

File: 23/38
Date: 8 March 2024

Smithfield Capital Pty Ltd ATF Smithfield Cattle Infrastructure Trust
Okeden Road
PROSTON QLD 4613

Attention: Jason Shearer-Smith / Rod Davis

Dear Jason and Rod

**Decision Notice –approval (with conditions)
Operational Works**

Lots 23 & 26 on MH80, Lots 54 & 55 on SP169191, Lot 56 on MH235, Lot 57 on SP225447 and Lot 59 on SP134244, Yelarbon Kurumbul Road, Yelarbon

We wish to advise that on 7 March 2024 a decision was made to approve the operational works development application for *Modification of an existing levee* at Lots 23 & 26 on MH80, Lots 54 & 55 on SP169191, Lot 56 on MH235, Lot 57 on SP225447 and Lot 59 on SP134244, Yelarbon Kurumbul Road, Yelarbon. In accordance with the *Planning Act 2016*, please find attached Council's Decision Notice for the application.

Please read the conditions carefully as these include actions which must be undertaken **prior to the commencement of the construction** as well as requirements for the ongoing operation of the use.

All conditions are required to be either complied with or bonded prior to the commencement of the construction unless otherwise specified.

The applicant is required to **notify Council in writing of the date of the commencement** of the works, within fourteen (14) business days of commencement.

If you require any further information, please contact Council's Manager of Planning Services, Mrs Ronnie McMahon, on (07) 4671 7400 or rmcmahon@grc.qld.gov.au, who will be pleased to assist.

Yours faithfully



Carl Manton
Chief Executive Officer
Goondiwindi Regional Council

Decision Notice approval

Planning Act 2016 section 63

Council File Reference: 23/38
Council Contact: Mrs Ronnie McMahon
Council Contact Phone: (07) 4671 7400

8 March 2024

Applicant Details: Smithfield Capital Pty Ltd ATF Smithfield Cattle Infrastructure Trust
Okeden Road
PROSTON QLD 4613

Attention: Jason Shearer-Smith / Rod Davis

The development application described below was properly made to Goondiwindi Regional Council on 25 September 2023.

Applicant details

Applicant name: Smithfield Capital Pty Ltd ATF Smithfield Cattle Infrastructure Trust

Applicant contact details: Attn: Jason Shearer-Smith / Rod Davis
Okeden Road, Proston Qld 4613
Ph: 0427 689 104 / 0427 629 203
E: jason@smithfieldcattleco.com /
rod.davis@rdcengineers.com.au

Application details

Application number: 23/38
Approval sought: Development Permit
Details of proposed development: "Operational Works" (Modification of Existing Levee)

Location details

Street address: Yelarbon Kurumbul Road, Yelarbon
Real property description: Lots 23 & 26 on MH80, Lots 54 & 55 on SP169191, Lot 56 on MH235, Lot 57 on SP225447 and Lot 59 on SP134244

Decision

Date of decision: 7 March 2024
Decision details: Approved in full with conditions. These conditions are set out in Attachment 1 and are clearly identified to indicate whether the assessment manager or a concurrence agency imposed them.

Details of the approval

The application is not taken to be approved (a deemed approval) under section 64(5) of the *Planning Act 2016*.

The following approvals are given:

	Planning Regulation 2017 reference	Development Permit	Preliminary Approval
Development assessable under the planning scheme, superseded planning scheme, a temporary local planning instrument, a master plan or a preliminary approval which includes a variation approval - building work assessable under the planning scheme - plumbing or drainage work - material change of use - reconfiguring a lot - operational work	N/A	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

Conditions

This approval is subject to the conditions in Attachment 1.

Further development permits

Please be advised that the following development permits are required to be obtained before the development can be carried out:

1. Not applicable

Properly made submissions

Not applicable—No part of the application required public notification.

Referral agencies for the application

The referral agencies for this application are:

For an application involving	Name of referral agency	Address
As per Schedule 10, Part 9, Division 4, Subdivision 1, Table 1, Item 1 (10.9.4.1.1.1) of the PR: <i>Development application for an aspect of development stated in schedule 20 that is assessable development under a local categorising instrument or section 21, if—</i> (a) <i>the development is for a purpose stated in schedule 20, column 1 for the aspect; and</i> (b) <i>the development meets or exceeds the threshold—</i>	Department of State Development, Infrastructure, Local Government and Planning – Concurrence Agency	Department of State Development, Infrastructure, Local Government and Planning, Post: PO Box 825, Visit: 128 Margaret Street, TOOWOOMBA QLD 4350 ToowoombaSARA@dsdilgp.qld.gov.au

For an application involving	Name of referral agency	Address
<p>(i) for development in local government area 1—stated in schedule 20, column 2 for the purpose; or</p> <p>(ii) for development in local government area 2—stated in schedule 20, column 3 for the purpose; and</p> <p>(c) for development in local government area 1—the development is not for an accommodation activity or an office at premises wholly or partly in the excluded area</p> <p><i>However, if the development is for a combination of purposes stated in the same item of schedule 20, the threshold is for the combination of purposes and not for each individual purpose.</i></p>		<p>Ph: (07) 4616 7307</p>
<p>As per Schedule 10, Part 9, Division 4, Subdivision 2, Table 5, Item 1 (10.9.4.2.5.1) of the PR:</p> <p><i>Development application for a material change of use, other than an excluded material change of use, that is assessable development under a local categorising instrument, if all or part of the premises—</i></p> <p>(a) are within 25m of a State transport corridor; or</p> <p>(b) are a future State transport corridor; or</p> <p>(c) are—</p> <p>(i) adjacent to a road that intersects with a State-controlled road; and</p> <p>(ii) within 100m of the intersection</p>	<p>Department of State Development, Infrastructure, Local Government and Planning –</p> <p>Concurrence Agency</p>	<p>Department of State Development, Infrastructure, Local Government and Planning,</p> <p>Post: PO Box 825, Visit: 128 Margaret Street, TOOWOOMBA QLD 4350</p> <p>ToowoombaSARA@dsdilgp.qld.gov.au</p> <p>Ph: (07) 4616 7307</p>
<p>As per Schedule 10, Part 19, Division 1, Subdivision 3, Table 1, Item 1 (10.19.1.3.1.1) of the PR:</p> <p><i>Development application for operational work that is assessable development under section 29, unless the chief executive is the prescribed assessment manager for the application</i></p>	<p>Department of State Development, Infrastructure, Local Government and Planning –</p> <p>Concurrence Agency</p>	<p>Department of State Development, Infrastructure, Local Government and Planning,</p> <p>Post: PO Box 825, Visit: 128 Margaret Street, TOOWOOMBA QLD 4350</p> <p>ToowoombaSARA@dsdilgp.qld.gov.au</p> <p>Ph: (07) 4616 7307</p>

Approved plans and specifications

Copies of the following plans are enclosed.

Drawing Number	Title	Date
E2-111-OW-00-04, Rev B	Layout Plan	13/09/23
SAPPHIRE\LEVVEE\01\B	Figure 5 – General Layout & Section Markers	September 2023
SAPPHIRE\LEVVEE\05\B	Figure 6 – Embankment Crest Centreline – Long Section CH 00 – CH900	September 2023
SAPPHIRE\LEVVEE\06\B	Figure 7 – Embankment Crest Centreline – Long Section CH 900 – CH1790	September 2023
SAPPHIRE\LEVVEE\07\B	Figure 8 – Wetland Channel Centreline – Long Section	September 2023
SAPPHIRE\LEVVEE\08\B	Figure 9 – Embankment – Typical Section A	September 2023
SAPPHIRE\LEVVEE\09\B	Figure 10 – Embankment – Typical Section B	September 2023
SAPPHIRE\LEVVEE\10\B	Figure 11 – Excavation and Filling Plan	September 2023

Currency period for the approval

This development approval will lapse at the end of the period set out in section 85 of *Planning Act 2016*.

Rights of appeal

The rights of an applicant to appeal to a tribunal or the Planning and Environment Court against a decision about a development application are set out in chapter 6, part 1 of the *Planning Act 2016*. For certain applications, there may also be a right to make an application for a declaration by a tribunal (see chapter 6, part 2 of the *Planning Act 2016*).

Appeal by an applicant

An applicant for a development application may appeal to the Planning and Environment Court against the following:

- the refusal of all or part of the development application
- a provision of the development approval
- the decision to give a preliminary approval when a development permit was applied for
- a deemed refusal of the development application.

An applicant may also have a right to appeal to the Development tribunal. For more information, see schedule 1 of the *Planning Act 2016*.

The timeframes for starting an appeal in the Planning and Environment Court are set out in section 229 of the *Planning Act 2016*.

Attachment 4 is an extract from the *Planning Act 2016* that sets out the applicant's appeal rights and the appeal rights of a submitter.

To stay informed about any appeal proceedings which may relate to this decision visit:
<https://planning.dsdmip.qld.gov.au/planning/our-planning-system/dispute-resolution/pe-court-database>.

Attachment 3 is a Notice about decision - Statement of reasons, in accordance with section 63 (5) of the Planning Act 2016.

If you wish to discuss this matter further, please contact Council's Manager of Planning Services, Mrs Ronnie McMahon, on 07 4671 7400.

Yours Sincerely



Carl Manton
Chief Executive Officer
Goondiwindi Regional Council

Cc Department of State Development, Infrastructure,
Local Government and Planning,
PO Box 825,
TOOWOOMBA QLD 4350

enc Attachment 1— Assessment manager and concurrence agency conditions

- State Assessment and Referral Agency Concurrence Agency Response dated 15 November 2023

Attachment 2—Approved Plans
Attachment 3—Notice about decision – Statement of reasons
Attachment 4—*Planning Act 2016* Extracts



ATTACHMENTS

Attachment 1 – Assessment Manager’s Conditions

Attachment 2 – Approved Plans

Attachment 3 – Infrastructure Charges Notice

Attachment 4 – Notice about decision - Statement of reasons

Attachment 5 – *Planning Act 2016* Extracts

Planning Act 2016 appeal provisions

Planning Act 2016 lapse dates



Attachment 1 – Assessment Manager’s Conditions



Assessment Manager's Conditions

Description:	"Operational Works" (Modification of Existing Levee)
Development:	Operational Works – Development Permit
Applicant:	Smithfield Capital Pty Ltd ATF Smithfield Cattle Infrastructure Trust
Address:	Yelarbon Kurumbul Road, Yelarbon
Real Property Description:	Lots 23 & 26 on MH80, Lots 54 & 55 on SP169191, Lot 56 on MH235, Lot 57 on SP225447 and Lot 59 on SP134244
Council File Reference:	23/38

GENERAL CONDITIONS																												
1.	<p>Approval is granted for the purpose of Operational Works for:</p> <ul style="list-style-type: none"> • <i>Modification of Existing Levee</i> <p>This approval in no way authorises any building work to occur on the relevant site.</p>																											
2.	All conditions must be complied with or bonded prior to the commencement of works, unless specified in an individual condition.																											
3.	<p>The development shall be constructed in accordance with supporting information supplied by the applicant with the development application including the following plans:</p> <table border="1"> <thead> <tr> <th>Drawing Number</th> <th>Title</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td>E2-111-OW-00-04, Rev B</td> <td>Layout Plan</td> <td>13/09/23</td> </tr> <tr> <td>SAPPHIRE\LEVVEE\01\B</td> <td>Figure 5 – General Layout & Section Markers</td> <td>September 2023</td> </tr> <tr> <td>SAPPHIRE\LEVVEE\05\B</td> <td>Figure 6 – Embankment Crest Centreline – Long Section CH 00 – CH900</td> <td>September 2023</td> </tr> <tr> <td>SAPPHIRE\LEVVEE\06\B</td> <td>Figure 7 – Embankment Crest Centreline – Long Section CH 900 – CH1790</td> <td>September 2023</td> </tr> <tr> <td>SAPPHIRE\LEVVEE\07\B</td> <td>Figure 8 – Wetland Channel Centreline – Long Section</td> <td>September 2023</td> </tr> <tr> <td>SAPPHIRE\LEVVEE\08\B</td> <td>Figure 9 – Embankment – Typical Section A</td> <td>September 2023</td> </tr> <tr> <td>SAPPHIRE\LEVVEE\09\B</td> <td>Figure 10 – Embankment – Typical Section B</td> <td>September 2023</td> </tr> <tr> <td>SAPPHIRE\LEVVEE\10\B</td> <td>Figure 11 – Excavation and Filling Plan</td> <td>September 2023</td> </tr> </tbody> </table>	Drawing Number	Title	Date	E2-111-OW-00-04, Rev B	Layout Plan	13/09/23	SAPPHIRE\LEVVEE\01\B	Figure 5 – General Layout & Section Markers	September 2023	SAPPHIRE\LEVVEE\05\B	Figure 6 – Embankment Crest Centreline – Long Section CH 00 – CH900	September 2023	SAPPHIRE\LEVVEE\06\B	Figure 7 – Embankment Crest Centreline – Long Section CH 900 – CH1790	September 2023	SAPPHIRE\LEVVEE\07\B	Figure 8 – Wetland Channel Centreline – Long Section	September 2023	SAPPHIRE\LEVVEE\08\B	Figure 9 – Embankment – Typical Section A	September 2023	SAPPHIRE\LEVVEE\09\B	Figure 10 – Embankment – Typical Section B	September 2023	SAPPHIRE\LEVVEE\10\B	Figure 11 – Excavation and Filling Plan	September 2023
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4.	<p>Complete and maintain the approved development as follows:</p> <ul style="list-style-type: none"> (i) Generally in accordance with development approval documents; and (ii) Strictly in accordance with those parts of the approved development which have been specified in detail by the Council unless Council agrees in writing that those parts will be adequately complied with by amended specifications. <p>All development shall comply with any relevant provisions in the <i>Goondiwindi Region Planning Scheme 2018 (Version 2), Guideline for construction of new levees or the modification of existing levees (WSS/2022/6193, Version 2.1)</i>, Council's standard designs for applicable work and any relevant Australian Standard that applies to that type of work.</p> <p>The development approval documents are the material contained in the development application, approved plans and supporting documentation including any written and electronic correspondence between applicant, Council or any relevant Agencies during all stages of the development application assessment processes.</p>
CONSTRUCTION REQUIREMENTS	
5.	<p>The developer shall contact Council's Engineering Department to ensure the correct specifications are obtained for all civil works prior to commencement of any works onsite.</p>
6.	<p>All construction works, including filling or excavation, shall be undertaken in accordance with the following:</p> <ul style="list-style-type: none"> • <i>Schedule 6.2 - Planning Scheme Policy 1 – Land Development Standards</i> of the Goondiwindi Region Planning Scheme (Version 2); and • Australian Standard AS3798 • "<i>Guideline for construction of new levees or the modification of existing levees</i>" (WSS/2022/6193, Version 2.1, 22 November 2022), by Department of Regional Development, Manufacturing and Water. <p>Or to other relevant engineering standards to the satisfaction of and at no cost to Council.</p>
7.	<p>All construction material must be sourced from inside the development area or outside the flood extents.</p>
8.	<p>Any excess spoil shall not be used as fill if it would result in changes to the pre-existing drainage patterns.</p>

9.	<p>All works associated with the development must be carried out in a manner that minimises erosion and controls sediment. Best practice erosion and sediment control measures shall be in place at the location of all works prior to work commencing and remain until work is completed in accordance with Schedule 6.2 – Planning Scheme Policy 1 – Land Development Standards of the Goondiwindi Region Planning Scheme 2018 (Version 2) to the satisfaction of and at no cost to Council.</p> <p>Control procedures are to be established to ensure sediment from the site is not deposited off site. The developer shall ensure no increase in any silt loads or contaminants in overland flow from the site during the development process and after development has been completed.</p>
AVOIDING NUISANCE	
10.	<p>Development does not detract from the amenity of the local area through unacceptable impacts relating to:</p> <ul style="list-style-type: none"> (a) Noise; (b) Hours of operation; (c) Traffic; (d) Advertising devices; (e) Lighting; (f) Visual amenity; (g) Privacy; (h) Odour; or (i) Emissions.
11.	<p>At all times, the development shall be conducted in accordance with the provision of the <i>Environmental Protection Act 1994</i> (the Act) and all relevant regulation and standards under the Act. All necessary licenses under the Act shall be obtained and shall be maintained at all times.</p>
12.	<p>At all times, no nuisance shall arise to adjoining premises as a result of dust, noise, lighting, odour, vibration, rubbish, contaminants, stormwater discharge or siltation or any other potentially detrimental impact.</p>
13.	<p>The operator shall be responsible for mitigating any complaint arising from on-site operations.</p>
14.	<p>Construction works must occur so they do not cause unreasonable interference with the amenity of adjoining premises.</p> <p>During construction, the site must be kept in a clean and tidy state at all times. After construction is completed, the site shall be left in a clean and tidy condition with all batter, excavations or filling trimmed neatly.</p>

DEVELOPER'S RESPONSIBILITIES	
15.	Any alteration or damage to roads and/or public infrastructure that is attributable to the progress of works or associated with the use of the site shall be repaired to Council's satisfaction or the cost of repairs paid to Council.
16.	It is the developer's responsibility to ensure that any contractors and subcontractors have current, relevant and appropriate qualifications and insurances in place to carry out the works.
17.	The developer shall be responsible for meeting all costs reasonably associated with the approved development, unless there is specific agreement by other parties, including the Council, to meeting those costs.
18.	It is the applicant's responsibility to obtain all statutory approvals prior to commencement of any works onsite.
POST CONSTRUCTION RESPONSIBILITIES	
19.	Submit to Council, certification from a Registered Professional Engineer of Queensland (RPEQ-Civil) that all work authorised by this development approval, have been designed and constructed in accordance with the requirements of the development approval: <div style="margin-left: 40px;">(a) submit a Construction Supervision Certificate at completion of the approved work and/or prior to Council's acceptance of the work on-maintenance.</div>
20.	An "As constructed" survey plan shall be submitted to Council within three (3) months of the completion of construction. The survey shall be certified by a licensed surveyor to AMG/MGA and AHD levels. The survey shall provide sufficient information by way of co-ordinates and levels to demonstrate compliance with this approval.
21.	At all times while the levee is in place, the applicant must maintain and repair the levee in accordance with: <ul style="list-style-type: none"> • The conditions of this approval; • "Guideline for construction of new levees or the modification of existing levees" (WSS/2022/6193, Version 2.1, 22 November 2022), by Department of Regional Development, Manufacturing and Water); and • The "As Constructed" Survey Plan.
22.	A qualified Council Officer may inspect construction works at the request of the applicant to ensure compliance with this approval.
23.	If the levee is proposed to be demolished, a further Operational Works Development Permit is required to be issued before commencing any works.

	PLEASE READ CAREFULLY - NOTES AND ADVICE
	<p>When approval takes effect</p> <p>This approval takes effect in accordance with section 71 of the <i>Planning Act 2016</i>.</p> <p>When approval lapses</p> <p>This approval will lapse if the development does not substantially start within two (2) years after the approval starts to take effect, in accordance with section 85(1)(c) of the <i>Planning Act 2016</i>.</p> <p>Section 86 on the <i>Planning Act 2016</i> sets out how an extension to the currency period of approval can be requested.</p>
	<p>This approval is for Operational Works for the purpose set out in the application and decision notice, and does not authorise a change of use.</p>
	<p>This approval in no way removes the duty of care responsibility of the applicant under the <i>Aboriginal Cultural Heritage Act 2003</i>. Pursuant to Section 23(1) of the <i>Aboriginal Cultural Heritage Act 2003</i>, a person who carries out an activity must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage (the "cultural heritage duty of care").</p>
	<p>This approval in no way authorises the clearing of native vegetation protected under the <i>Vegetation Management Act 1999</i>.</p>
	<p>The approved development does not authorise any deviation from the applicable Australian Standards nor from the application of any laws, including laws covering work place health and safety.</p>



SARA reference: 2310-37154 SRA
 Council reference: 23/38
 Applicant reference: E2-111 OW / 23/38

15 November 2023

Chief Executive Officer
 Goondiwindi Regional Council
 LMB 7
 INGLEWOOD QLD 4387
 mail@grc.qld.gov.au

Attention: Mrs Ronnie McMahon

Dear Ronnie

SARA referral agency response—Yelarbon Kurumbul Road, Yelarbon

(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 October 2023.

Response

Outcome:	Referral agency response - No requirements Under section 56(1)(a) of the <i>Planning Act 2016</i> , SARA advises it has no requirements relating to the application.
Date of response:	15 November 2023
Advice:	Advice to the applicant is in Attachment 1
Reasons:	The reasons for the referral agency response are in Attachment 2

Development details

Description:	Development permit	Operational work for taking or interfering with water under the <i>Water Act 2000</i> (modification of an existing levee)
SARA role:	Referral agency	
SARA trigger:	Schedule 10, Part 19, Division 1, Subdivision 3, Table 1, Item 1 (Planning Regulation 2017) – Operational work that involves taking or interfering with water	

Schedule 10, Part 9, Division 4, Subdivision 1, Table 1, Item 1
(Planning Regulation 2017) – Development impacting on state
transport infrastructure

Schedule 10, Part 9, Division 4, Subdivision 2, Table 5, Item 1
(Planning Regulation 2017) – Operational work on premises near a
state transport corridor

SARA reference: 2310-37154 SRA

Assessment manager: Goondiwindi Regional Council

Street address: Yelarbon Kurumbul Road, Yelarbon

Real property description: Lots 23 & 26 on MH80; Lots 54-55 on SP169191; Lot 56 on
MH235; Lot 57 on SP225447 and Lot 59 on SP134244

Applicant name: Smithfield Capital Pty Ltd as trustee for Smithfield Cattle
Infrastructure Trust

Applicant contact details: C/- Rod Davis (RDC Engineers Pty Ltd)
Okeden Road
Proston QLD 4613
rod.davis@rdcengineers.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 (section 30 of the Development
Assessment Rules).

Copies of the relevant provisions are in **Attachment 3**.

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

For further information please contact Danica Clark, Senior Planning Officer, on (07) 4616 7305 or via
email ToowoombaSARA@dSDLGP.qld.gov.au who will be pleased to assist.

Yours sincerely



Kieran Hanna
Manager (Planning)

enc Attachment 1 - Advice to the applicant
Attachment 2 - Reasons for referral agency response
Attachment 3 - Representations about a referral agency response provisions

cc Smithfield Capital Pty Ltd as trustee for Smithfield Cattle Infrastructure Trust,
rod.davis@rdcengineers.com.au

Attachment 1—Advice to the applicant

General advice	
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), (version 3.0). If a word remains undefined it has its ordinary meaning.

Attachment 2—Reasons for referral agency response

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

The reasons for SARA's decision are:

The proposed development complies with the relevant provisions of State code 2 Development in a railway environment and State code 6 Protection of state transport networks of the SDAP; in particular, the development does not:

- increase the likelihood or frequency of accidents, fatalities or serious injury for users of state-transport corridors
- adversely impact the structural integrity or physical condition of state-transport corridors
- adversely impact the function and efficiency of state-transport corridors
- adversely impact the state's ability to plan, construct, maintain, upgrade or operate state transport infrastructure.

The proposed development complies with State code 10: Taking or interfering with water of the SDAP. Specifically, the development:

- maintains:
 - o natural ecosystem processes
 - o riverine environments
 - o underground water systems
 - o physical integrity of watercourses
- does not result in an adverse impact on:
 - o connectivity between underground water and water in a watercourse, lake, or spring
 - o property of others
 - o the water security of other users and their access to the water resources.

Material used in the assessment of the application:

- the development application material and submitted plans
- *Planning Act 2016*
- Planning Regulation 2017
- the SDAP, version 3.0, as published by SARA
- the Development Assessment Rules
- SARA DA Mapping system
- Section 58 of the *Human Rights Act 2019*

Attachment 3— Representations about a referral agency response provisions

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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 Rules¹ regarding **representations about a referral agency response**

Part 6: Changes to the application and referral agency responses

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.²
- 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.

¹ Pursuant to Section 68 of the *Planning Act 2016*

² 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.³

³ 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 2 – Approved Plans



DATE PLOTTED: 13 September 2023 BY: RDC Engineers Pty Ltd

FILE PATH: C:\RDC\Engineers\BDC - Projects\E2-111 Smithfield Cattle Feeders\BDC - Current - Drawings - Current - FILE NAME: E2-111-00-MASTERPLAN-20230308.vb.dwg



LEGEND
 — SUBJECT LAND BOUNDARY
 — LAND PARCEL BOUNDARY

NOTES
 1. THIS MAP IS BASED ON DIGITAL GIS DATA FROM THE STATE OF QUEENSLAND (DEPARTMENT OF RESOURCES (DoR)) 2023 - QUEENSLAND SPATIAL CATALOGUE.
 2. CADASTRAL INFORMATION BASED ON THE STATE OF QUEENSLAND (DoR) DIGITAL CADASTRAL DATABASE (DCDB) 2023, PROVIDED BY THE QUEENSLAND SPATIAL CATALOGUE AND ACCURACY IS LIMITED.
 3. TOPOGRAPHIC PLAN EXTRACTED FROM QTOPO METADATA JULY 2023 AND ACCURACY IS LIMITED.
 4. IMAGE SOURCED FROM BING MAPS™, NO DATE.
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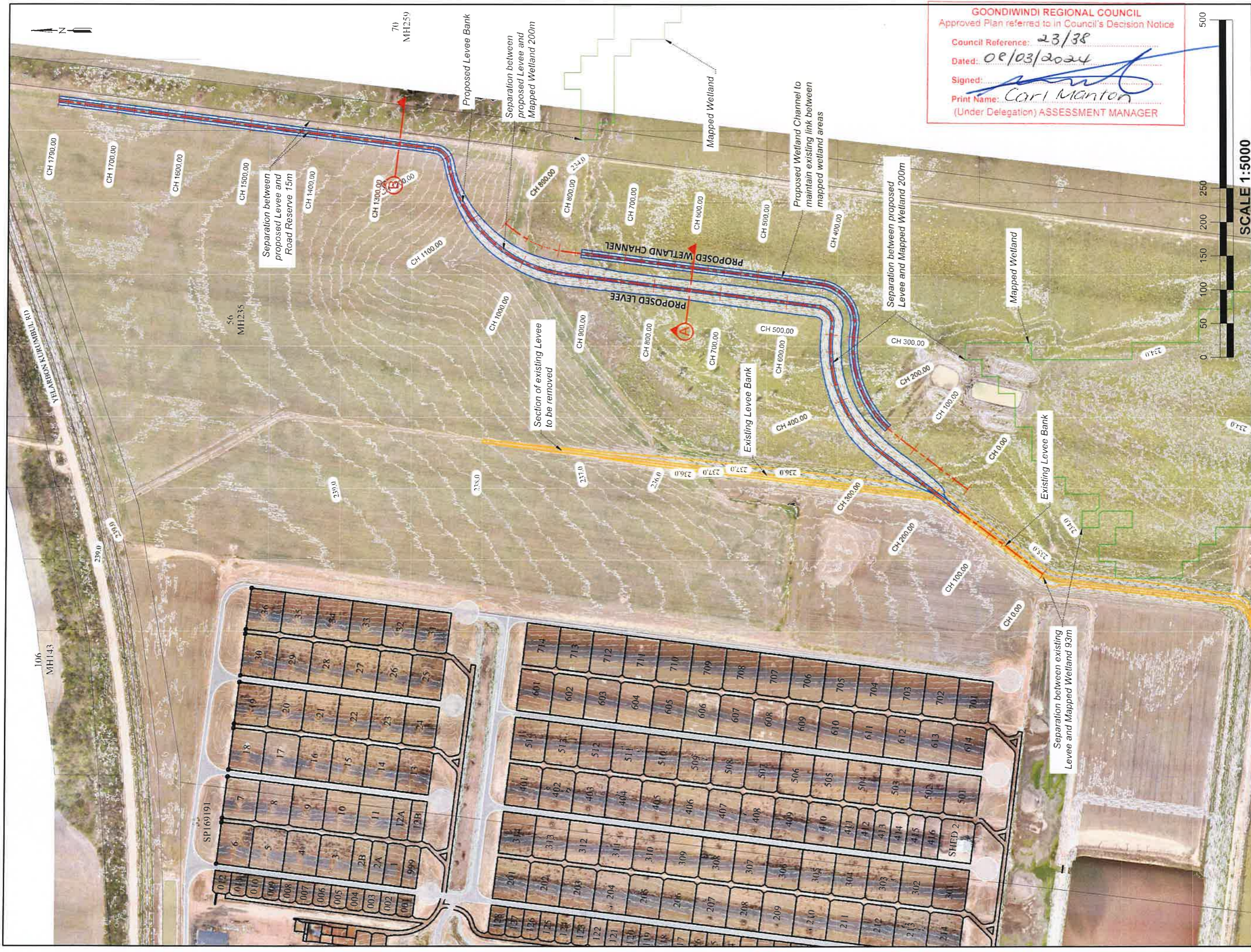
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 E: info@rdcengineers.com.au

REV.	DATE	REVISION DESCRIPTION	DRAWN	CHECK	APPROVED	SCALE
A	06/06/23	DRAFT ISSUE TO CLIENT	RJD	RJD	RJD	DRAWN
B	13/09/23	FINAL ISSUE FOR LODGEMENT TO GRC AND SARA	RJD	RJD	RJD	DATE
						CHECKED
						DATE
						APPROVED
						DATE

CLIENT	SMITHFIELD CAPITAL PTY LTD AS TRUSTEE
PROJECT	PROPOSED MODIFICATION OF EXISTING LEVEE
TITLE	DEVELOPMENT APPLICATION - OPERATIONAL WORKS PROPOSED DEVELOPMENT - LAYOUT PLAN
REPORT REFERENCE	FIGURE 4
COPY/FILED DRAWING NUMBER	A3
DRAWING NUMBER	E2-111-OW-00-04
REV.	B

GOONDIWINDI REGIONAL COUNCIL
Approved Plan referred to in Council's Decision Notice
Council Reference: 23/38
Dated: 08/03/2024
Signed: 
Print Name: Carl Manton
(Under Delegation) ASSESSMENT MANAGER



GOONDIWINDI REGIONAL COUNCIL
 Approved Plan referred to in Council's Decision Notice
 Council Reference: **23/38**
 Dated: **08/03/2024**
 Signed: *[Signature]*
 Print Name: **Carl Manton**
 (Under Delegation) ASSESSMENT MANAGER

SCALE 1:5000

For the exclusive use of:
 SMITHFIELD CATTLE CO.
 "SAPPHIRE"
 VIA YELARBON

Agricultural & Engineering Surveying
 25 Aberdeen St. TOOWOOMBA
 Tel: 0429 724 556

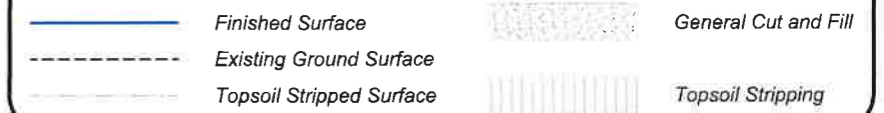
Surveyed:
 Drawn:
 Scale: 1:5,000 (A3)
 Date: SEPTEMBER 2023
 DWG: LEVEE ALTERATION.DWG

GRAHAM SURVEY & DESIGN

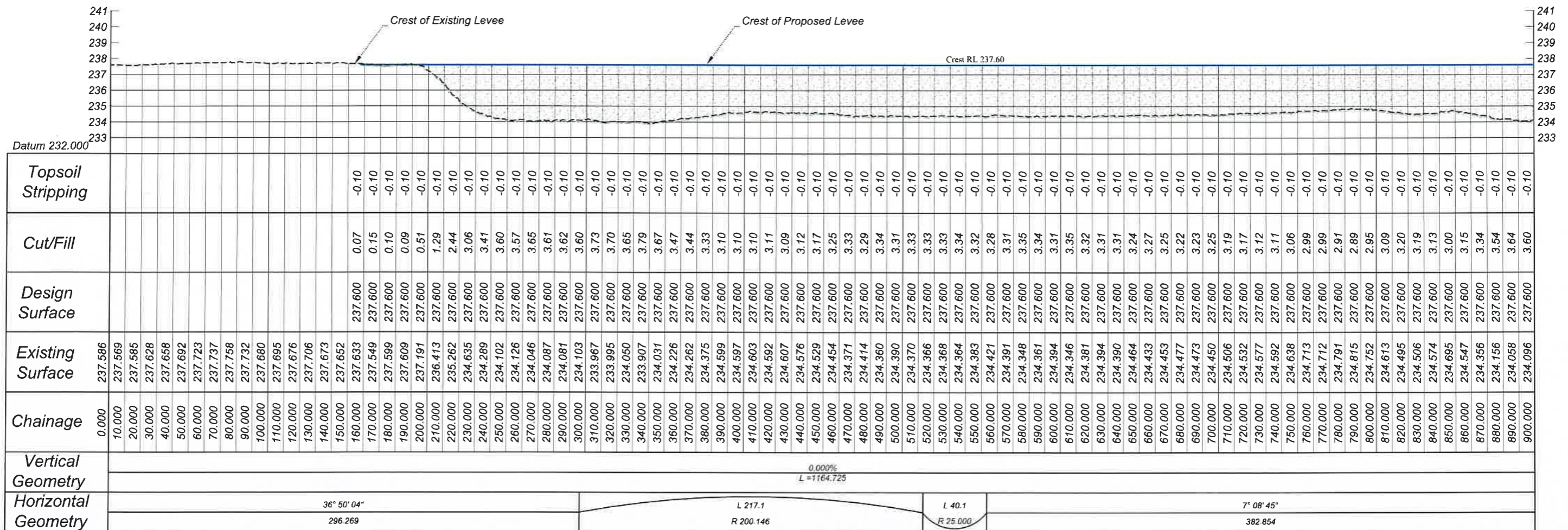
SAPPHIRE LEVEE - PROPOSED DEVELOPMENT
FIGURE 5 - GENERAL LAYOUT & SECTION MARKERS

Project:
 Drawing Number: SAPPHIRELEVEE01B
 Horizontal Datum: MGA2020 ZONE 56
 Vertical Datum: AHD

LEGEND



GOONDIWINDI REGIONAL COUNCIL
 Approved Plan referred to in Council's Decision Notice
 Council Reference: 23/38
 Dated: 08/03/2024
 Signed: *[Signature]*
 Print Name: Carl Manton
 (Under Delegation) ASSESSMENT MANAGER



**EMBANKMENT CREST CENTRELINE
 CH 0.000 - CH 900.000
 Vertical Exaggeration 10x**

Project:	SAPPHIRE LEVEE - PROPOSED DEVELOPMENT	For the exclusive use of SMITHFIELD CATTLE CO. 'SAPPHIRE' VIA YELARBON		Agricultural & Engineering Surveying 28 Aberdeen St. TOOWOOMBA Tc: 0419 774 256	Drawing Number : SAPPHIRE\LEVEE\051B Horizontal Datum : MGA2020 ZONE 56 Vertical Datum : AHD
Drawing Title:	FIGURE 6 - EMBANKMENT CREST CENTRELINE - LONG SECTION CH 00 - CH 900			Surveyed: _____ Drawn: _____	Scale : 1:2,500 (A3) Date : SEPTEMBER 2023 DWG : LEVEE ALTERATION.DWG

LEGEND

- Finished Surface
- Existing Ground Surface
- Topsoil Stripped Surface
- General Cut and Fill
- Topsoil Stripping

GOONDIWINDI REGIONAL COUNCIL

Approved Plan referred to in Council's Decision Notice

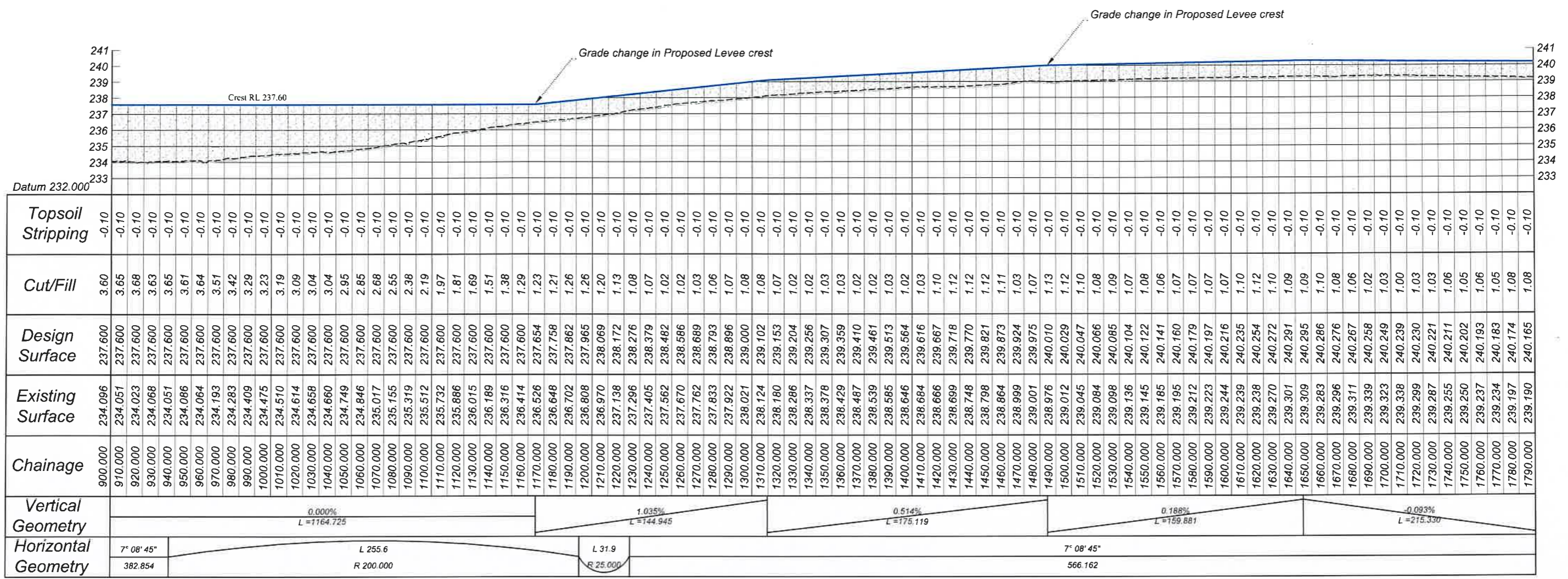
Council Reference: 23/38

Dated: 08/03/2024

Signed:

Print Name: Carl Manton

(Under Delegation) ASSESSMENT MANAGER



EMBANKMENT CREST CENTRELINE
CH 900.000 - CH 1790.000
Vertical Exaggeration 10x

LEGEND

- Finished Surface
- Existing Ground Surface
- Topsoil Stripped Surface
- General Cut and Fill
- Topsoil Stripping

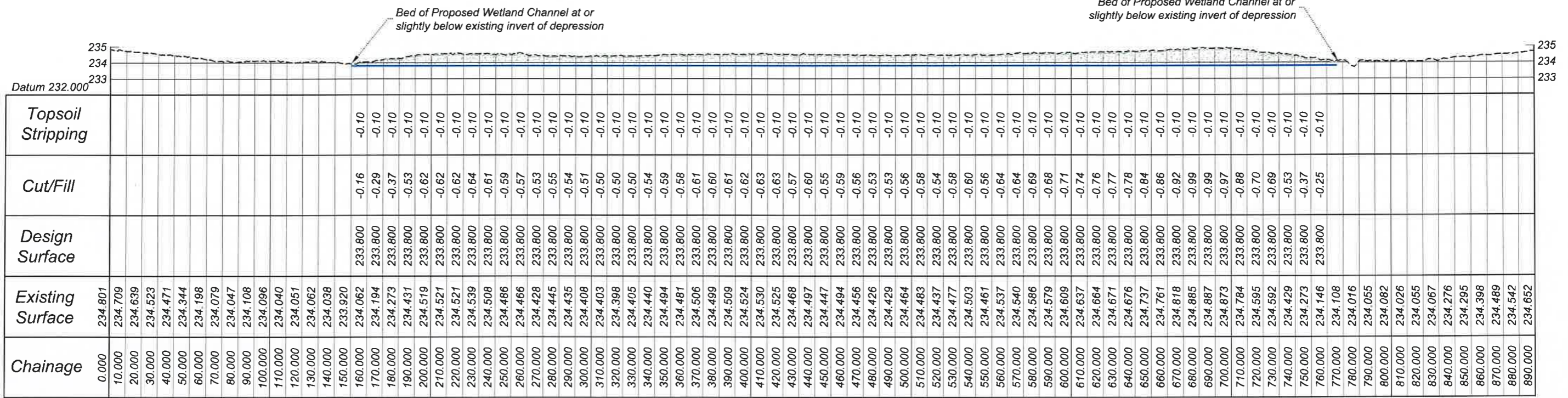
GOONDIWINDI REGIONAL COUNCIL
 Approved Plan referred to in Council's Decision Notice

Council Reference: 23/38

Dated: 08/03/2024

Signed:

Print Name: Carl Manton
 (Under Delegation) ASSESSMENT MANAGER



**PROPOSED WETLAND CHANNEL
 CH 0.000 - CH 890.000
 Vertical Exaggeration 10x**

<p>Project: SAPPHIRE LEVEE - PROPOSED DEVELOPMENT</p>	<p>For the exclusive use of SMITHFIELD CATTLE CO. 'SAPPHIRE' VIA YELARBON</p>	<p>GRAHAM SURVEY & Design</p>	<p>Agricultural & Engineering Surveying 28 Aberdeen St. TOOWOOMBA Tc: 0419 774 256</p>	<p>Surveyed: _____ Drawn: _____</p>	<p>Drawing Number : SAPPHIRE\LEVEE\071B Horizontal Datum : MGA2020 ZONE 56 Vertical Datum : AHD</p>
<p>Drawing Title: FIGURE 8 - WETLAND CHANNEL CENTRELINE - LONG SECTION</p>	<p>Scale : 1:2,500 (A3) Date : SEPTEMBER 2023 DWG : LEVEE ALTERATION.DWG</p>				

LEGEND

- Finished Surface
- Existing Ground Surface
- Topsoil Stripped Surface
- General Cut and Fill
- Topsoil Stripping

GOONDIWINDI REGIONAL COUNCIL

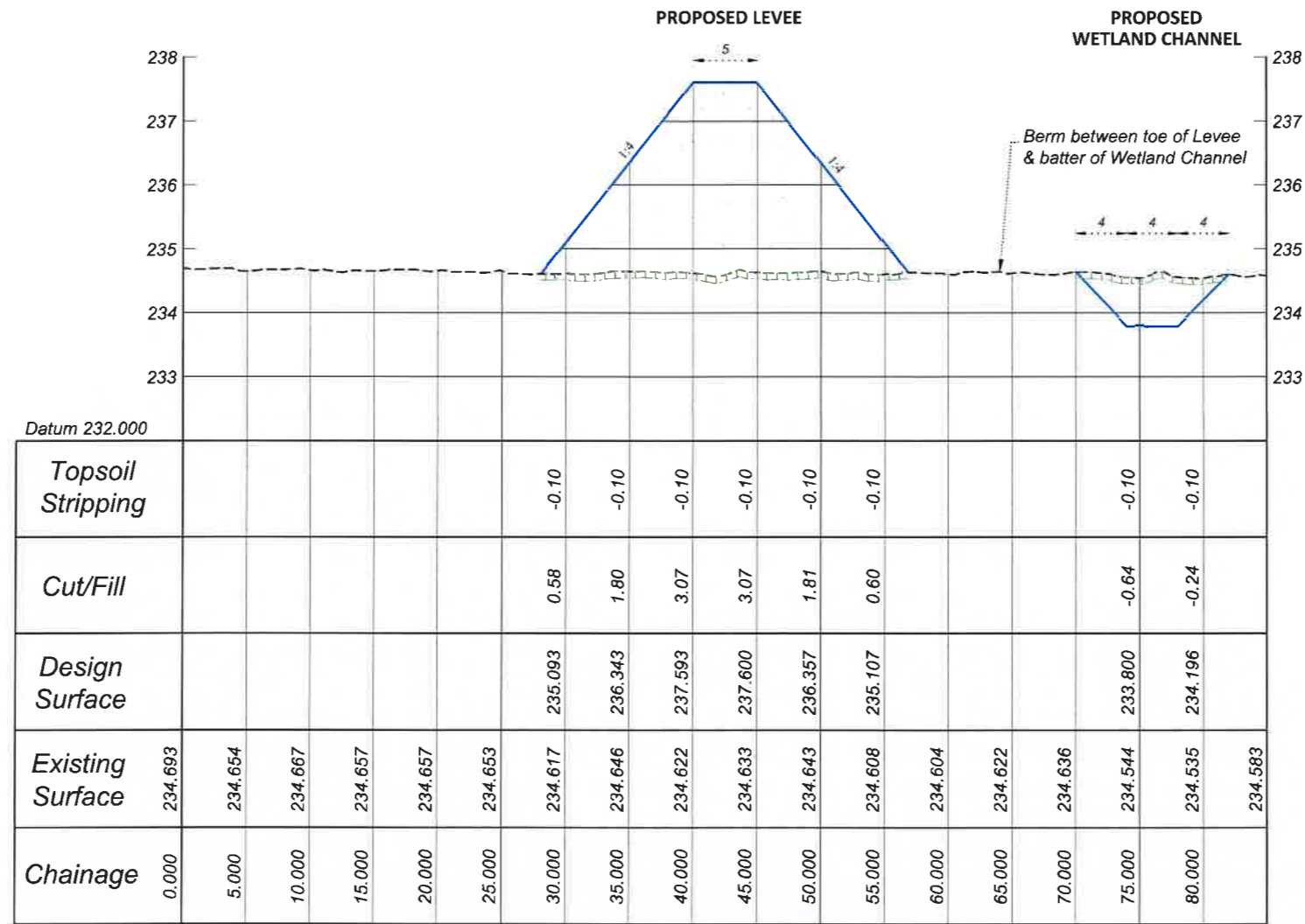
Approved Plan referred to in Council's Decision Notice

Council Reference: 23/38

Dated: 08/03/2024

Signed:

Print Name: Cari Manton
(Under Delegation) ASSESSMENT MANAGER



TYPICAL SECTION A
CH 0.000 - CH 85.000
Vertical Exaggeration 5x

<p><i>Project:</i> SAPPHIRE LEVEE - PROPOSED DEVELOPMENT</p>	<p>For the exclusive use of SMITHFIELD CATTLE CO. 'SAPPHIRE' VIA YELARBON</p>		<p>Agricultural & Engineering Surveying 28 Aberdeen St. TOOWOOMBA Tel: 0419 774 256</p>		<p><i>Drawing Number:</i> SAPPHIRE\LEVEE\081B</p>
<p><i>Drawing Title:</i> FIGURE 9 - EMBANKMENT - TYPICAL SECTION A</p>			<p><i>Surveyed:</i> <i>Drawn:</i></p>		<p><i>Horizontal Datum:</i> MGA2020 ZONE 56</p> <p><i>Vertical Datum:</i> AHD</p> <p><i>Scale:</i> 1:500 (A3)</p> <p><i>Date:</i> SEPTEMBER 2023</p> <p><i>DWG:</i> LEVEE ALTERATION.DWG</p>

LEGEND

- Finished Surface
- Existing Ground Surface
- Topsoil Stripped Surface
- General Cut and Fill
- Topsoil Stripping

GOONDIWINDI REGIONAL COUNCIL

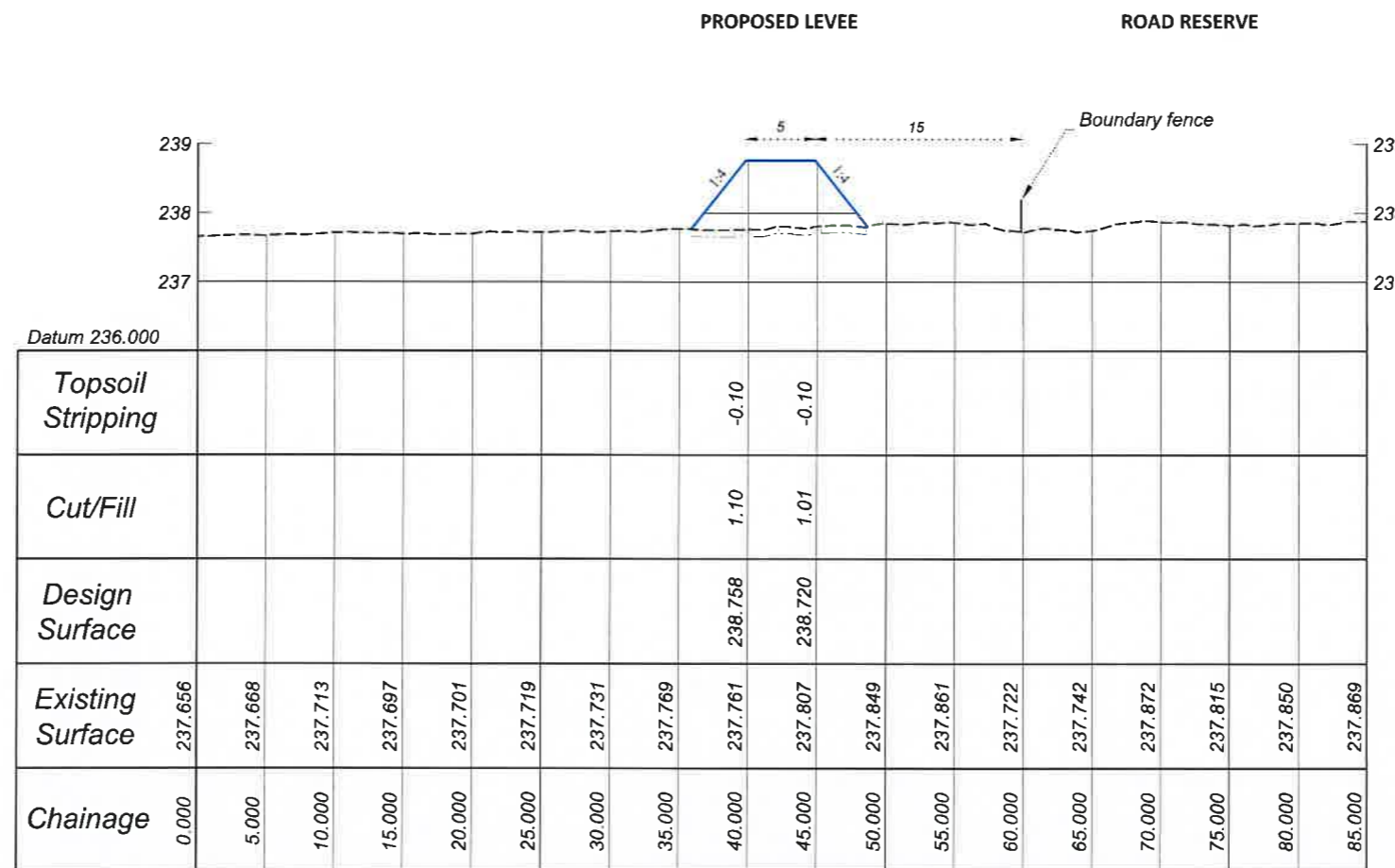
Approved Plan referred to in Council's Decision Notice

Council Reference: 23/38

Dated: 08/03/2024










Signed:

Print Name: Cari Manton
(Under Delegation) ASSESSMENT MANAGER



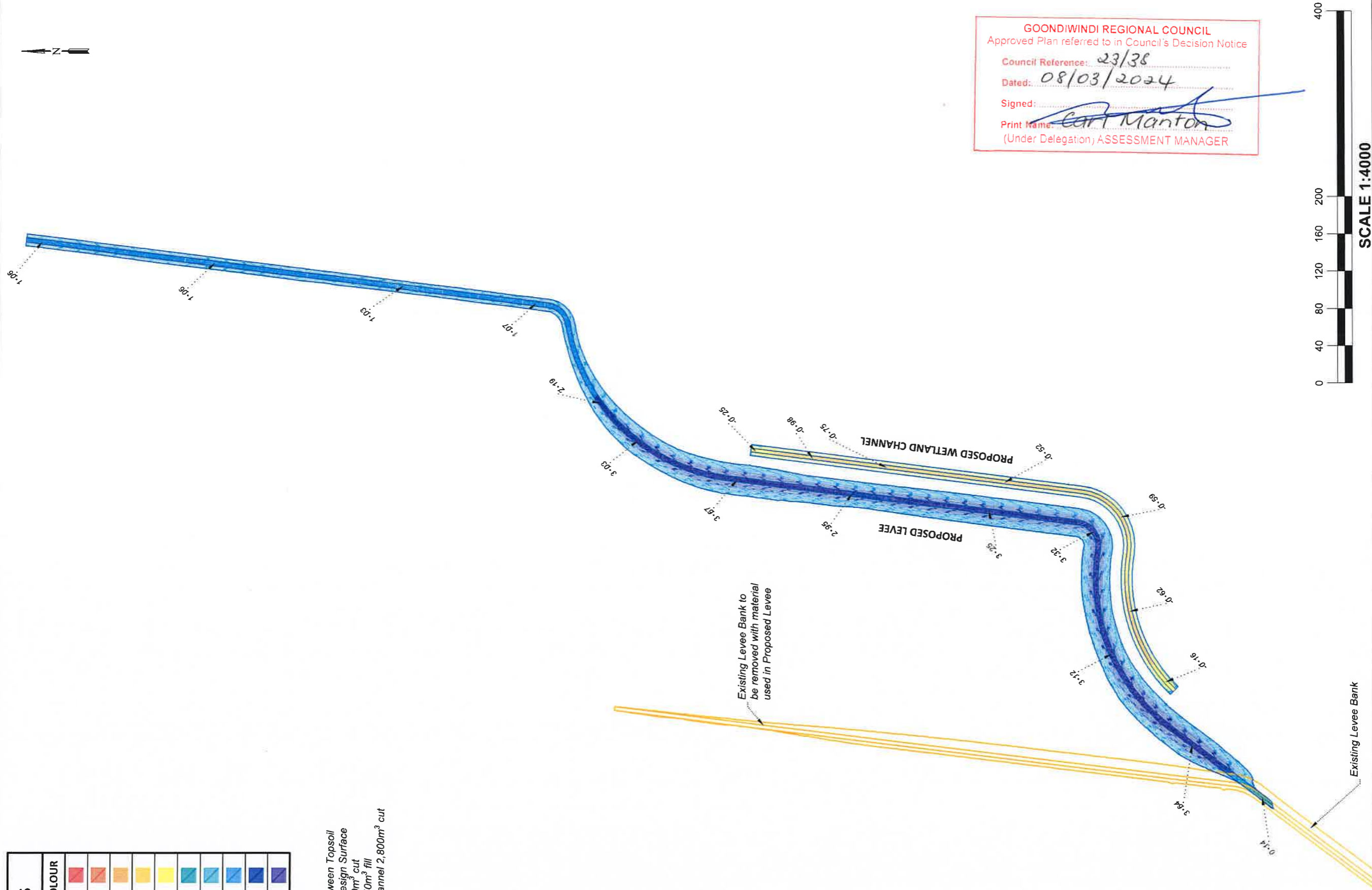
TYPICAL SECTION B
CH 0.000 - CH 85.000
Vertical Exaggeration 5x

<p>Project: SAPPHIRE LEVEE - PROPOSED DEVELOPMENT</p>	<p>For the exclusive use of SMITHFIELD CATTLE CO. 'SAPPHIRE' VIA YELARBON</p>		<p>Agricultural & Engineering Surveying 28 Aberdeen St. TOOWOOMBA Tc.: 0419 774 256</p>		<p>Drawing Number : SAPPHIRE\LEVEE\09\B Horizontal Datum : MGA2020 ZONE 56 Vertical Datum : AHD</p>
<p>Drawing Title: FIGURE 10 - EMBANKMENT - TYPICAL SECTION B</p>			<p>Surveyed: _____ Drawn: _____</p> <p>Scale : 1:500 (A3) Date : SEPTEMBER 2023 DWG : LEVEE ALTERATION.DWG</p>		

CUTS & FILLS			
#	FROM	TO	COLOUR
1	-4.85	-3.50	
2	-3.50	-2.00	
3	-2.00	-1.00	
4	-1.00	-0.50	
5	-0.50	0.00	
6	0.00	0.50	
7	0.50	1.00	
8	1.00	2.00	
9	2.00	3.00	
10	3.00	4.00	

NOTES

- * Cuts & Fills shown between Topsoil Stripped Surfaces & Design Surface
- * Topsoil Stripping 6,500m³ cut
- * Proposed Levee 60,250m³ fill
- * Proposed Wetland Channel 2,800m³ cut



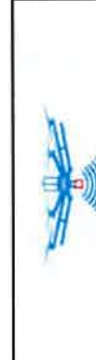
GOONDIWINDI REGIONAL COUNCIL
 Approved Plan referred to in Council's Decision Notice
 Council Reference: 23/38
 Dated: 08/03/2024
 Signed: *Carl Manton*
 Print Name: Carl Manton
 (Under Delegation) ASSESSMENT MANAGER

Project: SAPPHIRE LEVEE - PROPOSED DEVELOPMENT

Drawing Title: FIGURE 11 - EXCAVATION AND FILLING PLAN

Drawing Number: SAPPHIRELEVEE101B
 Horizontal Datum: MGA2020 ZONE 56
 Vertical Datum: AHD

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 VIA YELARBON



Surveyed:
 Drawn:
 Scale: 1:4,000 (A3)
 Date: SEPTEMBER 2023
 DWG: LEVEE ALTERATION.DWG

SCALE 1:4000





Attachment 3 – Notice about decision - Statement of reasons



Notice about decision - Statement of reasons

The following information is provided in accordance with section 63 (5) of the Planning Act 2016 and must be published on the assessment managers website.

The development application for Operational Works (Modification of a levee bank)

23/38

Yelarbon Kurumbul Road, Yelarbon

Lots 23 & 26 on MH80, Lots 54 & 55 on SP169191, Lot 56 on MH235, Lot 57 on SP225447 and Lot 59 on

SP134244

On 7 March 2024, the above development application was:

- approved in full or
- approved in part for _____ or
- approved in full with conditions or
- approved in part for _____, with conditions or
- refused.

1. Reasons for the decision

The reasons for this decision are:

- Having regard to the relevant criteria in the Goondiwindi Region Planning Scheme 2018, the proposed development satisfied all relevant criteria, and was approved subject to appropriate, relevant and reasonable conditions.

2. Assessment benchmarks

The following are the benchmarks applying for this development:

Benchmarks applying for the development	Benchmark reference
Rural Zone Code	PO1-PO5
Operational Works Code	PO1-PO10
Biodiversity Areas Overlay Code	PO1-PO3
Flood Hazard Overlay Code	PO1-PO4

3. Compliance with benchmarks

Benchmark reference	Reasons for the approval despite non-compliance with benchmark
Operational Works Code AO2.1 Excavating or filling does not increase the 'take' of overland flow runoff above that provided under a water entitlement.	Alternative Solution The proposed works include a drainage channel that will increase the take of overland flow water, however the proposal is in line with the existing water entitlement for the site. The proposed works have been approved by SARA as the relevant authority.

<p>AO2.2</p> <p>No filling is carried out in a waterway.</p>	<p>Complies</p> <p>The proposed works are adequately separated from the adjoining waterway.</p>
<p>AO7</p> <p>The levee bank is designed and constructed such that:</p> <ul style="list-style-type: none"> (a) the exit of flood water from flood ways is at rates and depths generally the same as those which would have been experienced in their natural conditions and flood water must discharge generally at the location of natural flood ways; and (b) if the hydraulic report which accompanies the application demonstrates that the likely hydraulic impact of the proposal will result in the height of the flood peak on other land increasing by 200 mm or less under the range of the following three flood events: the 1976 and 1996 flood events and 75% of the 1976 flood event – the proposal may specify a distance from the outside toe of the levee bank to the high bank mark of any watercourse of less than 150 m; and (c) if the hydraulic report which accompanies the application does not demonstrate that the likely hydraulic impact of the proposal will result in the height of the flood peak on other land increasing by 200 mm or less under the range of the following three flood events – the 1976 and 1996 flood events and 75% of the 1976 flood event – the proposal must specify a distance from the outside toe of the levee bank to the high bank mark of any watercourse of not less than 150 m; and (d) if the hydraulic report which accompanies the application identifies how the applicant proposes to dispose of spoil from diversion drains and supply channels and demonstrates that the manner in which the applicant proposes to disposal of spoil will have no adverse hydraulic impact - spoil from diversion drains and supply channels must be disposed of in the manner identified in the application; and (e) if the hydraulic report which accompanies the application does not identify how the applicant proposes to dispose of spoil from diversion drains and supply channels or does not demonstrate that the manner in which the applicant proposes to dispose of spoil will have no adverse hydraulic impact - spoil from diversion drains and supply channels must, if placed in a flow path, be run out in 1 or more streamlined rills constructed above natural ground level each of which must be: <ul style="list-style-type: none"> (i) no wider than 6.0 m; and (ii) placed parallel to the natural flow of flood water at a minimum of 200 m centres; and (f) the proposal must not include: <ul style="list-style-type: none"> (i) any artificial or improved flood way (for example, excavation of soil below natural ground level or the clearing of vegetation in flood ways); or (ii) any excavated channel (other than local drainage works or channels which are less than 5 m in width); and (g) the proposal must not include blocking or obstruction of any flood water flow path; and (h) the proposal must not result in ponding of flood water on the applicant's land or any other land; and (i) compliance with the performance criteria must be considered against the range of the following three flood events – the 1976 and 1996 flood events and 75% of the 1976 flood event. 	<p>Alternative Solution</p> <p>The proposal complies with items (a)-(e), (g) and (h).</p> <p>The proposed development does not significantly increase flood water velocity and does not increase flood height by more than 200mm during the specified events, as far as can be practically modelled. The applicant's consultant identified that flood data for the 1996 flood is too limited to develop a sufficient model.</p> <p>The maximum modelled off-property depth increase is 90mm.</p> <p>Diversion drain spoil will be used in the construction of the associated levee bank and will not further impact flood water flows.</p> <p>Alternative Solution (f)</p> <p>The applicant proposes a drainage channel along the upstream side of the levee that has a base width of 4m, and a surface channel width of 12m. The applicant states the purpose of the drainage channel is to provide connection between two ecologically significant wetlands to offset any impacts created by the location of the levee bank. The proposal is therefore considered to conform as closely as possible to the natural drainage pattern.</p>

AO8

The levee bank is designed and constructed to ensure that sufficient flood storage is retained on the flood plain so that:

- (a) the flood peak is not significantly accelerated to downstream areas; and
- (b) the height of the flood peak on other land does not increase by more than 200 mm under the range of the following three flood events – the 1976 and 1996 flood events and 75% of the 1976 flood event – when comparing:
 - (i) the height of the flood peak prior to the construction of any levee bank on the flood plain; and
 - (ii) the height of the flood peak after construction of the levee bank and assuming completion of construction of each levee bank approved by Council.

Editor's note-As an example, the construction of a levee bank should not result in a significant change in flow time from Boggabilla to Mungindi.

Alternative Solution

The proposed development does not increase flood water velocity by more than 0.6m/s and also does not increase flood height by more than 200mm during the specified events, as far as can be practically modelled. The applicant's consultant identified that flood data for the 1996 flood is too limited to develop a sufficient model.

Further, the applicant submits the proposal does not alter the impacts from the 2017 levee bank approval.

AO10

The levee bank is designed and constructed such that:

- (a) the height of the flood peak at the boundaries of the applicant's land do not increase by more than 200 mm under the range of the following three flood events – the 1976 and 1996 flood events and 75% of the 1976 flood event – when comparing:
 - (i) the height of the flood peak prior to the construction of any levee bank on the flood plain; and
 - (ii) the height of the flood peak after construction of the levee bank and assuming completion of construction of each levee bank approved by Council.
- (b) there must be no adverse hydraulic effects beyond the boundaries of the applicant's land; and

Editor's note – as an example, the construction of a levee bank should not result in the following:

- An excessive increase in the velocity of flood flow.
- Increased scouring.
- Increased flood peak height.
- Increased flooding of other land.
- Ponding on the applicant's land or other land.
- Flooding of the floor of a building on the applicant's land or other land.

- (c) if the hydraulic report which accompanies the application demonstrates that the likely hydraulic impact of the proposal will result in the height of the flood peak on other land increasing by 200mm or less under the range of the following three flood events – the 1976 and 1996 flood events and 75% of the 1976 flood event and the levee bank has a frontage of 1 km or more - the distance from the outside toe of the levee bank to the boundaries of the applicant's land may be less than 150 m; and
- (d) if the hydraulic report which accompanies the application does not demonstrate that the likely hydraulic impact of the proposal will result in the height of the flood peak on other land increasing by 200 mm or less under the range of the following three flood events – the 1976 and 1996 flood events and 75% of the 1976 flood event – and the levee bank has a frontage of 1 km or more - the distance from the outside toe of the levee bank to the boundaries of the applicant's land must be not less than 150 m; and
- (e) the levee bank must not cause significant change in the duration of inundation of other land such that the normal use or potential use of the other land is adversely impacted; and
- (f) the levee bank must not cause an increase in flooding which will adversely affect the economic viability, safety or use of any other land.

Alternative Solution

The proposed development does not significantly increase flood water velocity and does not increase flood height by more than 200mm during the specified events, as far as can be practically modelled. The applicant's consultant identified that flood data for the 1996 flood is too limited to develop a sufficient model.

The maximum modelled off-property depth increase is 90mm.

The proposed levee bank modification does not result in velocity increases of more than 0.6m/s, with all downstream velocities remaining below erosive limits, where affected by the levee.

The levee is setback more than 10m from the nearest property boundary.

4. Relevant matters for impact assessable development
5. Matters raised in submissions for impact assessable development
6. Matters prescribed by Regulation



Attachment 5 – *Planning Act 2016 Extracts*



**EXTRACT FROM PLANNING ACT 2016
RELATING TO APPEAL RIGHTS**

Chapter 6 Dispute Resolution, Part 1 Appeal Rights

229 Appeals to tribunal or P&E Court

(1) Schedule 1 states—

(a) matters that may be appealed to—

- (i) either a tribunal or the P&E Court; or
- (ii) only a tribunal; or
- (iii) only the P&E Court; and

(b) the person—

- (i) who may appeal a matter (the **appellant**); and
- (ii) who is a respondent in an appeal of the matter; and
- (iii) who is a co-respondent in an appeal of the matter; and
- (iv) who may elect to be a co-respondent in an appeal of the matter.

(2) An appellant may start an appeal within the appeal period.

(3) The **appeal period** is—

- (a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency; or
- (b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
- (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or
- (d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
- (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the

deemed approval notice to the assessment manager; or

- (f) for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

Note—

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

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

(5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.

(6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—

(a) the adopted charge itself; or

(b) for a decision about an offset or refund—

(i) the establishment cost of trunk infrastructure identified in a LGIP; or

(ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

230 Notice of appeal

(1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—

(a) is in the approved form; and

(b) succinctly states the grounds of the appeal.

(2) The notice of appeal must be accompanied by the required fee.

(3) The appellant or, for an appeal to a tribunal, the registrar must, within the service period, give a copy of the notice of appeal to—

(a) the respondent for the appeal; and

(b) each co-respondent for the appeal; and

(c) for an appeal about a development application under schedule 1, table 1, item 1—each

principal submitter for the development application; and

(d) for an appeal about a change application under schedule 1, table 1, item 2—each principal submitter for the change application; and

(e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); and

(f) for an appeal to the P&E Court—the chief executive; and

(g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.

(4) The **service period** is—

(a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or

(b) otherwise—10 business days after the appeal is started.

(5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).

(6) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

231 Other appeals

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

(2) The Judicial Review Act 1991, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.

(3) A person who, but for subsection (1) could have made an application under the Judicial Review Act 1991 in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.

(4) In this section—

decision includes—

(a) conduct engaged in for the purpose of making a decision; and

(b) other conduct that relates to the making of a decision; and

(c) the making of a decision or the failure to make a decision; and

(d) a purported decision; and

(e) a deemed refusal.

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

(a) is final and conclusive; and

(b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the Judicial Review Act 1991 or otherwise, whether by the Supreme Court, another court, a tribunal or another entity; and

(c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a 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—

(a) has the qualifications or experience prescribed by regulation; and

(b) has demonstrated an ability—

(i) 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.

(2) The appointer may—

(a) appoint a referee for the term, of not more than 3 years, stated in the appointment notice; and

(b) reappoint a referee, by notice, for further terms of not more than 3 years.

(3) If an appointer appoints a public service officer as a referee, the officer holds the appointment concurrently with any other appointment that the officer holds in the public service.

(4) A referee must not sit on a tribunal unless the referee has given a declaration, in the approved form and signed by the referee, to the chief executive.

(5) The appointer may cancel a referee's appointment at any time by giving a notice, signed by the appointer, to the referee.

(6) A referee may resign the referee's appointment at any time by giving a notice, signed by the referee, to the appointer.

(7) In this section—

appointment notice means—

(a) if the Minister gives the notice—a gazette notice; or

(b) if the chief executive gives the notice—a notice given to the person appointed as a referee.

234 Referee with conflict of interest

(1) This section applies if the chief executive informs a referee that the chief executive proposes to appoint the referee as a tribunal member, and either or both of the following apply—

(a) the tribunal is to hear a matter about premises—

(i) the referee owns; or

(ii) for which the referee was, is, or is to be, an architect, builder, drainer, engineer, planner, plumber, plumbing inspector, certifier, site evaluator or soil assessor; or

(iii) for which the referee has been, is, or will be, engaged by any party in the referee's capacity as an accountant, lawyer or other professional; or

(iv) situated or to be situated in the area of a local government of which the referee is an officer, employee or councillor;

(b) the referee has a direct or indirect personal interest in a matter to be considered by the tribunal, and the interest could conflict with the proper performance of the referee's functions for the tribunal's consideration of the matter.

(2) However, this section does not apply to a referee only because the referee previously acted in relation to the preparation of a relevant local planning instrument.

(3) The referee must notify the chief executive that this section applies to the referee, and on doing so, the chief executive must not appoint the referee to the tribunal.

(4) If a tribunal member is, or becomes, aware the member should not have been appointed to the tribunal, the member must not act, or continue to act, as a member of the tribunal.

235 Establishing development tribunal

(1) The chief executive may at any time establish a tribunal, consisting of up to 5 referees, for tribunal proceedings.

(2) The chief executive may appoint a referee for tribunal proceedings if the chief executive considers the referee has the qualifications or experience for the proceedings.

(3) The chief executive must appoint a referee as the chairperson for each tribunal.

(4) A regulation may specify the qualifications or experience required for particular proceedings.

(5) After a tribunal is established, the tribunal's membership must not be changed.

236 Remuneration

A tribunal member must be paid the remuneration the Governor in Council decides.

237 Tribunal proceedings

(1) *A tribunal must ensure all persons before the tribunal are afforded natural justice.*

(2) *A tribunal must make its decisions in a timely way.*

(3) *A tribunal may—*

(a) conduct its business as the tribunal considers appropriate, subject to a regulation made for this section; and

(b) sit at the times and places the tribunal decides; and

(c) hear an appeal and application for a declaration together; and

(d) hear 2 or more appeals or applications for a declaration together.

(4) *A regulation may provide for—*

(a) the way in which a tribunal is to operate, including the qualifications of the chairperson of the tribunal for particular proceedings; or

(b) the required fee for tribunal proceedings.

238 Registrar and other officers

(1) *The chief executive may, by gazette notice, appoint—*

(a) a registrar; and

(b) other officers (including persons who are public service officers) as the chief executive considers appropriate to help a tribunal perform its functions.

(2) *A person may hold the appointment or assist concurrently with any other public service appointment that the person holds.*

Division 2 Applications for declarations

239 Starting proceedings for declarations

(1) *A person may start proceedings for a declaration by a tribunal by filing an application, in the approved form, with the registrar.*

(2) *The application must be accompanied by the required fee.*

240 Application for declaration about making of development application

(1) *The following persons may start proceedings for a declaration about whether a development application is properly made—*

(a) the applicant;

(b) the assessment manager.

(2) *However, a person may not seek a declaration under this section about whether a development application is accompanied by the written consent of the owner of the premises to the application.*

(3) *The proceedings must be started by—*

(a) the applicant within 20 business days after receiving notice from the assessment manager, under the development assessment rules, that the development application is not properly made; or

(b) the assessment manager within 10 business days after receiving the development application.

(4) *The registrar must, within 10 business days after the proceedings start, give notice of the proceedings to the respondent as a party to the proceedings.*

(5) *In this section—*

respondent means—

(a) if the applicant started the proceedings—the assessment manager; or

(b) if the assessment manager started the proceedings—the applicant.

241 Application for declaration about change to development approval

(1) *This section applies to a change application for a development approval if—*

(a) the approval is for a material change of use of premises that involves the use of a classified building; and

(b) the responsible entity for the change application is not the P&E Court.

(2) *The applicant, or responsible entity, for the change application may start proceedings for a*

declaration about whether the proposed change to the approval is a minor change.

(3) The registrar must, within 10 business days after the proceedings start, give notice of the proceedings to the respondent as a party to the proceedings.

(4) In this section—

respondent means—

(a) if the applicant started the proceedings—the responsible entity; or

(b) if the responsible entity started the proceedings—the applicant.

Division 3 Tribunal proceedings for appeals and declarations

242 Action when proceedings start

If a document starting tribunal proceedings is filed with the registrar within the period required under this Act, and is accompanied by the required fee, the chief executive must—

(a) establish a tribunal for the proceedings; and

(b) appoint 1 of the referees for the tribunal as the tribunal's chairperson, in the way required under a regulation; and

(c) give notice of the establishment of the tribunal to each party to the proceedings.

243 Chief executive excusing noncompliance

(1) This section applies if—

(a) the registrar receives a document purporting to start tribunal proceedings, accompanied by the required fee; and

(b) the document does not comply with any requirement under this Act for validly starting the proceedings.

(2) The chief executive must consider the document and decide whether or not it is reasonable in the circumstances to excuse the noncompliance (because it would not cause substantial injustice in the proceedings, for example).

(3) If the chief executive decides not to excuse the noncompliance, the chief executive must give a notice stating that the document is of no effect,

because of the noncompliance, to the person who filed the document.

(4) The chief executive must give the notice within 10 business days after the document is given to the chief executive.

(5) If the chief executive does excuse the noncompliance, the chief executive may act under section 242 as if the noncompliance had not happened.

244 Ending tribunal proceedings or establishing new tribunal

(1) The chief executive may decide not to establish a tribunal when a document starting tribunal proceedings is filed, if the chief executive considers it is not reasonably practicable to establish a tribunal.

Examples of when it is not reasonably practicable to establish a tribunal—

• there are no qualified referees or insufficient qualified referees because of a conflict of interest

• the referees who are available will not be able to decide the proceedings in a timely way

(2) If the chief executive considers a tribunal established for tribunal proceedings—

(a) does not have the expertise to hear or decide the proceedings; or

(b) is not able to make a decision for proceedings (because of a tribunal member's conflict of interest, for example); the chief executive may decide to suspend the proceedings and establish another tribunal, complying with section 242(c), to hear or re-hear the proceedings.

(3) However, the chief executive may instead decide to end the proceedings if the chief executive considers it is not reasonably practicable to establish another tribunal to hear or re-hear the proceedings.

(4) If the chief executive makes a decision under subsection (1) or (3), the chief executive must give a decision notice about the decision to the parties to the proceedings.

(5) Any period for starting proceedings in the P&E Court, for the matter that is the subject of the tribunal proceedings, starts again when the chief

executive gives the decision notice to the party who started the proceedings.

- (6) The decision notice must state the effect of subsection (5).

245 Refunding fees

The chief executive may, but need not, refund all or part of the fee paid to start proceedings if the chief executive decides under section 244—

- (a) not to establish a tribunal; or
- (b) to end the proceedings.

246 Further material for tribunal proceedings

- (1) The registrar may, at any time, ask a person to give the registrar any information that the registrar reasonably requires for the proceedings.

Examples of information that the registrar may require—

- material about the proceedings (plans, for example)
- information to help the chief executive decide whether to excuse noncompliance under section 243
- for a deemed refusal—a statement of the reasons why the entity responsible for deciding the application had not decided the application during the period for deciding the application.

- (2) The person must give the information to the registrar within 10 business days after the registrar asks for the information.

247 Representation of Minister if State interest involved

If, before tribunal proceedings are decided, the Minister decides the proceedings involve a State interest, the Minister may be represented in the proceedings.

248 Representation of parties at hearing

A party to tribunal proceedings may appear—

- (a) in person; or
- (b) by an agent who is not a lawyer.

249 Conduct of tribunal proceedings

- (1) Subject to section 237, the chairperson of a tribunal must decide how tribunal proceedings are to be conducted.

- (2) The tribunal may decide the proceedings on submissions if the parties agree.

- (3) If the proceedings are to be decided on submissions, the tribunal must give all parties a notice asking for the submissions to be made to the tribunal within a stated reasonable period.

- (4) Otherwise, the tribunal must give notice of the time and place of the hearing to all parties.

- (5) The tribunal may decide the proceedings without a party's submission (written or oral) if—

- (a) for proceedings to be decided on submissions—the party's submission is not received within the time stated in the notice given under subsection (3); or

- (b) for proceedings to be decided by hearing—the person, or the person's agent, does not appear at the hearing.

- (6) When hearing proceedings, the tribunal—

- (a) need not proceed in a formal way; and

- (b) is not bound by the rules of evidence; and

- (c) may inform itself in the way it considers appropriate; and

- (d) may seek the views of any person; and

- (e) must ensure all persons appearing before the tribunal have a reasonable opportunity to be heard; and

- (f) may prohibit or regulate questioning in the hearing.

- (7) If, because of the time available for the proceedings, a person does not have an opportunity to be heard, or fully heard, the person may make a submission to the tribunal.

250 Tribunal directions or orders

A tribunal may, at any time during tribunal proceedings, make any direction or order that the tribunal considers appropriate.

Examples of directions—

- a direction to an applicant about how to make their development application comply with this Act

- a direction to an assessment manager to assess a development application, even though the referral agency's response to the assessment manager was to refuse the application

251 Matters tribunal may consider

(1) This section applies to tribunal proceedings about—

(a) a development application or change application; or

(b) an application or request (however called) under the Building Act or the Plumbing and Drainage Act.

(2) The tribunal must decide the proceedings based on the laws in effect when—

(a) the application or request was properly made; or

(b) if the application or request was not required to be properly made—the application or request was made.

(3) However, the tribunal may give the weight that the tribunal considers appropriate, in the circumstances, to any new laws.

252 Deciding no jurisdiction for tribunal proceedings

(1) A tribunal may decide that the tribunal has no jurisdiction for tribunal proceedings, at any time before the proceedings are decided—

(a) on the tribunal's initiative; or

(b) on the application of a party.

(2) If the tribunal decides that the tribunal has no jurisdiction, the tribunal must give a decision notice about the decision to all parties to the proceedings.

(3) Any period for starting proceedings in the P&E Court, for the matter that is the subject of the tribunal proceedings, starts again when the tribunal gives the decision notice to the party who started the proceedings.

(4) The decision notice must state the effect of subsection (3).

(5) If the tribunal decides to end the proceedings, the fee paid to start the proceedings is not refundable.

253 Conduct of appeals

(1) This section applies to an appeal to a tribunal.

(2) Generally, the appellant must establish the appeal should be upheld.

(3) However, for an appeal by the recipient of an enforcement notice, the enforcement authority that gave the notice must establish the appeal should be dismissed.

(4) The tribunal must hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against.

(5) However, the tribunal may, but need not, consider—

(a) other evidence presented by a party to the appeal with leave of the tribunal; or

(b) any information provided under section 246.

254 Deciding appeals to tribunal

(1) This section applies to an appeal to a tribunal against a decision.

(2) The tribunal must decide the appeal by—

(a) confirming the decision; or

(b) changing the decision; or

(c) replacing the decision with another decision; or

(d) setting the decision aside, and ordering the person who made the decision to remake the decision by a stated time; or

(e) for a deemed refusal of an application—

(i) ordering the entity responsible for deciding the application to decide the application by a stated time and, if the entity does not comply with the order, deciding the application; or

(ii) deciding the application.

(3) However, the tribunal must not make a change, other than a minor change, to a development application.

(4) The tribunal's decision takes the place of the decision appealed against.

(5) The tribunal's decision starts to have effect—

(a) if a party does not appeal the decision—at the end of the appeal period for the decision; or

(b) if a party appeals against the decision to the P&E Court—subject to the decision of the court, when the appeal ends.

255 Notice of tribunal's decision

A tribunal must give a decision notice about the tribunal's decision for tribunal proceedings, other than for any directions or interim orders given by the tribunal, to all parties to proceedings.

256 No costs orders

A tribunal must not make any order as to costs.

257 Recipient's notice of compliance with direction or order

If a tribunal directs or orders a party to do something, the party must notify the registrar when the thing is done.

258 Tribunal may extend period to take action

(1) This section applies if, under this chapter, an action for tribunal proceedings must be taken within a stated period or before a stated time, even if the period has ended or the time has passed.

(2) The tribunal may allow a longer period or a different time to take the action if the tribunal considers there are sufficient grounds for the extension.

259 Publication of tribunal decisions

The registrar must publish tribunal decisions under the arrangements, and in the way, that the chief executive decides.

Schedule 1 Appeals

section 229

Appeal rights and parties to appeals

(1) Table 1 states the matters that may be appealed to—

(a) the P&E court; or

(b) a tribunal.

(2) However, table 1 applies to a tribunal only if the matter involves—

(a) the refusal, or deemed refusal of a development application, for—

(i) a material change of use for a classified building; or

(ii) operational work associated with building work, a retaining wall, or a tennis court; or

(b) a provision of a development approval for—

(i) a material change of use for a classified building; or

(ii) operational work associated with building work, a retaining wall, or a tennis court; or

(c) if a development permit was applied for—the decision to give a preliminary approval for—

(i) a material change of use for a classified building; or

(ii) operational work associated with building work, a retaining wall, or a tennis court; or

(d) a development condition if—

(i) the development approval is only for a material change of use that involves the use of a building classified under the Building Code as a class 2 building; and

(ii) the building is, or is proposed to be, not more than 3 storeys; and

(iii) the proposed development is for not more than 60 sole-occupancy units; or

(e) a decision for, or a deemed refusal of, an extension application for a development approval that is only for a material change of use of a classified building; or

(f) a decision for, or a deemed refusal of, a change

application for a development approval that is only for a material change of use of a classified building; or

(g) a matter under this Act, to the extent the matter relates to the Building Act, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission; or

(h) a decision to give an enforcement notice—

(i) in relation to a matter under paragraphs (a) to (g); or

(ii) under the Plumbing and Drainage Act; or

(i) an infrastructure charges notice; or

(j) the refusal, or deemed refusal, of a conversion application; or

(l) a matter prescribed by regulation.

(3) Also, table 1 does not apply to a tribunal if the matter involves—

(a) for a matter in subsection (2)(a) to (d)—

(i) a development approval for which the development application required impact assessment; and

(ii) a development approval in relation to which the assessment manager received a properly made submission for the development application; or

(b) a provision of a development approval about the identification or inclusion, under a variation approval, of a matter for the development.

(4) Table 2 states the matters that may be appealed only to the P&E Court.

(5) Table 3 states the matters that may be appealed only to the tribunal.

(6) In each table—

(a) column 1 states the appellant in the appeal; and

(b) column 2 states the respondent in the appeal; and

(c) column 3 states the co-respondent (if any) in the appeal; and

(d) column 4 states the co-respondents by election (if any) in the appeal.

(7) If the chief executive receives a notice of appeal under section 230(3)(f), the chief executive may elect to be a co-respondent in the appeal.

(8) In this section—

storey see the Building Code, part A1.1.

Table 1

Appeals to the P&E Court and, for certain matters, to a tribunal

1. Development applications

For a development application other than a development application called in by the

Minister, an appeal may be made against—

(a) the refusal of all or part of the development application; or

(b) the deemed refusal of the development application; or

(c) a provision of the development approval; or

(d) if a development permit was applied for—the decision to give a preliminary approval.

**EXTRACT FROM THE *PLANNING ACT 2016*
RELATING TO LAPSE DATES**

***Division 4 Lapsing of and extending
development approvals***

85 Lapsing of approval at end of current period

*(1) A part of a development approval lapses at the end of the following period (the **currency period**)—*

(a) for any part of the development approval relating to a material change of use—if the first change of use does not happen within—

(i) the period stated for that part of the approval; or

(ii) if no period is stated—6 years after the approval starts to have effect;

(b) for any part of the development approval relating to reconfiguring a lot—if a plan for the reconfiguration that, under the Land Title Act, is required to be given to a local government for approval is not given to the local government within—

(i) the period stated for that part of the approval; or

(ii) if no period is stated—4 years after the approval starts to have effect;

(c) for any other part of the development approval if the development does not substantially start within—

(i) the period stated for that part of the approval; or

(ii) if no period is stated—2 years after the approval starts to take effect.

(2) If part of a development approval lapses, any monetary security given for that part of the approval must be released.