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

19 October 2022

Enquiries: Neil Beck

Our Ref: OP 2021\_4456 (1115515)

Your Ref: IH132900

Craig Caplick C/- 5KF

Email: Craig@5KF.com.au

Dear Sir,

# Development Application for Ocean Breeze Estate (Stage 5E) At Cooya Beach Road BONNIE DOON On Land Described as LOT: 901 SP: 311505

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

Please quote Council's application number: OP 2021\_4456 in all subsequent correspondence relating to this development application.

Also find attached a 'Pre-Start' meeting template, which identifies the information that must be provided for Council approval, prior to the commencement of works.

The template also provides the Consulting Engineer with a format for conducting the meeting. An invitation to attend the meeting must be sent to Council's representative Neil Beck on telephone number 07 4099 9451, giving at least five (5) working days notification if possible.

In addition to the Decision Notice, Council provides the following 'Advice Statement' which relates to issues that are relevant to the proposed works:

- 1. The design of lighting will be subject to separate agreement and must be submitted to Council, prior to the commencement of associated works; and
- 2. The Consulting Engineer is to present all contractors with a copy of this Decision Notice and the Council approved plans, prior to the commencement of works.

Should you require any clarification regarding this, please contact Neil Beck on telephone 07 4099 9451.

Yours faithfully

Paul Hoye

For

**Manager Environment & Planning** 

### encl.

- **Decision Notice** 
  - Approved Drawing(s) and/or Document(s)Concurrence Agency Response

  - o Reasons for Decision
- Advice For Making Representations and Appeals (Decision Notice)



# **Decision Notice**

# Approval (with conditions)

### Given under section 63 of the Planning Act 2016

### **Applicant Details**

Name: Craig Caplick

Postal Address: C/- 5KF

Email: Craig@5KF.com.au

### **Property Details**

Street Address: Cooya Beach Road BONNIE DOON

Real Property Description: LOT: 901 SP: 311505

Local Government Area: Douglas Shire Council

### **Details of Proposed Development**

Development Permit for Operational Works (Ocean Breeze Estate – Stage 5E)

### **Decision**

**Date of Decision:** 13 October 2022

**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 No.	Title	Revision
IH132900-5E-CI-DRG-0501	LOCALITY PLAN AND DRAWING INDEX	Α
IH132900-5E-CI-DRG-0502		Α
	GENERAL NOTES	

IH132900-5E-CI-DRG-0503	GENERAL ARRANGEMENT	А
IH132900-5E-CI-DRG-0504	EARTHWORKS	А
IH132900-5E-CI-DRG-0505	MISCELLANEOUS SECTIONS AND DETAILS	А
IH132900-5E-CI-DRG-0506	ROAD LONGITUDINAL SECTION	А
IH132900-5E-CI-DRG-0507	ROAD CROSS SECTIONS	А
IH132900-5E-CI-DRG-0508	INTERSECTION DETAILS	А
IH132900-5E-CI-DRG-0509	STORMWATER DRAINAGE	А
IH132900-5E-CI-DRG-0510	STORMWATER DRAINAGE PIT DETAILS	А
IH132900-5E-CI-DRG-0511	STORMWATER DRAINAGE CROSS DRAINAGE DETAILS	А
IH132900-5E-CI-DRG-0512	STORMWATER DRAINAGE DRAIN 01 PLAN AND LONGITUDINAL SECTION	А
IH132900-5E-CI-DRG-0513	STORMWATER DRAINAGE DRAIN 01 TYPICAL SECTIONS AND DETAILS	Α
IH132900-5E-CI-DRG-0514	STORMWATER DRAINAGE LONGITUDINAL SECTIONS	А
IH132900-5E-CI-DRG-0515	SEWERAGE	А
IH132900-5E-CI-DRG-0516	SEWERAGE LONGITUDINAL SECTIONS	А
IH132900-5E-CI-DRG-0517	WATER RETICLATION	А
IH132900-5E-CI-DRG-0521	MASTER SERVICES PLAN	А

### **EROSION AND SEDIMENT CONTROL DRAWINGS**

The following drawings must form the basis of the contractor's Erosion and Sediment Control Plan in accordance with the *FNQROC Development Manual*, Clause CP1.06.

Drawing Description	No	Rev
EROSION AND SEDIMENT CONTROL	IH132900-5E-CI-DRG-0518	۸
STRATEGY PHASE 1 - TOPSOIL STRIPPING		Α
EROSION AND SEDIMENT CONTROL	IH132900-5E-CI-DRG-0519	۸
STRATEGY PHASE 2 - EARTHWORKS		Α
EROSION AND SEDIMENT CONTROL	IH132900-5E-CI-DRG-0520	В
STRATEGY PHASE 3 - ROADWORKS		В

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

### 1. General

- a. Where the conditions require amendments to the drawings, the revised drawings must be submitted "for construction" and must be certified as approved by a registered professional engineer of Queensland (RPEQ).
- b. Materials shall be in accordance with the provisions of the FNQROC Development Manual. Where alternative materials are proposed details are to be provided to Council for consideration and approval prior to incorporation into the

works.

This information must be provided prior to the pre-start meeting (or such other timeframe agreed with Council) and the elements are not approved unless confirmed by Council in writing.

### 2. Road Reserve

The road reserve width of Road 05 providing access to Stage 5E must be amended to comply with the minimum reserve width of 14.5 metres in accordance with the FNQROC Development Manual. Amended drawings are to be provided prior to the request of a pre-start meeting.

### 3. Earthworks

- a. The applicant is to ensure that any earthworks undertaken as part of the works maintains a free draining surface with no ponding of standing water resulting. Any amendments proposed to the existing finished surface profiles are to be identified and reported to Council prior to being undertaken on site. Resultant amendments shall be recorded on as constructed drawings to be submitted at the completion of the project.
- b. The retaining walls are nominated as being designed by supplier. Therefore, this component of the works is not approved under this operational works approval and a separate approval will be required for the retaining wall element.

Advice note: In principle, Council accepts the retaining wall and nomination of future design detail. This condition establishes that a further step is required. Therefore, Prior to construction of the wall, the applicant is to provide design details and certification of the wall including appropriate structural forms (form 15) and any additional information required for structural elements (including a safety in design assessment if applicable).

- c. The applicant is to ensure that sufficient footing and setout details are provided for the retaining wall designs. In particular, the wall adjacent the drainage channel and in the vicinity of the headwall (adjacent Lot 218).
- d. If acid sulfate soils are encountered during construction, the applicant must ensure the site is managed in accordance with requirements of the Queensland Acid Sulfate Technical Manual. In addition, an ASS/PASS Management Plan is to be submitted to Council within seven (7) days, should site excavations identify the presence of acid sulfate soils.

### 4. Stormwater

- a. The applicant is to amend the drawings in relation to the access ramps into the concrete lined drain. The surface of each access ramp is to be 150mm thick concrete, consistent with the concrete invert of the drain.
- b. Scour protection in southwest of Drain 1 as shown on drawing IH132900-5E-CI-DRG-0509 is to be reviewed at time of construction or maintenance period to verify performance and adequacy. The applicant will be required to rectify any issue at no cost of Council.
- c. The retaining wall height at the rear of Lots 220 to 225 is to be amended to ensure a minimum height of 500mm above the natural surface. The amended drawings must show this requirement prior to the pre-start meeting.

### 5. Water

- a. Include on the water reticulation plan the location of light pole footings and confirm the clearance between the footing and the water main. The revised drawing is to be endorsed by Council prior to commencement of water reticulation works.
- b. The minimum clearance between light pole footings and water mains are to be in accordance with WSA and verified and recorded by the consulting engineer during construction.

### 6. Roads and Paths

- a. Pavement design details are to be confirmed prior to pavement construction. Details provided to Council shall include subgrade CBR results for each pavement section, confirmation of traffic loadings adopted (as per FNQROC requirements) and final pavement design.
- b. Prior to the pre-start meeting, the applicant is to provide swept path diagram to confirm that *Council's Recycle Truck* can manoeuvre within the Road 05 Tee head (with the amended road reserve width of 14.5m). In the event that widening of the tee head is required to accommodate the turning movement for this design vehicle, the amended drawings detailing the widened turn head are to be provided prior to the pre-start meeting.

### 7. Erosion and Sediment Control

a. A copy of the Contractor's Erosion and Sediment Control (ESC) Plan is to be submitted to Council and endorsed by the Consulting Engineer, prior to commencement of any works. In particular, the ESC Plan must address the Institution of Engineers Australia Guidelines for Soil Erosion and Sediment Control and the Environment Protection (Water) Policy and Clauses CP1.05, CP1.13 and D5.10 of Council's FNQROC Development Manual.

### 8. Miscellaneous

- a. The applicant is to provide a street lighting plan prior to the pre-start meeting for civil construction to confirm any conflicts between light pole locations and other services
- b. Prior to the pre-start meeting, the applicant must provide written evidence from Ergon and Telstra confirming arrangements have been made for the provision of services to the stage.
- c. CCTV inspections are to be reviewed by the supervising engineer and the Engineering Report and Certification by an RPEQ provided to Council prior to Works Acceptance as required under FNQROC Development Manual CP1.25 Project Documentation.
- d. The applicant is to confirm the extent of fencing and/or safety barries across the end of the existing cul-de-sac and the formalised Drain. Specifically, the RPEQ is to review the need for barriers (and maintenance access gates) or bollards adjacent the road frontages of Lot 217, 218, 225 and 227. Written advice on the RPEQ findings must be provided to Council prior to the pre-start meeting.

### **Further Development Permits**

Not applicable

### **Concurrence Agency Response**

None Applicable

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

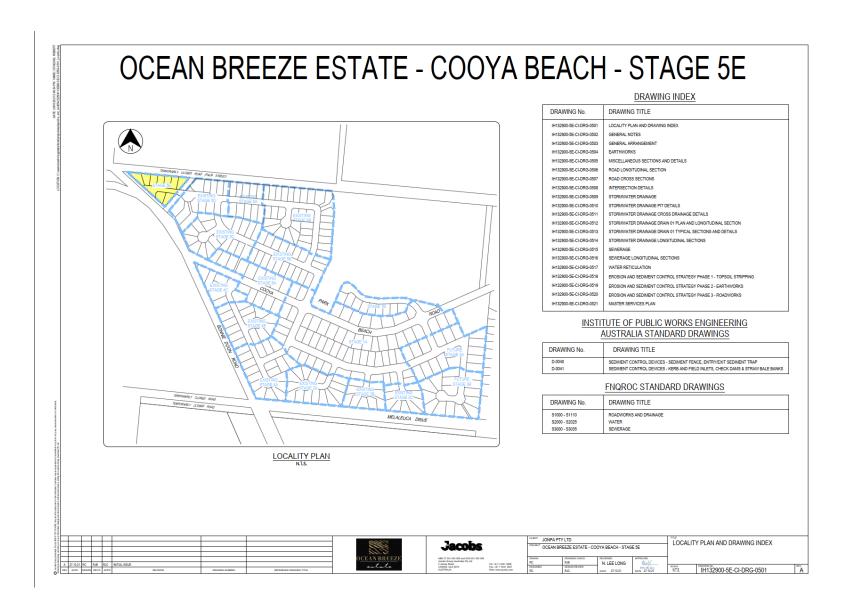
This approval, granted under the provisions of the *Planning Act 2016*, shall lapse two (2) years from the day the approval takes effect in accordance with the provisions of Section 85 of the *Planning Act 2016*.

### Rights to make Representations & Rights of Appeal

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 are attached.

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



1115515 OP 2021\_4456 Page 8 of 37

#### GENERAL ARRANGEMENT

- 1. FOR EARTHWORKS DETAILS REFER DRG-0504.
- 2. FOR TYPICAL CROSS SECTIONS AND CONTROL LINE SETOUT DETAILS REFER
- 3. FOR ROAD LONGITUDINAL SECTIONS REFER DRG-0506.
- 4. FOR KERB PROFILE DETAILS REFER FNQROC STD DRG S1000.
- 5. FOR STREET NAME POST DETAILS REFER FNQROC STD DRG S1040.
- 6. CONTRACTOR TO PROVIDE PUBLIC NOTIFICATION/SIGNS (REFER FNQROC DEVELOPMENT MANUAL CP1.11).
- 7. CLEARED VEGETATION SHALL BE MULCHED ON SITE BY THE CONTRACTOR.
- 8. FOR TYPICAL JOIN TO EXISTING ROAD DETAIL REFER DRG-0505

- 1. EXISTING SERVICES ARE PLOTTED FROM THE BEST INFORMATION, AVAILABLE, NO RESPONSIBILITY IS TAKEN BY THE PRINCIPAL OR SUPERINTENDENT FOR THE ACCURACY AND COMPLETENESS OF THE INFORMATION SHOWN.
- 2. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION THE CONTRACTOR IS TO ESTABLISH ON SITE THE EXACT POSITION OF ALL UNDERGROUND SERVICES IN THE PROPOSED WORKS AREA. METHODS FOR ACHIEVING THIS WILL INCLUDE BUT NOT BE LIMITED TO:-
  - CAREFUL EXAMINATION OF THE CONTRACT DRAWINGS.
     CONSULTATION WITH THE RELEVANT SERVICE AUTHORITIES.

  - COMPREHENSIVELY SCANNING THE AFFECTED AREAS WITH A CABLE DETECTOR AND MARKING ON THE GROUND THE POSITION OF ALL SERVICES. . HAND EXCAVATING TO EXPOSE ALL SUCH SERVICES WHICH MAY BE AFFECTED BY THE PROPOSED WORKS UNDER THE DIRECTION OF THE RELEVANT SERVICE
- 3. THE CONTRACTOR IS TO BRING TO THE SUPERINTENDENT'S ATTENTION ANY DISCREPANCIES BETWEEN THE EXISTING SERVICES THUS IDENTIFIED AND DOCUMENTED SERVICES WHICH MIGHT AFFECT THE PROPOSED WORKS APPROPRIATE MEASURES TO RESOLVE ANY CONFLICTS WILL BE DOCUMENTED BY THE SUPERINTENDENT.

#### **EARTHWORKS**

- 1. ALL BATTERS TO ROAD FRONTAGES OF LOTS ARE 1 ON 4 OR FLATTER. ALL OTHER BATTERS ARE 1 0N 2 U.N.O.
- 2. BATTERS TO BE ADJUSTED LOCALLY AROUND SEWER MANHOLES. REFER DRG-0515
- 3. UPON COMPLETION ALL BATTERS STEEPER THAN 1 IN 2 AND HIGHER THAN 1.5m SHALL REQUIRE CERTIFICATION AS TO THE STABILITY BY A GEOTECHNICAL ENGINEER.

#### INTERSECTION DETAILS

- ALL KERB SETOUT DETAILS REFER TO THE LIP OF KERB AND CHANNEL OR FACE OF KERB AS APPLICABLE.
- 2. FOR KERB PROFILE DETAILS REFER FNQROC STD, DRG, S1000

#### STORMWATER DRAINAGE

- 1. FOR STANDARD STORMWATER DRAINAGE DETAILS REFER FNQROC STD. DRGS. \$1045-\$1100 INCLUSIVE.
- 2. THE CONTRACTOR IS TO LOCATE ALL EXISTING SERVICES IN THE WORKS AREA PRIOR TO THE COMMENCEMENT OF CONSTRUCTION.
- 3. SUBSURFACE DRAINS TO BE CONSTRUCTED IN ACCORDANCE WITH STANDARD SPECIFICATION, FLUSHING POINTS IN ACCORDANCE WITH FNQROC STD. DRG. S1095.
- 4. WHERE ANY PART OF THE STORMWATER PIT IS BELOW RL 1.80 THE CONCRETE GRADE AND COVER TO REINFORCEMENT SHALL BE IN ACCORDANCE WITH FNQROC STD DRGS S1050 & S1055.
- 5. FOR BEDDING DIMENSIONS TO BLACKMAX/ STORMPRO PIPES REFER DRG-0505.
- 6. PRIOR TO COMMENCEMENT OF PIPEWORK, THE CONTRACTOR IS TO CONFIRM THE INVERT LEVEL OF DOWNSTREAM DRAINAGE TO ENSURE THE STORMWATER SYSTEM CAN DRAIN SATISFACTORILY. REFER ANY DISCREPANCY TO THE SUPERINTENDENT.
- 7. CCTV INSPECTIONS ARE TO BE CONDUCTED FOR ALL NEW STORMWATER PIPES FOR
- ALL UNDERGROUND STORMWATER PIPEWORK SHALL BE POLYPROPYLENE (PP), BLACKMAX/STORMPRO OR APPROVED EQUIVALENT UNLESS NOTED OTHERWISE.

#### SEWERAGE

- 1. ALL SEWER PIPES SHALL BE uPVC CLASS 'S.N.B.' (U.N.O.).
- 2. FOR STANDARD DETAILS OF SEWER MAINS, ETC. REFER FNQROC STD. DRGS. S3000 TO S3015 INCLUSIVE.
- 3. MANHOLES ADJACENT ROAD BOUNDARIES SHALL BE ON A 1.5m ALIGNMENT U.N.O. MANHOLES ADJACENT SIDE AND REAR BOUNDARIES SHALL BE ON A 0.8m ALIGNMENT
- 4. SEWER MANHOLES SHALL BE FINISHED 50mm MAX ABOVE FINISHED SURFACE LEVEL IN ALLOTMENTS AND FLUSH IN ROAD RESERVES.
- 5. HOUSE DRAINS ARE TO EXTEND 1.5m CLEAR OF ANY EARTHWORKS BATTER THAT IS STEEPER THAN 1 ON 2. AN INSPECTION OPENING IS TO BE PROVIDED AT THE
- THE CONTRACTOR IS TO LOCATE ALL EXISTING SERVICES IN THE WORKS AREA PRIOR TO THE COMMENCEMENT OF CONSTRUCTION.
- 7. EXISTING LOTS TO BE REINSTATED AFTER CONSTRUCTION OF THE SEWER.
- 8. ALL HOUSE CONNECTION BRANCHES ARE REQUIRED TO BE BROUGHT TO WITHIN A MAXIMUM OF 300mm OF THE FINISHED SURFACE LEVEL AND A GLUED CAP INSTALLED. THE RISER MUST BE CONNECTED TO A MARKER PEG WITH PLASTIC COATED WIRE. THE MARKER PEG IS TO BE OF HARDWOOD MATERIAL, PROTRUDING 20mm ABOVE THE GROUND AND SHALL BE INSTALLED IMMEDIATELY ADJACENT TO THE RISER IN ACCORDANCE WITH FNQROC DRAWING \$3005.
- 9. ALL VERTICAL DROPS SHALL BE CONSTRUCTED USING FIBREGLASS HEAVY DUTY
- 10. CONNECTIONS TO EXISTING COUNCIL MAINS TO BE MADE BY DOUGLAS SHIRE
- 11. CCTV INSPECTIONS ARE TO BE CONDUCTED FOR ALL NEW SEWERS FOR COUNCIL
- 12. ALL WORKS ARE TO BE IN ACCORDANCE WITH FNQROC DEVELOPMENT MANUAL SPECIFICATION S6.
- 13. PROVIDE A COMPRESSIBLE LAYER BETWEEN ALL PROPOSED MANHOLES WITHIN AREAS OF CONCRETE.

- 1. ALL WATER MAINS ARE ON 1.6m ALIGNMENTS FROM BOUNDARY U.N.O.
- 2. FOR STANDARD DETAILS REFER FNQROC. STD. DRGS. S2000 TO S2035
- 3. CONNECTIONS TO EXISTING COUNCIL MAINS TO BE MADE BY DOUGLAS SHIRE COUNCIL.
- THE CONTRACTOR IS TO LOCATE ALL EXISTING SERVICES IN THE WORKS AREA PRIOR TO COMMENCEMENT OF CONSTRUCTION.
- PROVIDE A COMPRESSIBLE LAYER BETWEEN ALL EXISTING AND PROPOSED HYDRANT OR VALVE SURROUNDS WITHIN AREAS OF CONCRETE.
- 6. ALL WORKS ARE TO BE IN ACCORDANCE WITH FNQROC DEVELOPMENT

#### EROSION AND SEDIMENT CONTROL STRATEGY

- a) INSTALL STABLE POINT OF ENTRY
- b) INSTALL SILT FENCES c) PROTECT TOPSOIL STOCKPILES
- d) CONSTRUCT TEMPORARY SEDIMENT BASINS
- e) INSTALL STORMWATER PIPES f) IMPLEMENT PROTECTION MEASURES TO STORMWATER PITS
- g) REVEGETATE BARE AREAS UPON COMPLETION OF EARTHWORKS h) THE SEDIMENT CONTROL STRUCTURES ARE TO BE CLEANED & MAINTAINED
- AFTER EVERY STORM EVENT. ERODED SOILS SHALL BE STOCKPILED AS
- 2. THE AMOUNT OF DISTURBANCE TO EXISTING VEGETATION BE KEPT TO A
- EXACT LOCATION OF SEDIMENT CONTROL STRUCTURES TO BE DETERMINED ON SITE BY COUNCIL & SUPERINTENDENT
- STOCKPILE LOCATIONS TO BE AGREED WITH COUNCIL & THE SUPERINTENDENT. STOCKPILES TO BE PROTECTED VIA DIVERSION DRAIN ON THE UPSLOPE & SILT
- RETURNS IN SILT FENCE TO BE AT 20m INTERVALS WHEN INSTALLED ALONG THE CONTOUR. SPACING IS TO DECREASE TO 5-10m DEPENDING ON SLOPE IF THE SILT FENCE IS INSTALLED AT AN ANGLE TO THE CONTOUR. THE RETURN SHALL
- V-SHAPED SECTION EXTENDING AT I EAST 1.5m UP THE SLOPE: OR - SANDBAG OR ROCK/AGGREGATE CHECK DAM A MINIMUM OF 1/3 AND MAXIMUM OF 1/2 FENCE HEIGHT, AND EXTENDING AT LEAST 1.5m UP THE SLOPE.
- STORMWATER PIPES TO HAVE PIT PROTECTION MEASURES AS DETAILED IN FNQROC DEVELOPMENT MANUAL
- ALL SEDIMENT CONTROL MEASURES TO BE IN ACCORDANCE WITH THE CONTRACTORS ESC PLAN.
- 8. THE FOLLOWING REVEGETATION MEASURES ARE TO BE UNDERTAKEN IMMEDIATELY UPON COMPLETION OF EARTHWORKS.
  a) CUT & FILL BATTERS 1 ON 4 OR STEEPER TO BE HYDROMULCHED. N VERGES & ALLOTMENTS TO BE GRASS SEEDED
- REVEGETATION IS TO BE WATERED & MAINTAINED UNTIL GROWTH IS ESTABLISHED.
- 10. CONTRACTOR TO PROVIDE DUST SUPPRESSION MEASURES AS REQUIRED.
- 11. DESIGN CRITERIA FOR CONTRACTOR'S EROSION & SEDIMENT CONTROL PLAN TO BE IN ACCORDANCE WITH SECTION CP1.05 OF THE FNQROC DEVELOPMENT



Jacobs

OCEAN BREEZE ESTATE - COOYA BEACH - STAGE 55

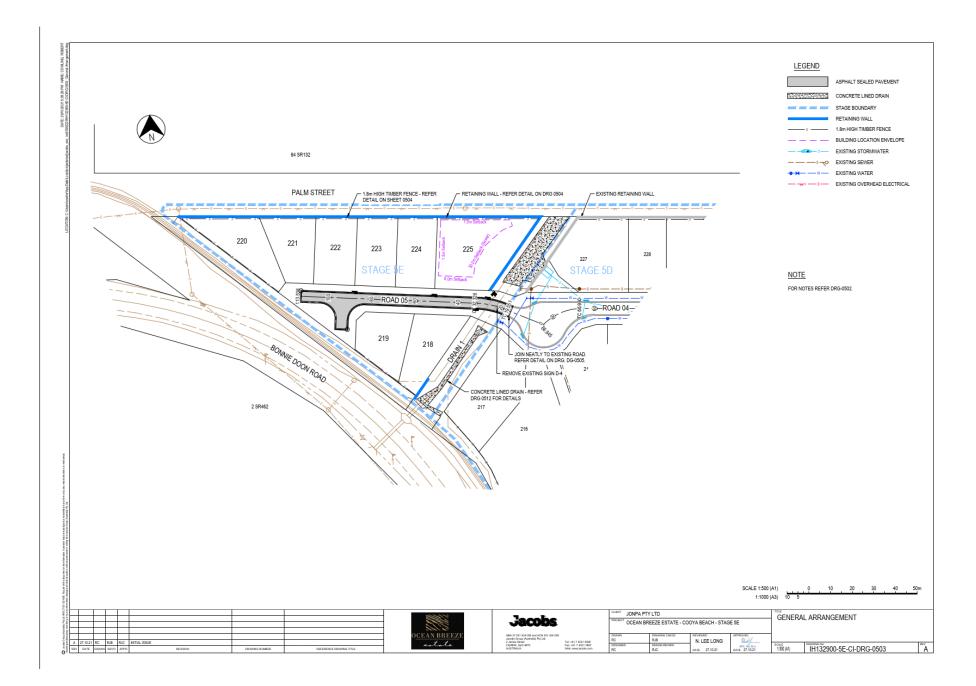
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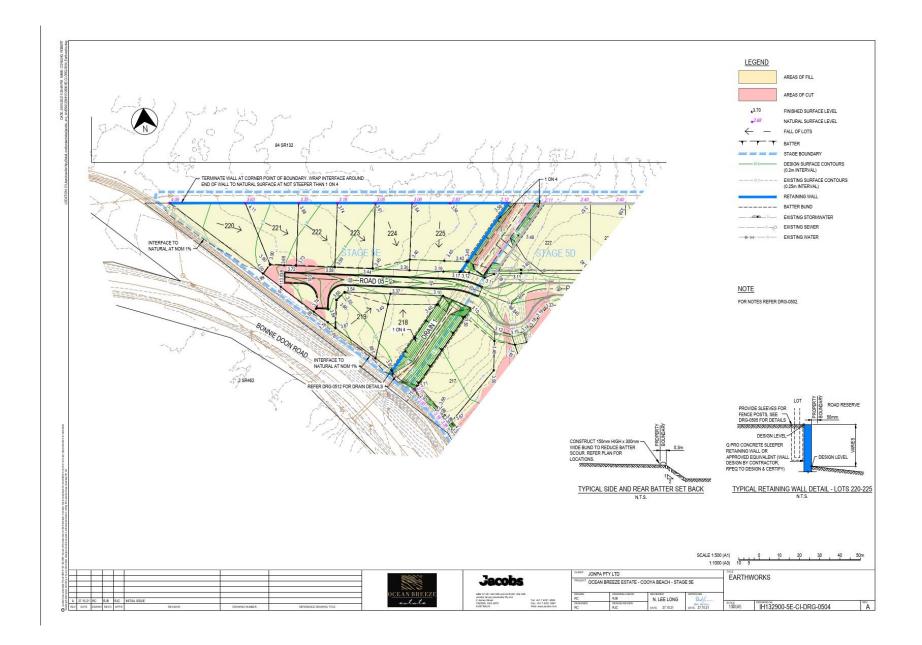
GENERAL NOTES

NTS IH132900-5E-CI-DRG-0502

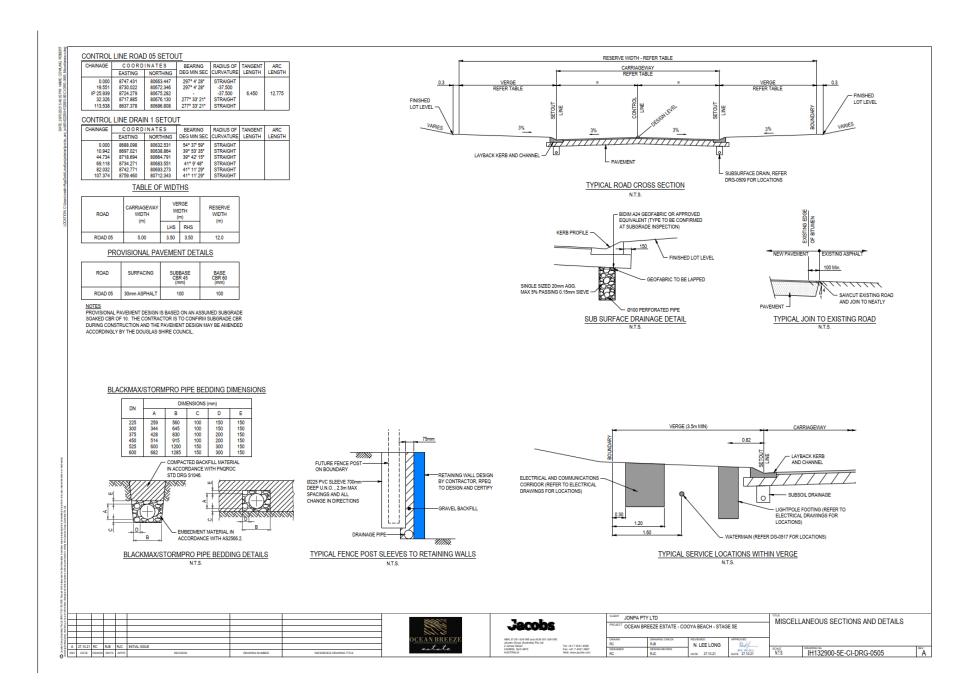
1115515 OP 2021 4456 Page 9 of 37

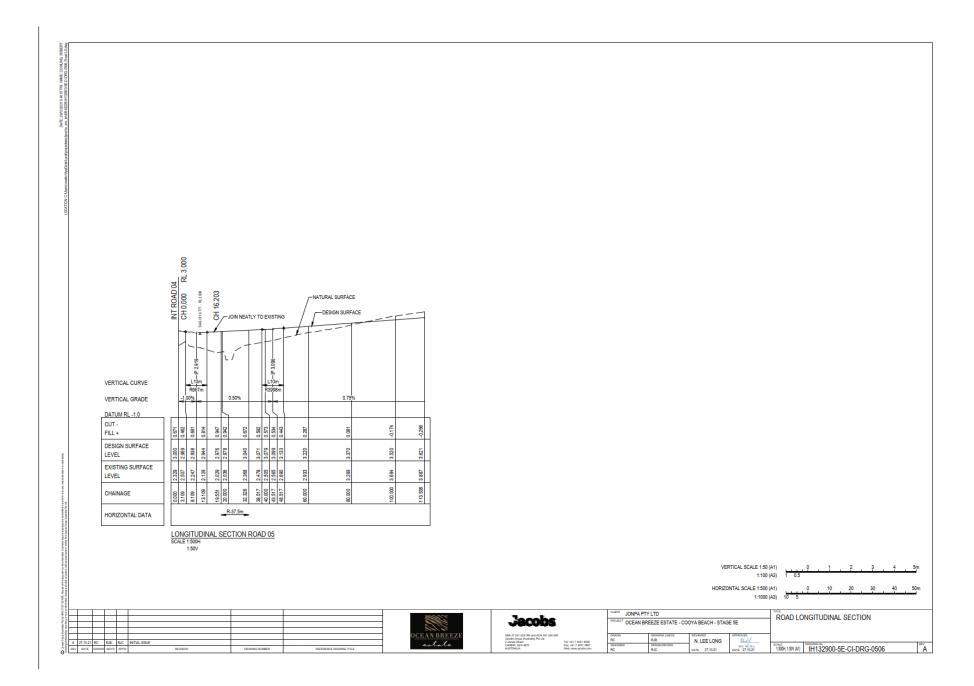


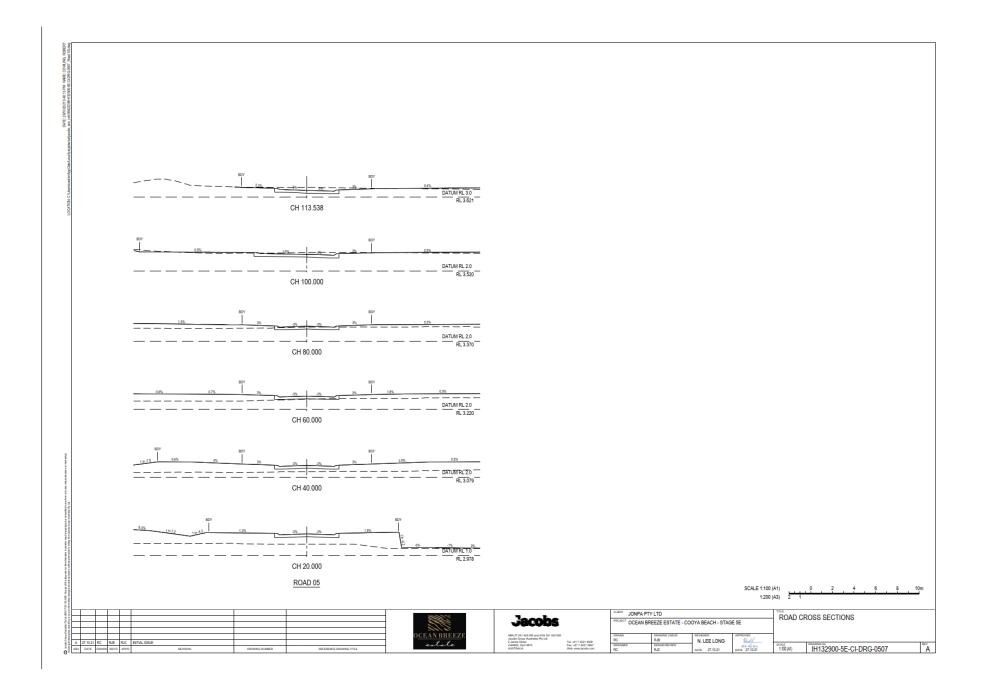
1115515 OP 2021\_4456 Page 10 of 37

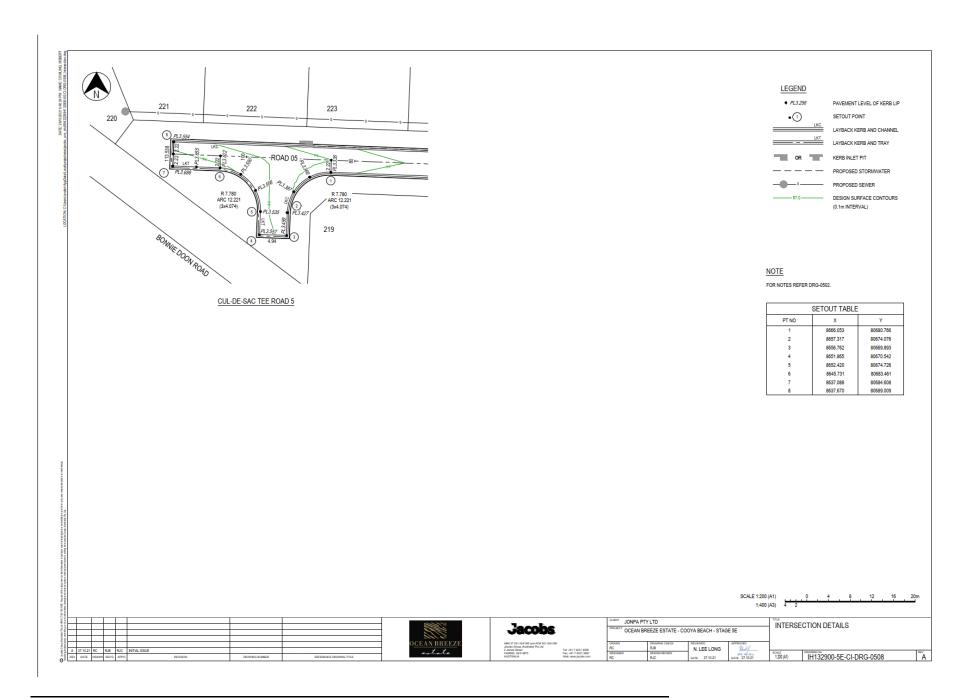


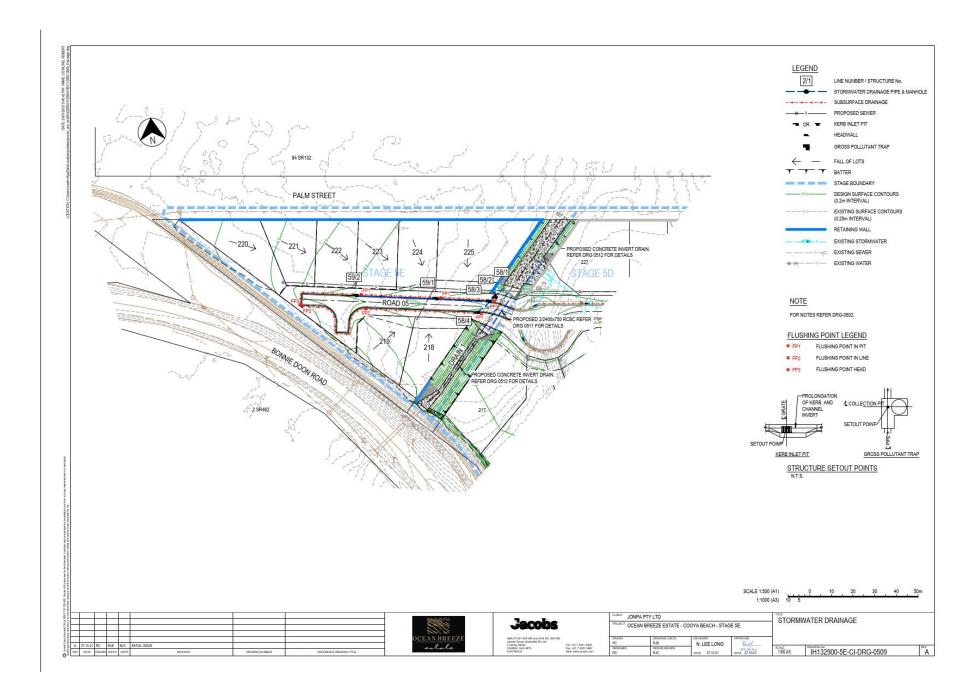
1115515 OP 2021\_4456 Page 11 of 37

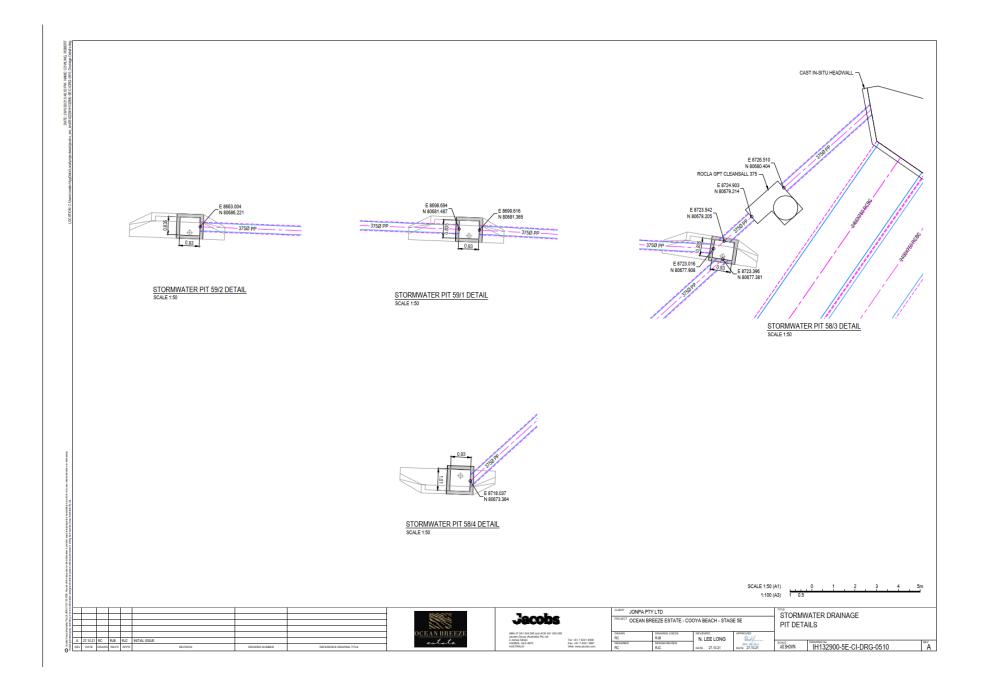


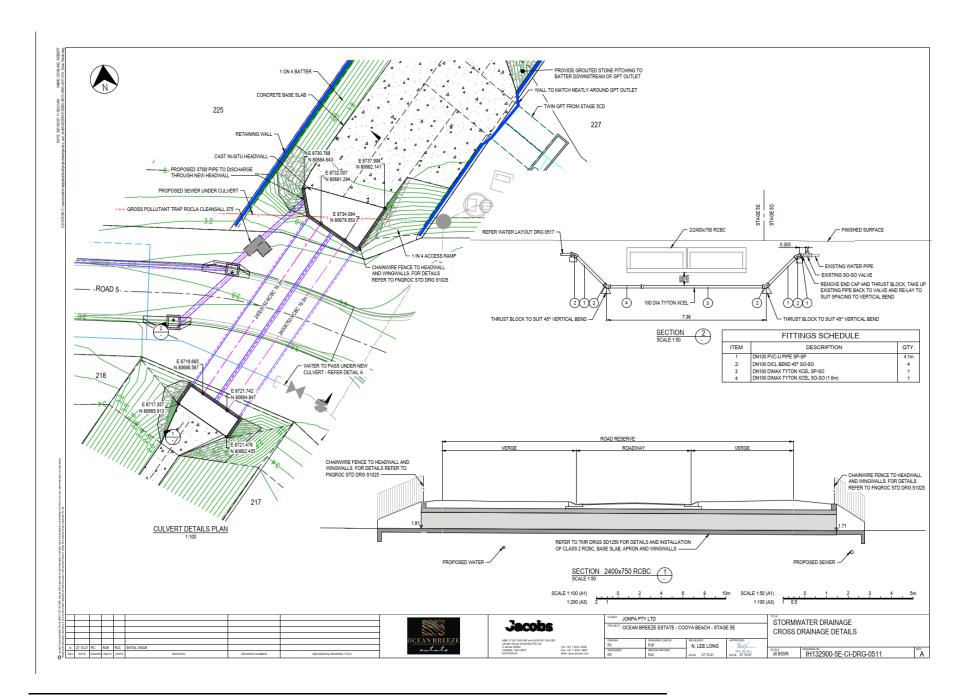




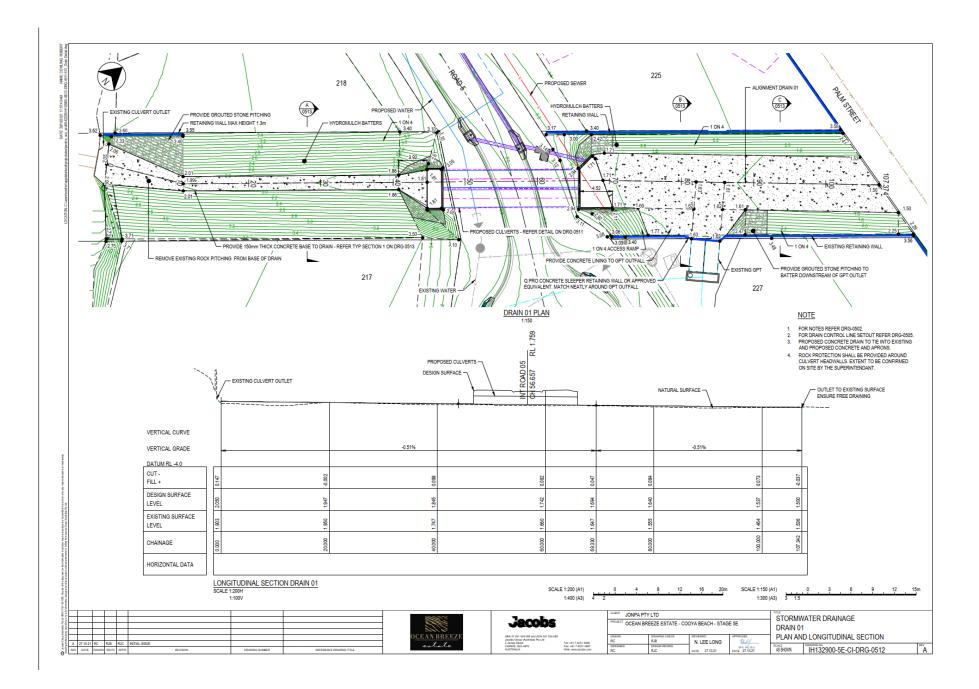




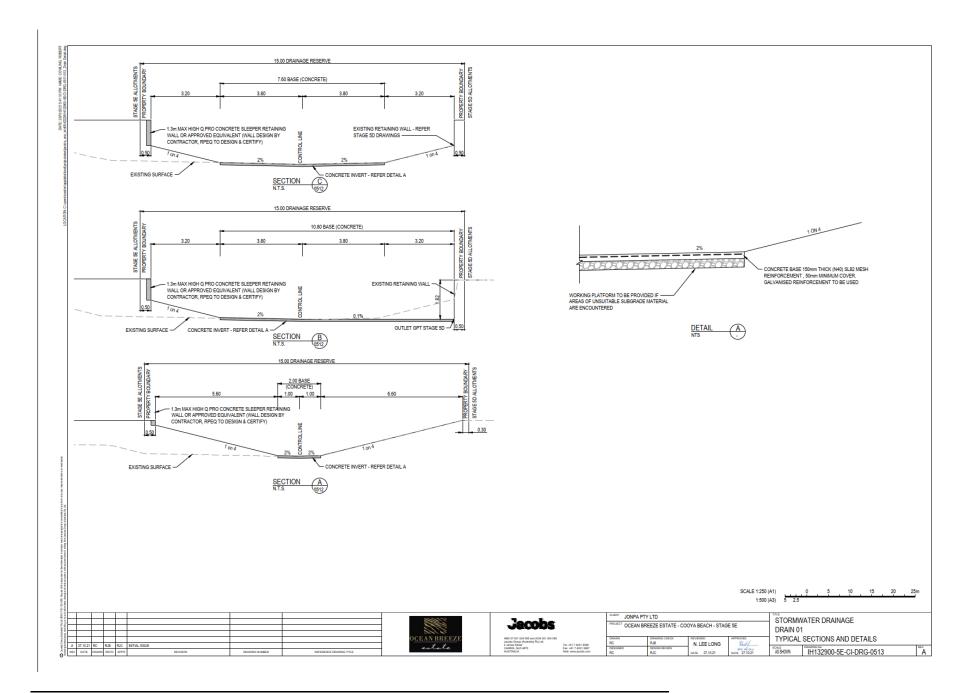




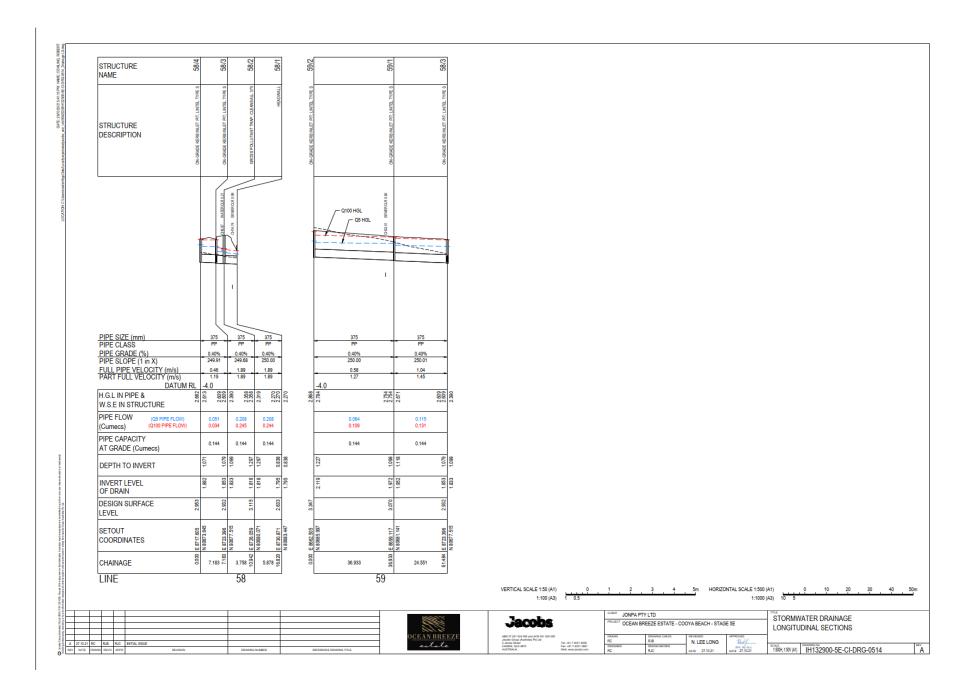
1115515 OP 2021\_4456 Page 18 of 37



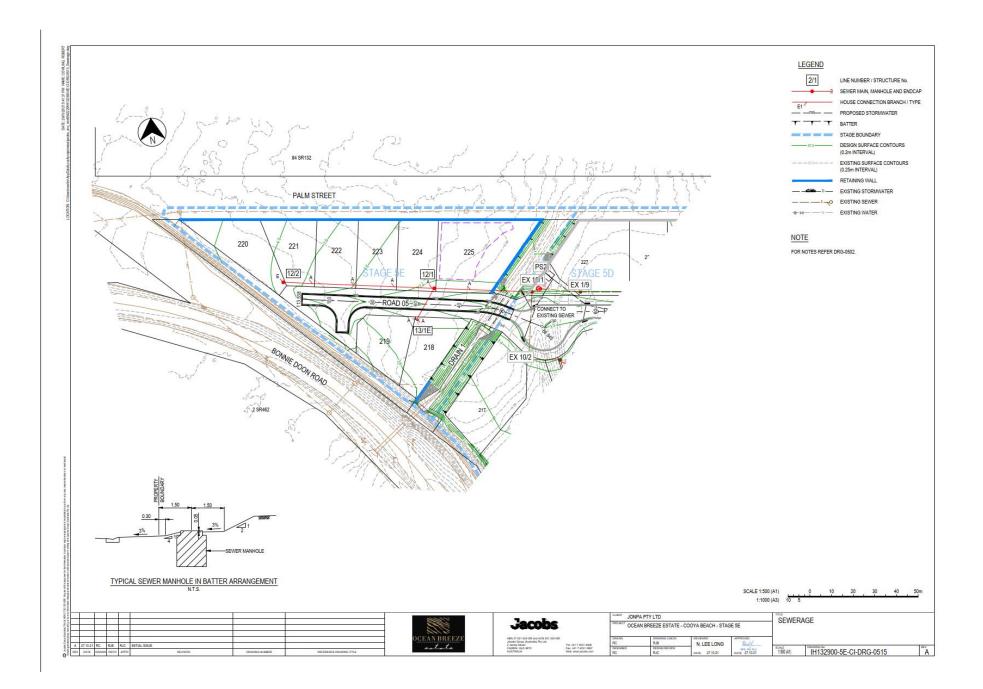
1115515 OP 2021\_4456 Page 19 of 37



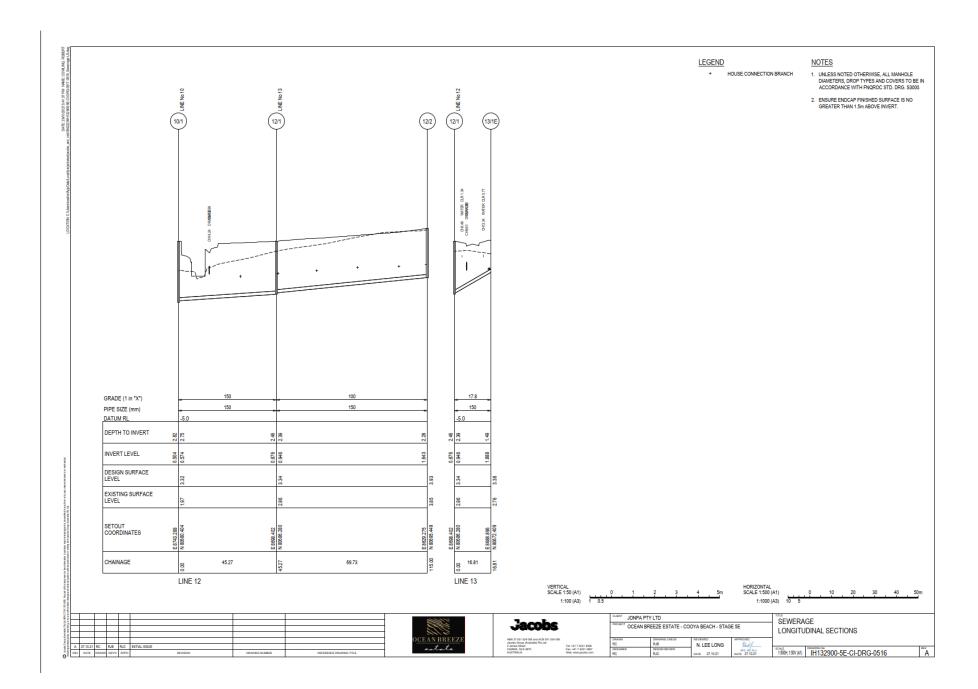
1115515 OP 2021\_4456 Page 20 of 37

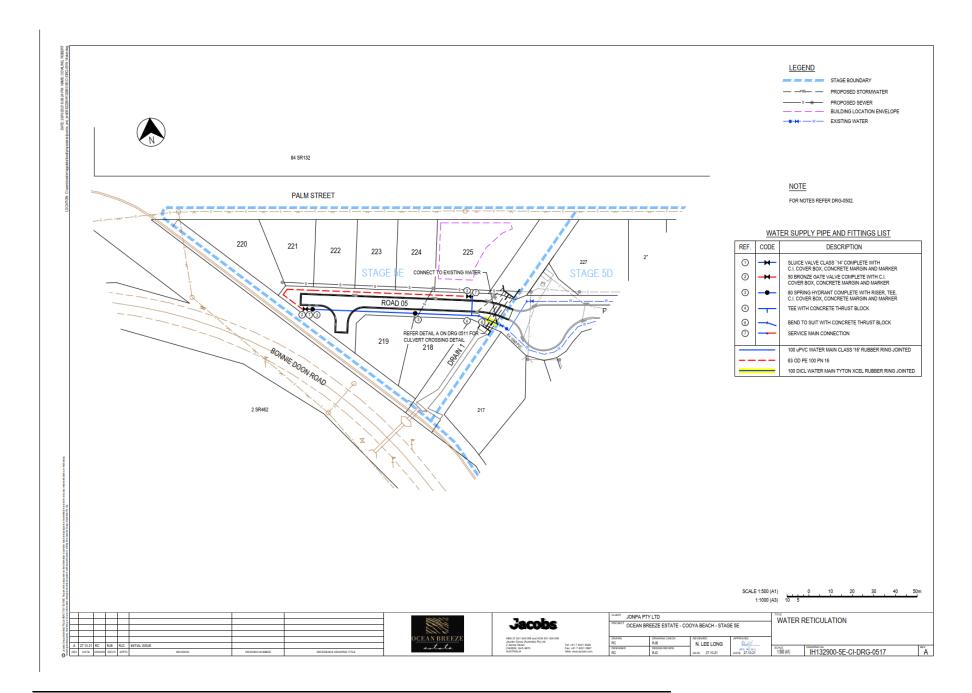


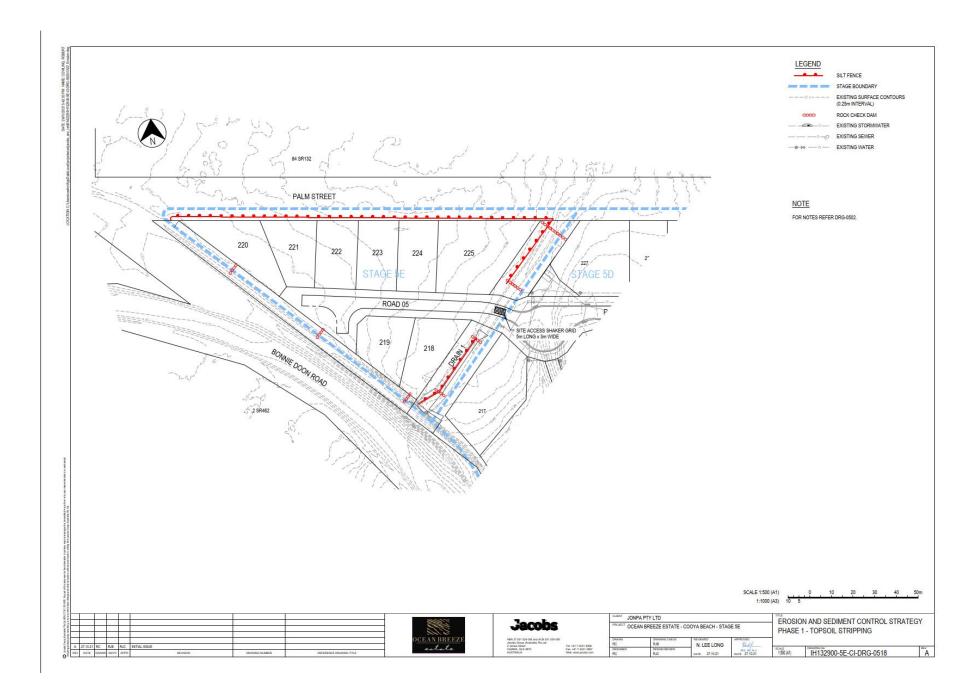
1115515 OP 2021\_4456 Page 21 of 37

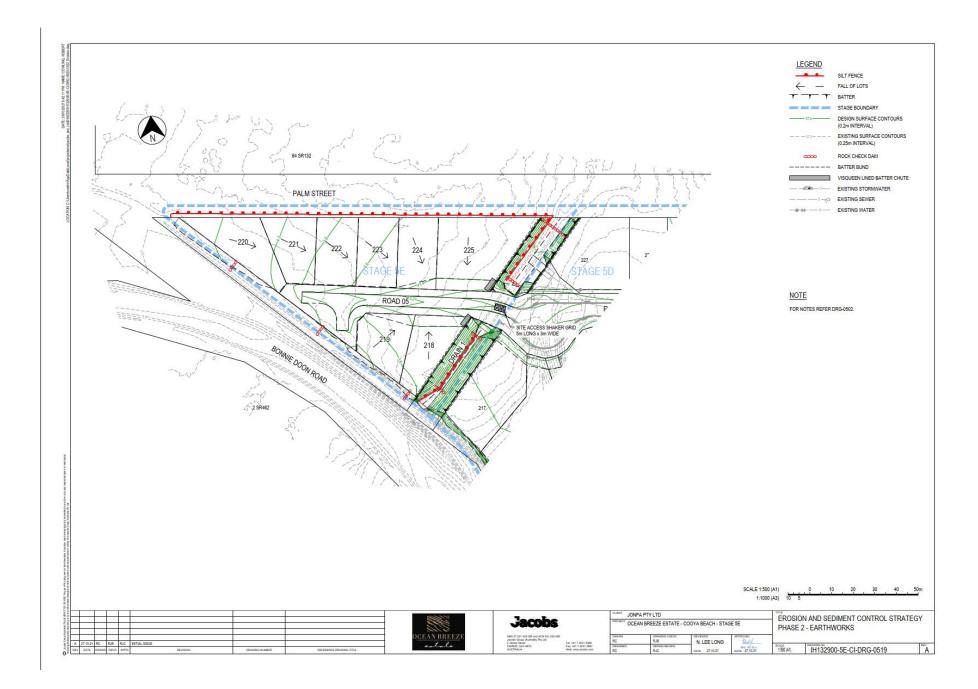


1115515 OP 2021\_4456 Page 22 of 37







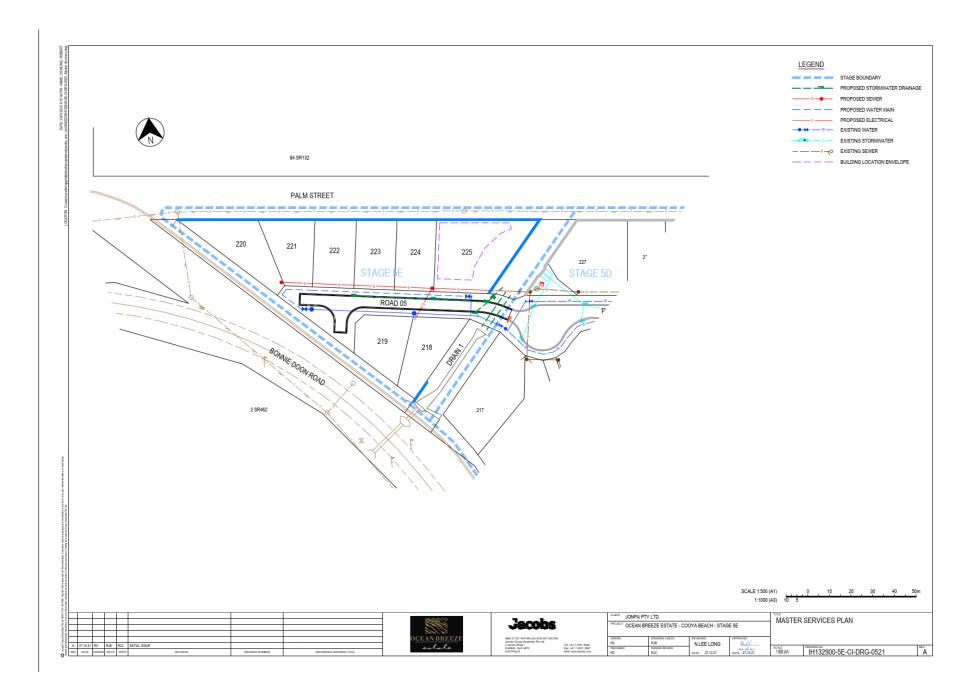


1115515 OP 2021\_4456 Page 26 of 37





1115515 OP 2021\_4456 Page 27 of 37



# Extracts from the Planning Act 2016 - Making Representations During Applicant's Appeal Period

Planning Act 2016 Chapter 3 Development assessment

[s 74]

### Division 2 Changing development approvals

### Subdivision 1 Changes during appeal period

### 74 What this subdivision is about

- 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;
  - (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—
    - a matter stated because of a referral agency's response; or

Page 94 Current as at 1 July 2019

Authorised by the Parliamentary Counsel

1115515 OP 2021\_4456 Page 29 of 37

- (ii) a development condition imposed under a direction made by the Minister under chapter 3, part 6, division 2; or
- 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—
    - the applicant withdraws the notice, by giving another notice to the assessment manager; or
    - 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

 The assessment manager must assess the change representations against and having regard to the matters that

Current as at 1 July 2019

Page 95

- 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
  - 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.

Page 96 Current as at 1 July 2019

### Extracts from the Planning Act 2016 - Appeal Rights

Planning Act 2016 Chapter 6 Dispute resolution

[s 229]

- (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

- 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

Page 212 Current as at 1 July 2019

- (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.
- 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—
    - 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

Current as at 1 July 2019

Page 213

- (iii) 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—
    - the establishment cost of trunk infrastructure identified in a LGIP; or
    - the cost of infrastructure decided using the method included in the local government's charges resolution.

### 230 Notice of appeal

- 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—

Page 214

Current as at 1 July 2019

- (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;
- (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—
  - 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.

Current as at 1 July 2019

Page 215

(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

- 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
- 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,

Page 216

Current as at 1 July 2019

- 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

- 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

- 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—
  - (a) has the qualifications or experience prescribed by regulation; and
  - (b) has demonstrated an ability—
    - to negotiate and mediate outcomes between parties to a proceeding; and
    - (ii) to apply the principles of natural justice; and
    - (iii) to analyse complex technical issues; and
    - (iv) to communicate effectively, including, for example, to write informed succinct and well-organised decisions, reports, submissions or other documents.

Current as at 1 July 2019

Page 217