

1 May 2024

**Enquiries:** Neil Beck  
**Our Ref:** OP 2023\_5560/1 (1223248)  
**Your Ref:** ARO0188

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

J S Donald  
C/- ARO Industries  
PO Box 6490  
CAIRNS QLD 4870

Dear Andrew

**Development Application for Operational Works (Earthworks)  
At 368-380 Port Douglas Road PORT DOUGLAS  
On Land Described as LOT: 3 RP: 729037**

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

Please quote Council's application number: OP 2023\_5560/1 in all subsequent correspondence relating to this development application.

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

Yours faithfully



**For**  
**Paul Hoyer**  
**Manager Environment & Planning**

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

- Decision Notice
  - Approved Drawing(s) and/or Document(s)
- 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: J S Donald

Postal Address: C/- ARO Industries  
PO Box 6490  
Cairns Qld 4870

Email: admin@aroindustries.com.au or

#### Property Details

Street Address: 368-380 Port Douglas Road PORT DOUGLAS

Real Property Description: LOT: 3 RP: 729037

Local Government Area: Douglas Shire Council

#### Details of Proposed Development

Development Permit for Operational Works (Operational Works - Earthworks)

#### Decision

Date of Decision: 1May 2024

Decision Details: Approved (subject to conditions)

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

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

Title	Reference No.	Revision
Bulk Earthworks Plan	ARO 0188-C01	2

**Note** – The plans referenced above will require amending in order to comply with conditions of this Decision Notice.

## 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; and
  - b. The following conditions of approval and the requirements of Council's Planning Scheme and the FNQROC Development Manual.

### Timing of Effect

2. The conditions of the Development Permit must be effected prior to the request for a Pre-start meeting except where specified otherwise in these conditions of approval.

### Earthworks

3. Provide updated plans to show the bulk earthworks footprint wholly contained within the boundaries of the development site. In particular, revise the proposed earthworks so they do not encroach into existing Lot 10 on RP729037, and include a fence along the shared boundary with Lot 10 on RP729037 on the revised plan.

The revised earthworks plan must be endorsed by Council prior to the Pre-Start Meeting.

4. Prior to the Pre-Start Meeting, provide clarification on the volume calculations for the updated bulk earthworks footprint supported with cross sections to the satisfaction of the Chief Executive Officer.

*Advice Note: Officers note conflicting commentary was provided in response to the Information Request (IR) dated 17 January 2024. The response to IR Query 1 indicates the quantity of fill imported to the site is approximately 4500m<sup>3</sup> with no further imported fill proposed. The response to IR Query 6 indicates the quantity of fill is 4200m<sup>3</sup> based on an average depth of 0.8m and 5156m<sup>2</sup>.*

5. In accordance with the Applicant's proposed methodology stated in Query 3 of the Response to Information Request, stripped topsoil must be inspected by the Contractor/Applicant with Council to confirm it has been stripped in accordance with AS3798. The inspection must be carried out to the satisfaction of the Chief Executive Officer prior to the Pre-Start Meeting.
6. The RPEQ certifying engineer is to provide evidence of subgrade preparation works undertaken to prepare the site for imported fill, (including clearing, stripping, and assessing in-situ subgrade prior to placing fill). Supporting information and/or photographs must be provided and certified by the RPEQ Engineer to the satisfaction of the Chief Executive Officer prior to the Pre-Start Meeting.

If subgrade works were not required to prepare the site for imported fill, this must be certified by a suitably qualified RPEQ Geotechnical Engineer prior to the Pre-Start Meeting.

### Retaining Walls

7. Provide details of the concrete retaining wall proposed along the northern boundary of the site to the satisfaction of the Chief Executive Officer prior to the Pre-Start Meeting.

8. Provide calculations and catchment plans to demonstrate stormwater flows are contained in the surface drainage system at the top of the retaining wall, enable flows to pass the wall, and include appropriate scour protection at the base of the wall.

*Advice Note: Retaining walls must include adequate surface drainage at the top of the wall to ensure surface stormwater flows are taken to the lawful point of discharge and do not overtop into adjacent private property.*

Drainage at the top of wall must be to the satisfaction of the Chief Executive Officer and maintained at all times.

9. Any retaining walls higher than 1 metre must be structurally certified prior to the Commencement of Work.

Where the profile or height of the wall is redesigned during structural certification, amended plan(s) must be approved by Council.

### **Stormwater Discharge**

10. Prior to the Pre-Start Meeting, demonstrate that the post-development discharge from the site is in accordance with the requirements of Queensland Urban Drainage Manual (QUDM).

In particular, demonstrate (with supporting calculations) that the post-development discharge from the site as a result of the proposed earthworks and concrete retaining wall along the northern boundary of the site does not exceed the pre-developed discharge to the satisfaction of the Chief Executive Officer.

11. All stormwater from the land must be directed to a lawful point of discharge such that it does not adversely affect surrounding properties or properties downstream from the development, in accordance with QUDM at all times.

For the purpose of stormwater runoff, the lawful point of discharge must be either the Port Douglas Road table drain adjacent the western development boundary and/or Lot 10 on RP729037 adjacent the eastern development boundary.

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

12. Prior to the Pre-Start Meeting, provide an Erosion and Sediment Control Plan nominating the proposed ESC measures on a separate plan to the bulk earthworks plan.
13. ESC measures must be installed and maintained at the interface between the earthworks batter and the existing ground surface within the development footprint to direct all runoff to the lawful point of discharge and prevent ponding nuisance at all times.

*Advice Note: It is unclear how stormwater conveyed from the proposed earthworks batter to the existing natural surface within the development footprint will be addressed to mitigate the risk of water ponding at the earthworks interface.*

14. Temporary ESC measures must remain in place during construction and until the site is stabilised to prevent any sediment entering the adjacent stormwater systems or properties to the satisfaction of the Chief Executive Officer.

### **Fencing**

15. Prior to the Commencement of Works, erect a fence to delineate the common boundary with existing Lot 10 on RP729037, and restrict building access for the duration of construction activity.

The fence must be to the requirement of the Chief Executive Officer.

## **Progression of Works**

16. Due to earthworks having commenced on site, a Pre-start Meeting must be requested within 2 months from the date of this Development Permit. Works authorised by this Development Permit must be completed within 2 months from the date of the Pre-Start Meeting unless otherwise agreed to by the Chief Executive Officer.

## **Advices**

1. 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 sections 85(1)(b) and 71 of the Planning Act 2016.
2. The Douglas Shire Council area is subject to water restrictions during dry season months that may limit and/or restrict the use of Council water for landscaped areas. Council recommends water harvesting and water saving devices to be included to cater for the dry season periods.
3. All building site managers must take all action necessary to ensure building materials and / or machinery on construction sites are secured immediately following the first cyclone watch and that relevant emergency telephone contacts are provided to Council officers, prior to commencement of works.
4. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements. In particular, the use of the adjacent sidewalk area is subject to a Local Law approval for outdoor dining. The use of the sidewalk area for outdoor dining is subject to a Local Laws approval.

## **Further Development Permits**

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Not applicable

## **Concurrence Agency Response**

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Not Applicable

## **Currency Period for the Approval**

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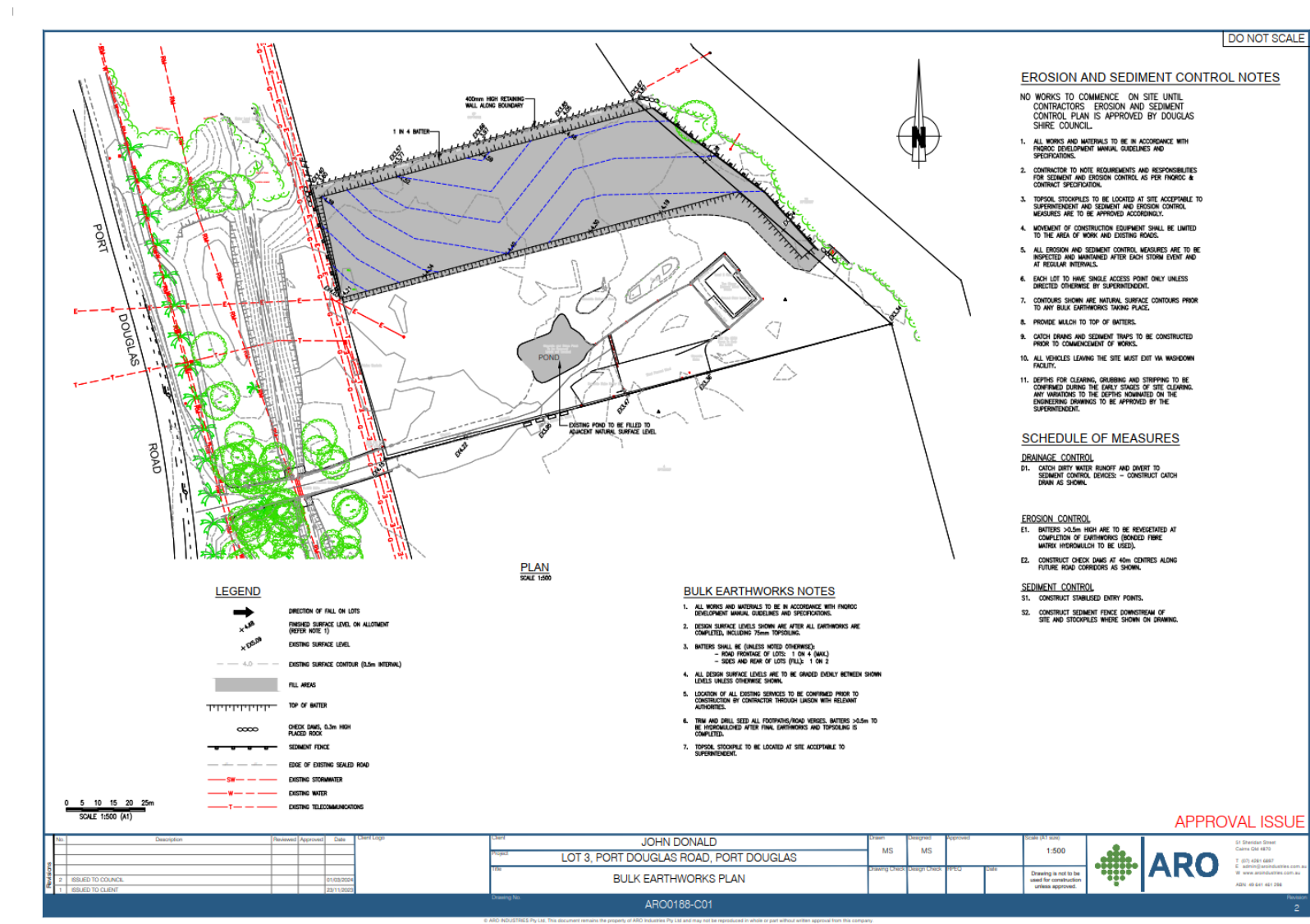
This approval, granted under the provisions of the *Planning Act 2016*, shall lapse two (2) years from the day the approval takes effect in accordance with the provisions of Section 85 of the *Planning Act 2016*.

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

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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.



Planning Act 2016  
Chapter 3 Development assessment

[s 74]

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## **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



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

## **76 Deciding change representations**

- (1) The assessment manager must assess the change representations against and having regard to the matters that



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

## Chapter 6 Dispute resolution

### Part 1 Appeal rights

#### 229 Appeals to tribunal or P&E Court

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

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

*Note—*

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

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



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

## **230 Notice of appeal**

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—
  - (a) is in the approved form; and
  - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar, must, within the service period, give a copy of the notice of appeal to—
  - (a) the respondent for the appeal; and
  - (b) each co-respondent for the appeal; and
  - (c) for an appeal about a development application under schedule 1, section 1, table 1, item 1—each principal submitter for the application whose submission has not been withdrawn; and
  - (d) for an appeal about a change application under schedule 1, section 1, table 1, item 2—each principal submitter for the application whose submission has not been withdrawn; and

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

## **231 Non-appealable decisions and matters**

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

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

## 232 Rules of the P&E Court

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