHOD B

ANCHORING BASE OF FABRIC  
N.T.S



SPILL TROUGH WEIR  
N.T.S

issue		amendments		associated consultants		 <b>DONNA &amp; GREG SMITH</b> PROPOSED RESIDENCE AT 34 MURPHY STREET, PORT DOUGLAS TITLE: EROSION AND SEDIMENT CONTROL DETAILS		SCALE	AS SHOWN	DRAWN	AD.
A	BUILDING APPROVAL ISSUE	STAGES						DATE	FOR 25	CHECKED	CLM
								APPROVED			
								DRAW NUMBER	45853-C09	AMT	

## Reasons for Decision

1. The reasons for this decision are:
  - a. Sections 60, 62 and 63 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 26 March 2025 under section 51 of the *Planning Act 2016* and Part 1 of the *Development Assessment Rules*;
  - 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 Environmental Management Zone Code;
  - b. Council undertook an assessment in accordance with the provisions of sections 60, 62 and 63 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.



## Division 2 Changing development approvals

### Subdivision 1 Changes during appeal period

#### 74 What this subdivision is about

- (1) This subdivision is about changing a development approval before the applicant's appeal period for the approval ends.
- (2) This subdivision also applies to an approval of a change application, other than a change application for a minor change to a development approval.
- (3) For subsection (2), sections 75 and 76 apply—
  - (a) as if a reference in section 75 to a development approval were a reference to an approval of a change application; and
  - (b) as if a reference in the sections to the assessment manager were a reference to the responsible entity; and
  - (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—
    - (i) the applicant withdraws the notice, by giving another notice to the assessment manager; or
    - (ii) the assessment manager gives the applicant the decision notice for 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) If the applicant makes the change representations during the appeal period without giving a notice under subsection (2), the appeal period is suspended from the day the representations are made until—
  - (a) the applicant withdraws the change representations by notice given to the assessment manager; or
  - (b) the assessment manager gives the applicant the decision notice for the change representations; or

- (c) 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.
- (6) Despite subsections (4) and (5), if the decision notice mentioned in subsection (4)(b)(ii) or (5)(b) is 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.
- (3) A decision notice (a *negotiated decision notice*) that states the assessment manager agrees with a change representation must—
  - (a) state the nature of the change agreed to; and

- (b) comply with section 63(2) and (3).
- (4) A negotiated decision notice replaces the decision notice for the development application.
- (5) Only 1 negotiated decision notice may be given.
- (6) If a negotiated decision notice is given to an applicant, a local government may give a replacement infrastructure charges notice to the applicant.

## Subdivision 2 Changes after appeal period

### 77 What this subdivision is about

This subdivision is about changing a development approval, other than the currency period, after all appeal periods in relation to the approval end.

### 78 Making change application

- (1) A person may make an application (a *change application*) to change a development approval.

*Note—*

For the making of a change application for a development approval that was a PDA development approval, see also the *Economic Development Act 2012*, sections 51AM, 51AN and 51AO.

- (2) A change application must be made to the responsible entity for the application.

### 78A Responsible entity for change applications

- (1) The *responsible entity* for a change application is—
  - (a) if the change application is for a minor change to a development condition of a development approval stated in a referral agency's response for the development application or another change application for the approval—the referral agency; or

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- (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 a decision of the Minister, under chapter 7, part 4, to amend the registration of premises to include additional land in the affected area for the premises—20 business days after the day a notice is published under section 269A(2)(a); or
  - (e) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
  - (f) 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
  - (g) 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
- (h) 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.

# **Part 2 Development tribunal**

## **Division 1 General**

### **233 Appointment of referees**

- (1) The Minister, or chief executive, (the ***appointer***) may appoint a person to be a referee, by an appointment notice, if the appointer considers the person—