

24 February 2026

**Enquiries:** Jenny Elphinstone  
**Our Ref:** MCUI 2024\_5682/1 (Doc ID 1350849)  
**Your Ref:** AU015874

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

NQ Asphalt Pty Ltd  
C/- RPS AAP Consulting Pty Ltd  
PO Box 1949  
CAIRNS QLD 4870

Email: [stacey.devaney@rpsconsulting.com](mailto:stacey.devaney@rpsconsulting.com)

Attention Ms Stacey Devaney

Dear Madam

**Development Application for Material Change of Use-Impact (Extractive Industry)  
At Captain Cook Highway Killaloe  
On Land Described as Lot 1 on RP893855**

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

Please quote Council's application number: MCUI 2024\_5682/1 in all subsequent correspondence relating to this development application.

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

Yours faithfully



**For**  
**Leonard Vogel**  
**Manager Environment & Planning**

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

bcc: - Persons who lodged a properly made submission

encl.

- Decision Notice
  - Reasons for Decision
  - Concurrence Agency Response
- Advice For Appeals (Decision Notice)



## Decision Notice

### Refused

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*Given under s 63 of the Planning Act 2016*

#### Applicant Details

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Name: NQ Asphalt Pty Ltd  
Postal Address: C/- RPS AAP Consulting Pty Ltd  
PO Box 1949  
CAIRNS QLD 4870  
Email: [stacey.devaney@rpsconsulting.com](mailto:stacey.devaney@rpsconsulting.com)

#### Property Details

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Street Address: Lot 1 Captain Cook Highway, Killaloe  
Real Property Description: Lot 1 on RP893855  
Local Government Area: Douglas Shire Council

#### Details of Proposed Development

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Development Permit for Material Change of Use-(Impact) for an Extractive Industry

#### Decision

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Date of Decision: 24 February 2026  
Decision Details: Refused

#### Reasons for Refusal

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1. Sand ridges and dunes form part of the Douglas Shire's physical setting and its environment as specifically identified in sections 3.2.1.2(1) and 3.2.1.3(3) respectively of the Douglas Shire Planning Scheme 2018 (**the Planning Scheme**). The extraction of the sand ridge proposed here, is in direct conflict with these provisions, along with Theme 2 – Environment and landscape values, Coastal zones element 3.5.4(2) and specific outcomes 3.5.4.1(1), (2), (3), (5) and (8) of the Planning Scheme.
2. The proposed development does not, or has not been demonstrated to comply with sections 3.6.1(1) or (3) of the Planning Scheme (Theme 3 – Natural resource management: strategic outcomes);

3. The proposed development does not, or has not been demonstrated to comply with section 3.6.3, or section 3.6.3.1(1) of the Planning Scheme (Theme 3 – Primary production, forestry and fisheries element).
4. The proposed development does not, or has not been demonstrated to comply with section 3.6.4(1), or sections 3.6.4.1(2) or (3) of the Planning Scheme (Theme 3 – Natural resource management: resource extraction element).
5. The proposed development does not, or has not been demonstrated to comply with:
  - i. section 6.2.10.2(1) and (2) of the Rural Zone Code;
  - ii. sections 6.2.10.2(3)(a), (b), (c) and (d), and PO4 and PO5 of the Rural Zone code;
  - iii. sections 9.3.10.2(2)(a) – (f) of the Extractive Industry Code;
  - iv. PO1 – PO10 of the Extractive Industry Code;
  - v. sections 9.4.3.2(1), 9.4.3.2(2)(c) and PO7 (AO7.2 and AO7.3) of the Environmental Performance Code;
  - vi. section 9.4.4.2(2)(a) – (e) of the Filling and Excavation Code;
  - vii. PO1, PO2, PO3, PO4 and PO5 (together with their associated AO's) of the Filling and Excavation Code;
  - viii. section 9.4.5.2(2)(a) – (e) of the Infrastructure Works Code;
  - ix. PO3, PO5, PO12 (together with their associated AO's) of the Infrastructure Works Code;
  - x. section 8.2.4.2(1)(a)(i) of the Flood and Storm Tide Hazard Overlay Code (with specific reference to sections 3.4.7.1(1) and (5), and 3.4.7.2(1) of Theme 1 – Mitigation of Hazards);
  - xi. sections 8.2.4.2(2)(c), (e) and (g) of the Flood and Storm Tide Hazard Overlay Code;
  - xii. PO5 (together with its associated AO's) of the Flood and Storm Tide Hazard Overlay Code;
  - xiii. section 8.2.6.2(1)(a)(ii) of the Landscape Values Overlay Code (with specific reference to section 3.6.4 of Theme 3 – Resource Extraction);
  - xiv. sections 8.2.6.2(2)(d) and (e) of the Landscape Values Overlay Code;
  - xv. PO2 of the Landscape Values Overlay Code;
  - xvi. sections 8.2.7.2(1)(a) and 8.2.7.2(2) of the Natural Areas Overlay Code;
  - xvii. PO1 – PO4 of the Natural Areas Overlay Code (together with their associated AO's);
6. It has not been demonstrated that the proposed development will not give rise to unacceptable traffic impacts including in respect of:
  - i. the suitability or safety of the proposed road access to the proposed development site, including the form of the road;
  - ii. the integration and connection of the development to the surrounding transport network; and
  - iii. impacts on the operation, safety and amenity of the surrounding road network.
7. There are no relevant matters which favour approval of the proposed development.

## Concurrence Agency Response

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Concurrence Agency	Concurrence Agency Reference	Date	Doc ID
State Assessment and Referral Agency (SARA) within the Department of State Development, Manufacturing Infrastructure and Planning	2410-43198 SRA	13 December 2024	Doc 1268767

**Note** – Concurrence Agency Response is attached. This Concurrence Agency Response maybe amended by agreement with the respective agency.

## Rights of Appeal

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The applicant's 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.

## Reasons for Decision

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Findings on material questions of fact:

1. The application was properly lodged to the Douglas Shire Council on 30 October 2024 under s 51 of the *Planning Act 2016* and included a planning report.

Evidence or other material on which findings were based:

1. Council undertook an investigation of assessment of the development, against the State Development Requirements and the 2018 Douglas Shire Planning Scheme in making its assessment manager decision; and
2. Council undertook an assessment in accordance with the provisions of section 60 of the *Planning Act 2016*.

## Non-Compliance with Assessment Benchmarks

1. Sand ridges and dunes form part of the Douglas Shire's physical setting and its environment as specifically identified in sections 3.2.1.2(1) and 3.2.1.3(3) respectively of the Douglas Shire Planning Scheme 2018 (**the Planning Scheme**). The extraction of the sand ridge proposed here, is in direct conflict with these provisions, along with Theme 2 – Environment and landscape values, Coastal zones element 3.5.4(2) and specific outcomes 3.5.4.1(1), (2), (3), (5) and (8) of the Planning Scheme.

2. The proposed development does not, or has not been demonstrated to comply with sections 3.6.1(1) or (3) of the Planning Scheme (Theme 3 – Natural resource management: strategic outcomes);
3. The proposed development does not, or has not been demonstrated to comply with section 3.6.3, or section 3.6.3.1(1) of the Planning Scheme (Theme 3 – Primary production, forestry and fisheries element).
4. The proposed development does not, or has not been demonstrated to comply with section 3.6.4(1), or sections 3.6.4.1(2) or (3) of the Planning Scheme (Theme 3 – Natural resource management: resource extraction element).
5. The proposed development does not, or has not been demonstrated to comply with:
  - i. section 6.2.10.2(1) and (2) of the Rural Zone Code;
  - ii. sections 6.2.10.2(3)(a), (b), (c) and (d), and PO4 and PO5 of the Rural Zone code;
  - iii. sections 9.3.10.2(2)(a) – (f) of the Extractive Industry Code;
  - iv. PO1 – PO10 of the Extractive Industry Code;
  - v. sections 9.4.3.2(1), 9.4.3.2(2)(c) and PO7 (AO7.2 and AO7.3) of the Environmental Performance Code;
  - vi. section 9.4.4.2(2)(a) – (e) of the Filing and Excavation Code;
  - vii. PO1, PO2, PO3, PO4 and PO5 (together with their associated AO's) of the Filing and Excavation Code;
  - viii. section 9.4.5.2(2)(a) – (e) of the Infrastructure Works Code;
  - ix. PO3, PO5, PO12 (together with their associated AO's) of the Infrastructure Works Code;
  - x. section 8.2.4.2(1)(a)(i) of the Flood and Storm Tide Hazard Overlay Code (with specific reference to sections 3.4.7.1(1) and (5), and 3.4.7.2(1) of Theme 1 – Mitigation of Hazards);
  - xi. sections 8.2.4.2(2)(c), (e) and (g) of the Flood and Storm Tide Hazard Overlay Code;
  - xii. PO5 (together with its associated AO's) of the Flood and Storm Tide Hazard Overlay Code;
  - xiii. section 8.2.6.2(1)(a)(ii) of the Landscape Values Overlay Code (with specific reference to section 3.6.4 of Theme 3 – Resource Extraction);
  - xiv. sections 8.2.6.2(2)(d) and (e) of the Landscape Values Overlay Code;
  - xv. PO2 of the Landscape Values Overlay Code;
  - xvi. sections 8.2.7.2(1)(a) and 8.2.7.2(2) of the Natural Areas Overlay Code;
  - xvii. PO1 – PO4 of the Natural Areas Overlay Code (together with their associated AO's);
6. It has not been demonstrated that the proposed development will not give rise to unacceptable traffic impacts including in respect of:
  - i. the suitability or safety of the proposed road access to the proposed development site, including the form of the road;
  - ii. the integration and connection of the development to the surrounding transport network; and
  - iii. impacts on the operation, safety and amenity of the surrounding road network.
7. There are no relevant matters which favour approval of the proposed development.

## Persons who made a properly made submission

John Whybrow	32 Barrbal Drive	Bonnie Doon Qld 4873
Dee Whybrow	32 Barrbal Drive	Bonnie Doon Qld 4873
Peter Verri	6936 Captain Cook Highway	Mossman Qld 4873
Damien Allen	233 Bonnie Doon Road	Bonnie Doon Qld 4873
Theresa Walker	38 Eagle Close	Bonnie Doon via Mossman Qld 4873
Craig Walker	38 Eagle Close	Bonnie Doon via Mossman Qld 4873
Tanya Morris	U3 / 15 Melaleuca Drive	Cooya Beach Qld 4873
Catherine Rosenbrauer	41 Bayil Drive	Bonnie Doon Q 4873
Owen Ives	37 Eagle Close	Bonnie Doon via Mossman Qld 4873
John Hartley	30 Middlemiss Street	Mossman Qld 4873
Theresa Ives	37 Eagle Close	Bonnie Doon via Mossman Qld 4873
Bernard Negan	88 Bonnie Doon Road	Killaloe Qld 4873
Samantha Negan	88 Bonnie Doon Road	Killaloe Qld 4873
Bernard Negan (Petition)	88 Bonnie Doon Road	Killaloe Qld 4873
Shobha Cameron	24 Thooleer Close	Cooya Beach Qld 4873
Soula Kazakis	16 Ocean Avenue	Cooya Beach Qld 4873
Bruno Santarossa	93 Santarossa Road	Bonnie Doon via Mossman Qld 4873
Lino Santarossa	93 Santarossa Road	Bonnie Doon via Mossman Qld 4873
Brandon Walker	1 Palm Street	Cooya Beach Qld 4873
Linc Walker	19 Ocean Avenue	Cooya Beach Qld 4873
Bennett Juan Walker	11 Bougainvillea Street	Cooya Beach Qld 4873
Susan Sorensen	146 McCracken Road	Bonnie Doon Qld 4873
Lee Sorensen	146 McCracken Road	Bonnie Doon Qld 4873
Kubrirriwarra Yalanji Aboriginal Corporation Inc ICN 9206. Attention Mr John Hartley Mossman	30 Middlemiss Street	Mossman Qld 4873

## Consideration of properly made submissions

Application was refused.

RA6-N



SARA reference: 2410-43198 SRA  
Council reference: MCUI 2024\_5682/1  
Applicant reference: AU015874

12 December 2024

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

Attention: Jenny Elphinstone

Dear Sir/Madam

## SARA referral agency response— Sand Extraction at Captain Cook Highway, Killaloe (Lot 1 on RP893855)

(Referral agency response given under section 56 of the *Planning Act 2016*)

The development application described below was confirmed as properly referred by the State Assessment and Referral Agency (SARA) on 13 November 2024.

### Response

Outcome:	Referral agency response – with conditions
Date of response:	12 December 2024
Conditions:	The conditions in <b>Attachment 1</b> must be attached to any development approval
Advice:	Advice to the applicant is in <b>Attachment 2</b>
Reasons:	The reasons for the referral agency response are in <b>Attachment 3</b>

### Development details

Description:	Development permit	Material change of use for an extractive industry for the extraction of approximately 30,000 tonne of sand per year.
SARA role:	Referral agency	
SARA trigger:	Schedule 10, Part 9, Division 4, Subdivision 1, Table 1 (Planning	

Regulation 2017) - Material change of use impacting on state transport infrastructure (extractive industry using machinery having an annual throughput of product of over 10,000t)

SARA reference: 2410-43198 SRA  
Assessment manager: Douglas Shire Council  
Street address: Captain Cook Highway, Killaloe  
Real property description: Lot 1 on RP893855  
Applicant name: NQ Asphalt Pty Ltd  
Applicant contact details: C/- RPS AAP Consulting Pty Ltd  
135 Abbott Street  
Cairns QLD 4870  
owen.caddick-king@rpsgroup.com.au

*Human Rights Act 2019* considerations: A consideration of the 23 fundamental human rights protected under the *Human Rights Act 2019* has been undertaken as part of this decision. It has been determined that this decision does not limit human rights.

## Representations

An applicant may make representations to a concurrence agency, at any time before the application is decided, about changing a matter in the referral agency response (s.30 Development Assessment Rules). Copies of the relevant provisions are in **Attachment 4**.

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

For further information please contact Anthony Westbury, A/Senior Planning Officer, on 4037 3215 or via email CairnsSARA@dcdilgp.qld.gov.au who will be pleased to assist.

Yours sincerely



Carl Porter  
A/ Manager Planning

cc NQ Asphalt Pty Ltd c/- RPS AAP Consulting Pty Ltd, owen.caddick-king@rpsgroup.com.au  
enc Attachment 1 - Referral agency conditions  
Attachment 2 - Advice to the applicant  
Attachment 3 - Reasons for referral agency response  
Attachment 4 - Representations about a referral agency response  
Attachment 5 - Documents referenced in conditions

**Attachment 1—Referral agency conditions**

(Under section 56(1)(b)(i) of the *Planning Act 2016* the following conditions must be attached to any development approval relating to this application) (Copies of the documents referenced below are found at **Attachment 5**)

No.	Conditions	Condition timing
Schedule 10, Part 9, Division 4, Subdivision 1, Table 4, Item 1 – Material change of use impacting on state transport infrastructure—The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of the Department of Transport and Main Roads 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 condition(s):		
1.	The haul route must be undertaken via the Captain Cook Highway / Bonnie Doon Road intersection generally in accordance with NQ Asphalt Pty Ltd Lot 1 on RP893855 Site Plan – Proposed Sand Extraction, prepared by RPS, dated 26-08-2024, drawing AU015874-2.	At all times.

**Attachment 2—Advice to the applicant**

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<b>General advice</b>	
1.	Terms and phrases used in this document are defined in the <i>Planning Act 2016</i> its regulation or the State Development Assessment Provisions (SDAP) v3.1. If a word remains undefined it has its ordinary meaning.

### **Attachment 3—Reasons for referral agency response**

(Given under section 56(7) of the *Planning Act 2016*)

**The reasons for the SARA decision are:**

The proposed development, with conditions, complies with the relevant provisions of State code 6: Protection of state transport networks, of the SDAP, in that:

- The proposed development is unlikely to compromise the safety, function, and efficiency of the state-controlled road network.
- The proposed development is appropriately separated from the Captain Cook Highway to avoid adverse impacts from increased stormwater and drainage flow.
- The Captain Cook Highway / Bonnie Doon Road intersection is improved by a channelised right turn lane and can adequately accommodate the haul vehicle traffic from the proposed development.

**Material used in the assessment of the application:**

- the development application material and submitted plans
- *Planning Act 2016*
- Planning Regulation 2017
- the State Development Assessment Provisions (version 3.1)
- the Development Assessment Rules
- SARA DA Mapping system
- *Human Rights Act 2019*

**Attachment 4—Representations about a referral agency response**

(page left intentionally blank – attached separately)

## Development Assessment Rules—Representations about a referral agency response

The following provisions are those set out in sections 28 and 30 of the Development Assessment Rules<sup>1</sup> regarding **representations about a referral agency response**

### Part 6: Changes to the application and referral agency responses

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#### 28 Concurrence agency changes its response or gives a late response

- 28.1. Despite part 2, a concurrence agency may, after its referral agency assessment period and any further period agreed ends, change its referral agency response or give a late referral agency response before the application is decided, subject to section 28.2 and 28.3.
- 28.2. A concurrence agency may change its referral agency response at any time before the application is decided if—
- (a) the change is in response to a change which the assessment manager is satisfied is a change under section 26.1; or
  - (b) the Minister has given the concurrence agency a direction under section 99 of the Act; or
  - (c) the applicant has given written agreement to the change to the referral agency response.<sup>2</sup>
- 28.3. A concurrence agency may give a late referral agency response before the application is decided, if the applicant has given written agreement to the late referral agency response.
- 28.4. If a concurrence agency proposes to change its referral agency response under section 28.2(a), the concurrence agency must—
- (a) give notice of its intention to change its referral agency response to the assessment manager and a copy to the applicant within 5 days of receiving notice of the change under section 25.1; and
  - (b) the concurrence agency has 10 days from the day of giving notice under paragraph (a), or a further period agreed between the applicant and the concurrence agency, to give an amended referral agency response to the assessment manager and a copy to the applicant.

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<sup>1</sup> Pursuant to Section 68 of the *Planning Act 2016*

<sup>2</sup> In the instance an applicant has made representations to the concurrence agency under section 30, and the concurrence agency agrees to make the change included in the representations, section 28.2(c) is taken to have been satisfied.

## **Part 7: Miscellaneous**

### **30 Representations about a referral agency response**

30.1. An applicant may make representations to a concurrence agency at any time before the application is decided, about changing a matter in the referral agency response.<sup>3</sup>

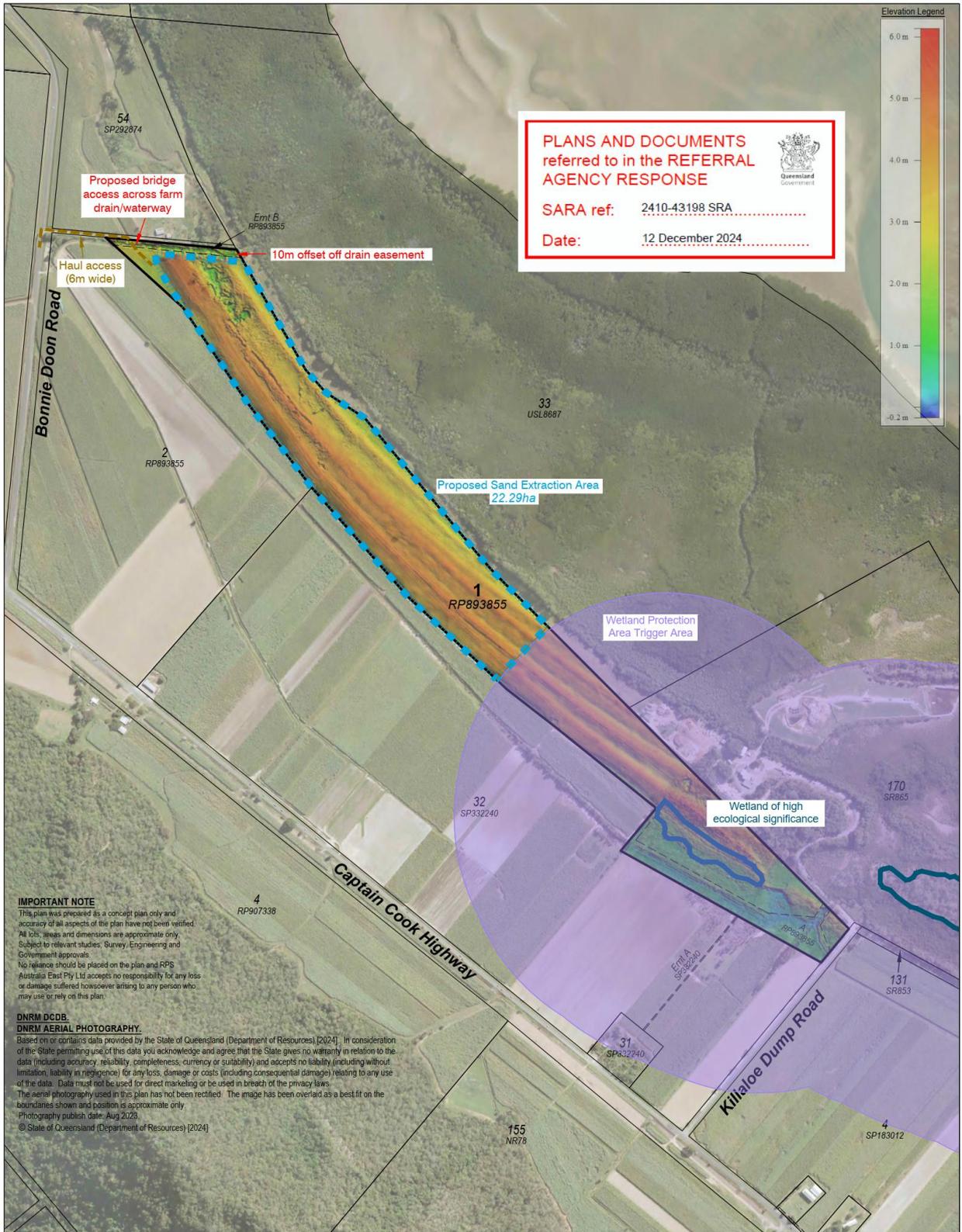
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<sup>3</sup> An applicant may elect, under section 32, to stop the assessment manager's decision period in which to take this action. If a concurrence agency wishes to amend their response in relation to representations made under this section, they must do so in accordance with section 28.

## **Attachment 5—Documents referenced in conditions**

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(page left intentionally blank – attached separately)

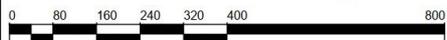


**IMPORTANT NOTE**  
 This plan is presented as a concept plan only and accuracy of all aspects of the plan have not been verified. All lots, areas and dimensions are approximate only. Subject to relevant studies, Survey, Engineering and Government approvals.  
 No reliance should be placed on the plan and RPS Australia East Pty Ltd accepts no responsibility for any loss or damage suffered howsoever arising to any person who may use or rely on this plan.

**DNRM DCDB**  
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 Based on or contains data provided by the State of Queensland (Department of Resources) [2024]. In consideration of the State permitting use of this data you acknowledge and agree that the State gives no warranty in relation to the data (including accuracy, reliability, completeness, currency or suitability) and accepts no liability (including without limitation, liability in negligence) for any loss, damage or costs (including consequential damage) relating to any use of the data. Data must not be used for direct marketing or be used in breach of the privacy laws. The aerial photography used in this plan has not been rectified. The image has been overlaid as a best fit on the boundaries shown and position is approximate only. Photography publish date: Aug 2023.  
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**NQ Asphalt Pty Ltd**  
 Lot 1 on RP893855  
 Site Plan - Proposed Sand Extraction



RPS AAP Consulting Pty Ltd  
 ACN 117 863 173  
 135 Abbott St  
 PO Box 1949  
 CAIRNS QLD 4870  
 T +61 7 4031 1336  
 F +61 7 4031 2942  
 W rpsgroup.com



Datum: MGA2020 Z55 | Scale: 1:8,000 @ A3 | Date: 26-08-2024 | Drawing: AU015874-2

## Extracts from the Planning Act 2016 – Appeal Rights

Planning Act 2016  
Chapter 6 Dispute resolution

[s 229]

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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.

*Note—*

For limitations on appeal rights in relation to a development approval for development requiring social impact assessment, see section 106ZJ.

- (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.

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**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

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- (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—