



Mareeba

SHIRE COUNCIL

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PO Box 154 MAREEBA QLD 4880

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13 August 2019

Glenn & Marisa Beere
PO Box 2842
MAREEBA QLD 4880

Planning Officer: Carl Ewin
Direct Phone: 4086 4656
Our Reference: MCU/19/0003

Dear Applicant/s

Decision Notice

Planning Act 2016

I refer to your application and advise that on 12 August 2019 under delegated authority, Council decided to approve the application in full subject to conditions.

Details of the decision are as follows:

APPLICATION DETAILS

Application No:	MCU/19/0003 & OPW/19/0002
Street Address:	321 Malone Road, Mareeba
Real Property Description:	Lot 2 on RP737772
Planning Scheme:	Mareeba Shire Council Planning Scheme 2016

DECISION DETAILS

Type of Decision:	Approval
Type of Approval:	Development Permit for Material Change of Use - Aquaculture and Associated Operational Works - Bulk Earthworks (Aquaculture Ponds)
Date of Decision:	12 August 2019

CURRENCY PERIOD OF APPROVAL

The currency period for this development approval starts from the day that this development approval takes effect. (Refer to Section 85 "Lapsing of approval at end of currency period" of the *Planning Act 2016*.)

- Operational Works - six (6) years (starting the day the approval takes effect);
- Material Change of Use – six (6) years (starting the day the approval takes effect)

INFRASTRUCTURE

Where conditions relate to the provision of infrastructure, these are non-trunk infrastructure conditions unless specifically nominated as a “*necessary infrastructure condition*” for the provision of trunk infrastructure as defined under Chapter 4 of the *Planning Act 2016*.

ASSESSMENT MANAGER CONDITIONS**(A) ASSESSMENT MANAGER’S CONDITIONS (COUNCIL)****(a) Development assessable against the Planning Scheme****For Operational Works - Bulk Earthworks (Aquaculture Ponds)**

1. Development must be carried out substantially in accordance with the approved plans and the facts and circumstances of the use as submitted with the application, subject to any alterations:

- found necessary by the Council’s Delegated Officer at the time of examination of the engineering plans or during construction of the development because of particular engineering requirements;
- to ensure the works comply in all respects with good engineering practice; and
- to ensure compliance with the following conditions of approval.

Note: Pond construction can occur in stages at the discretion of the applicant/developer.

2. Timing of Effect

- 2.1 The conditions of the development permit must be complied with at all times, to the satisfaction of Council’s delegated officer except where specified otherwise in these conditions of approval.

3. General

- 3.1 The applicant/developer is responsible for the cost of necessary alterations to existing public utility mains, services or installations required by works in relation to the proposed development or any works required by condition(s) of this approval.
 - 3.2 All works must be designed, constructed and carried out in accordance with FNQROC Development Manual standards (as amended) and to the satisfaction of Council’s delegated officer.
 - 3.3 Prior to any ponds/dams becoming operational, the applicant/developer must provide a statement from an RPEQ (Registered Professional Engineer of Queensland) or other suitably qualified professional confirming that the ponds/dams have been constructed in such a way as to ensure their long

term stability and/or in accordance with the *Queensland Government Guidelines for Constructing and Maintaining Aquaculture Containment Structures*.

3.4 Hours of work

3.4.1 Work involving the operation of construction plant and equipment of any description, shall only be carried out on site during the following times:

- 7.00am to 6.00pm, Monday to Friday;
- 7.00am to 1.00pm Saturdays;
- No work is permitted on Sundays or Public Holidays.

3.4.2 No variation to the above working hours is allowed unless otherwise agreed in writing by Council.

4. Infrastructure services and standards

4.1 Erosion and Sediment Control Plan

4.1.1 The applicant/developer must take all necessary steps to ensure a non-worsening effect on surrounding land as a consequence of the operational works.

4.1.2 Prior to works commencing, the applicant must develop an Erosion and Sediment Control Plan. The plan must detail what measures/procedures will be implemented on-site to prevent erosion and sediment run-off during and after dam/pond construction.

4.1.3 The applicant/developer must ensure that the Erosion and Sediment Control Plan is complied with at all times.

For Material Change of Use - Aquaculture

1. Development must be carried out substantially in accordance with the approved plans and the facts and circumstances of the use as submitted with the application, subject to any alterations:

- found necessary by Council's delegated officer at the time of examination of the engineering plans or during construction of the development because of particular engineering requirements; and
- to ensure compliance with the following conditions of approval.

2. Timing of Effect

2.1 The conditions of the development permit must be complied with to the satisfaction of Council's delegated officer prior to the commencement of the use except where specified otherwise in these conditions of approval.

- 2.2 Prior to the commencement of use, the applicant must notify Council that all the conditions of the development permit have been complied with, except where specified otherwise in these conditions of approval.

3. General

- 3.1 The applicant/developer is responsible for the cost of necessary alterations to existing public utility mains, services or installations required by works in relation to the proposed development or any works required by condition(s) of this approval.

- 3.2 All payments or bonds required to be made to the Council pursuant to any condition of this approval must be made prior to commencement of the use and at the rate applicable at the time of payment.

- 3.3 All works must be designed, constructed and carried out in accordance with FNQROC Development Manual requirements (as amended) and to the satisfaction of Council's delegated officer.

3.4 Waste management

Where on site refuse storage areas are provided they must be effectively screened from view from adjoining properties and road reserve.

3.5 Irrigation setback

- 3.5.1 The excess water from the aquaculture ponds/sediment dam shall not be used for irrigation within 50 metres of any waterway.

- 3.5.2 The excess water from the aquaculture ponds/sediment dam shall not be used for irrigation within 15 metres of any side boundary

3.6 Pond/sediment dam setback

Aquaculture ponds/sediment dam are to be constructed a minimum of 20 metres from any property boundary and a minimum of 50 metres from any waterway or wetland area.

3.7 Flood level and freeboard height

All aquaculture ponds/sediment dam must be located above the Q100 flood level. The aquaculture ponds and sediment dam must be maintained with a minimum freeboard height of 500mm at all times.

3.8 Discharge of contaminants

The approved use must be designed and operated to ensure that no aquaculture pond/sediment dam water, contaminants or farmed crayfish

stocks are released to nearby waterways, particularly during annual wet seasons.

4. Infrastructure Services and Standards

4.1 Access

The existing access crossover must be upgraded/constructed (from the edge of Malone Road to the property boundary) in accordance with FNQROC Development Manual standards, to the satisfaction of Council's delegated officer.

4.2 Stormwater Management

4.2.1 The applicant/developer must take all necessary steps to ensure a non-worsening affect on surrounding land as a consequence of the development.

4.2.2 All stormwater drainage must be collected from site and discharged to an approved legal point of discharge.

4.3 Car Parking

The applicant/developer must allow provision of at least 2 on-site car parking spaces for use by employees or visitors to the site. The parking spaces must be within proximity of the development area or processing shed/s and must be constructed to a all-weather compacted gravel standard (at minimum) and maintained for the life of the development, to the satisfaction of Council's delegated officer.

REFERRAL AGENCIES

The referral agencies applicable to this application are:

Non-devolved environmentally relevant activities		
Development application for a material change of use that is assessable development under section 8, if—	Schedule 10, Part 5, Division 4, Table 2, Item 1	State Assessment & Referral Agency (SARA) Department of State Development, Manufacturing, Local Government & Planning PO Box 2358 Cairns Qld 4870 CairnsSARA@dsdmip.qld.gov.au
(a) the environmentally relevant activity the subject of the application has not been devolved to a local government under the Environmental Protection Regulation; and		
(b) the chief executive is not the prescribed assessment manager for the application		

A copy of any referral agency conditions are attached.

APPROVED PLANS

The following plans are Approved plans for the development:

Plan/Document Number	Plan/Document Title	Prepared by	Dated
-	Plan Showing Water Containment Structures and Sheds	G & M Beere	March 2019
-	Plan Showing All Development Infrastructure	G & M Beere	March 2019
-	Plan Showing Pond Area Development	G & M Beere	March 2019
-	Detailed Plan of Pond Area	G & M Beere	March 2019
-	Plan Showing Location of Sections	G & M Beere	March 2019
-	NNW Long Section Through Sediment Dam	G & M Beere	-
-	NNW Long Section Along Main Drain	G & M Beere	-
-	Generalised Pond Plan	G & M Beere	July 2019

ADVISORY NOTES

The following notes are included for guidance and information purposes only and do not form part of the assessment manager conditions:

(A) ASSESSMENT MANAGER'S ADVICE

(a) Compliance with applicable codes/policies

The development must be carried out to ensure compliance with the provisions of Council's Local Laws, Planning Scheme Policies, Planning Scheme and Planning Scheme Codes to the extent they have not been varied by a condition of this approval.

(b) Compliance with Acts and Regulations

The erection and use of the building must comply with the Building Act and all other relevant Acts, Regulations and Laws, and these approval conditions.

(c) Environmental Protection and Biodiversity Conservation Act 1999

The applicant is advised that referral may be required under the *Environmental Protection and Biodiversity Conservation Act 1999* if the proposed activities are likely to have a significant impact on a matter of national environmental

significance. Further information on these matters can be obtained from www.environment.gov.au

(d) Cultural Heritage

In carrying out the activity the applicant must take all reasonable and practicable measures to ensure that no harm is done to Aboriginal cultural heritage (the "cultural heritage duty of care"). The applicant will comply with the cultural heritage duty of care if the applicant acts in accordance with gazetted cultural heritage duty of care guidelines. An assessment of the proposed activity against the duty of care guidelines will determine whether or to what extent Aboriginal cultural heritage may be harmed by the activity. Further information on cultural heritage, together with a copy of the duty of care guidelines and cultural heritage search forms, may be obtained from www.datsip.qld.gov.au

(e) Transportation of Soil

All soil transported to or from the site must be covered to prevent dust or spillage during transport. If soil is tracked or spilt onto the road pavements as a result of works on the subject site, it must be removed prior to the end of the working day and within four (4) hours of a request from a Council Officer.

(B) CONCURRENCE AGENCY CONDITIONS

Department of State Development, Manufacturing, Infrastructure and Planning conditions dated 29 July 2019.

PROPERTY NOTES

Not Applicable.

FURTHER DEVELOPMENT PERMITS REQUIRED

- Access approval arising from condition number 4.1 (Please contact Planning Section to obtain application form and applicable fee)

SUBMISSIONS

Not Applicable.

RIGHTS OF APPEAL

You are entitled to appeal against this decision. A copy of the relevant appeal provisions from the *Planning Act 2016* is attached.

During the appeal period, you as the applicant may suspend your appeal period and make written representations to council about the conditions contained within the development approval.

If council agrees or agrees in part with the representations, a "negotiated decision notice" will be issued. Only one "negotiated decision notice" may be given. Taking this step will defer your appeal period, which will commence again from the start the day after you receive a "negotiated decision notice".

OTHER DETAILS

If you wish to obtain more information about Council's decision, electronic copies are available on line at www.msc.qld.gov.au, or at Council Offices.

Yours faithfully

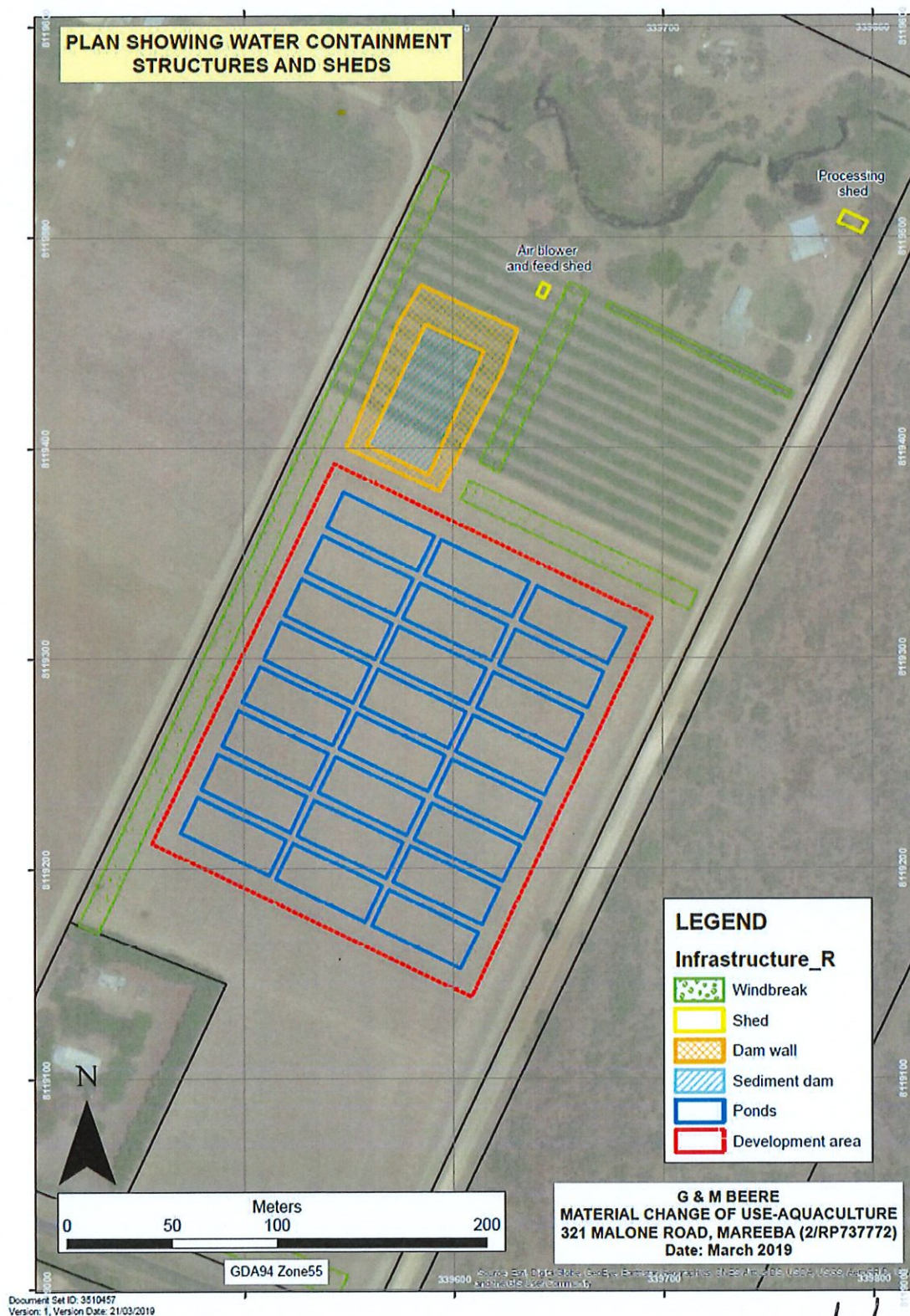


BRIAN MILLARD
SENIOR PLANNER

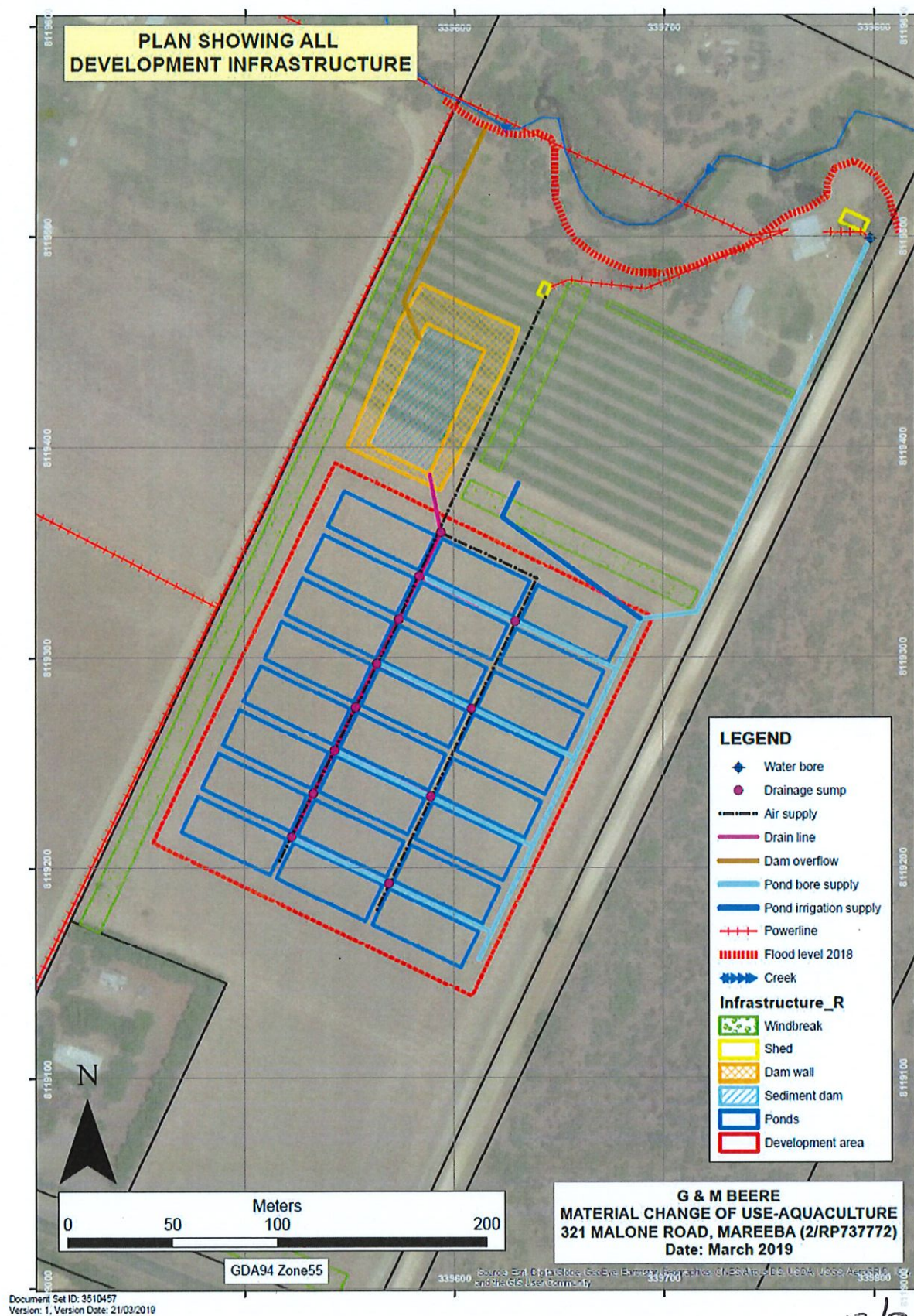
Enc: Approved Plans/Documents
 Referral Agency Response
 Appeal Rights

Copy: Department of State Development, Manufacturing, Infrastructure and Planning
 CairnsSARA@dsdmip.qld.gov.au

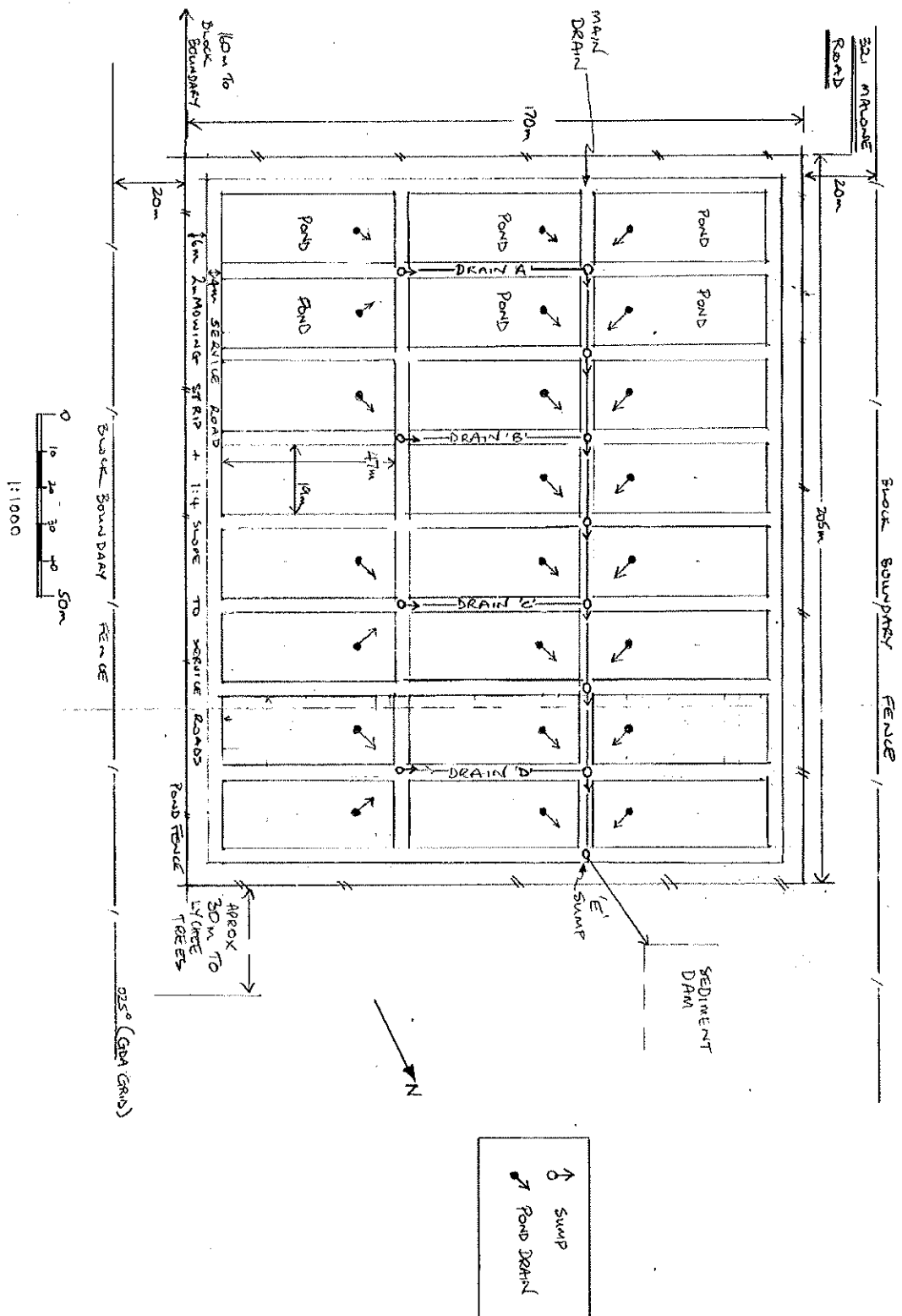
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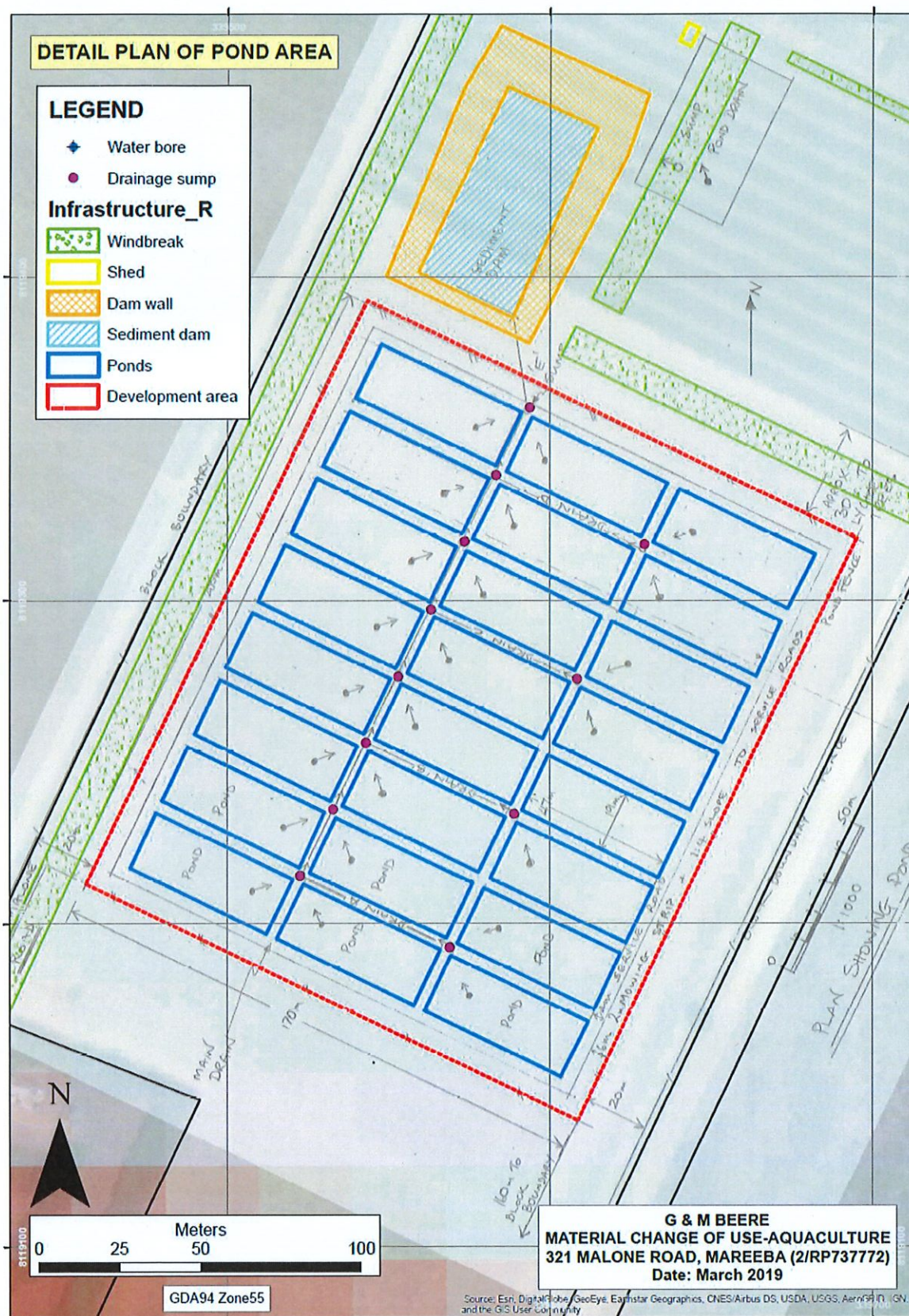
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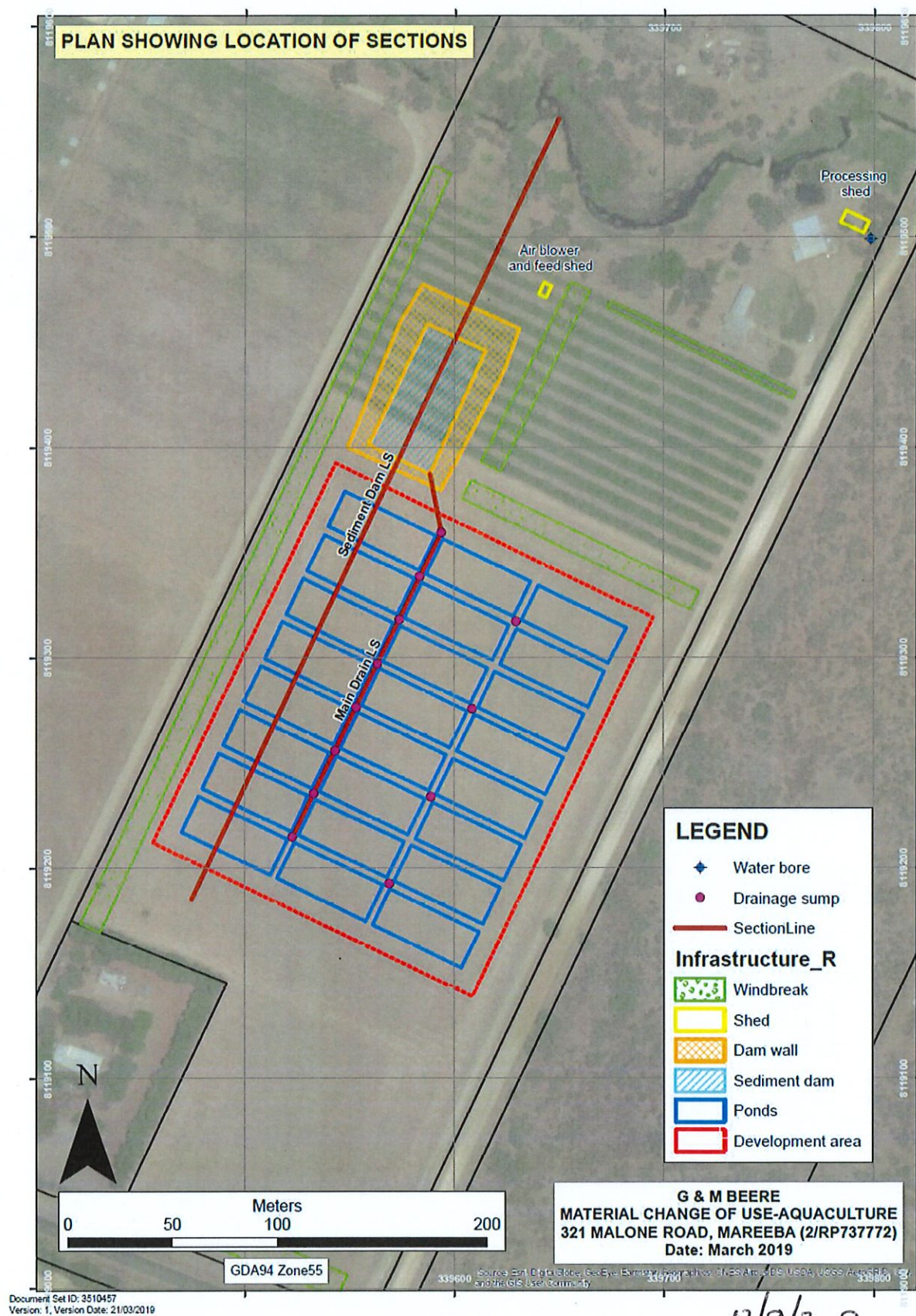
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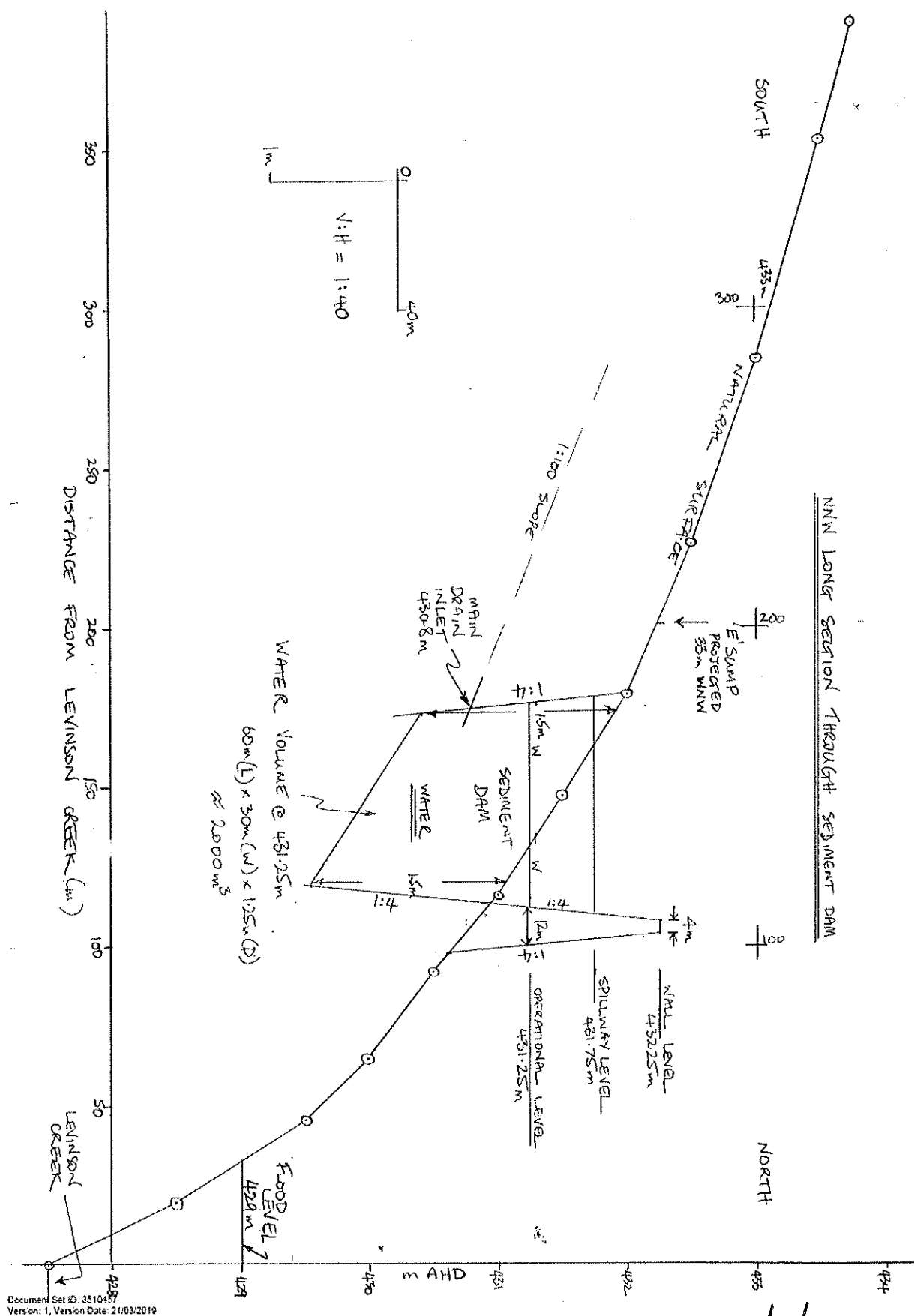


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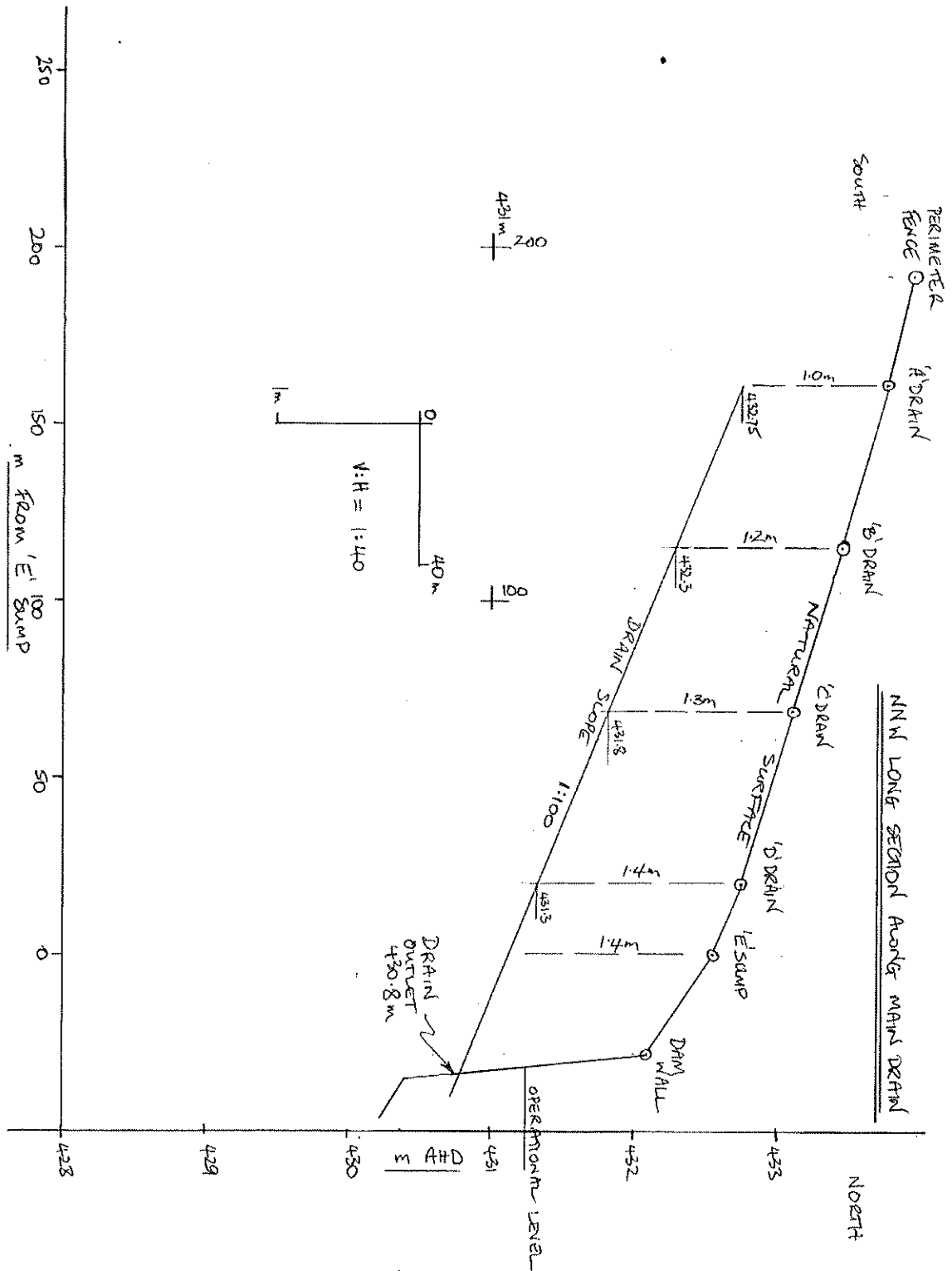


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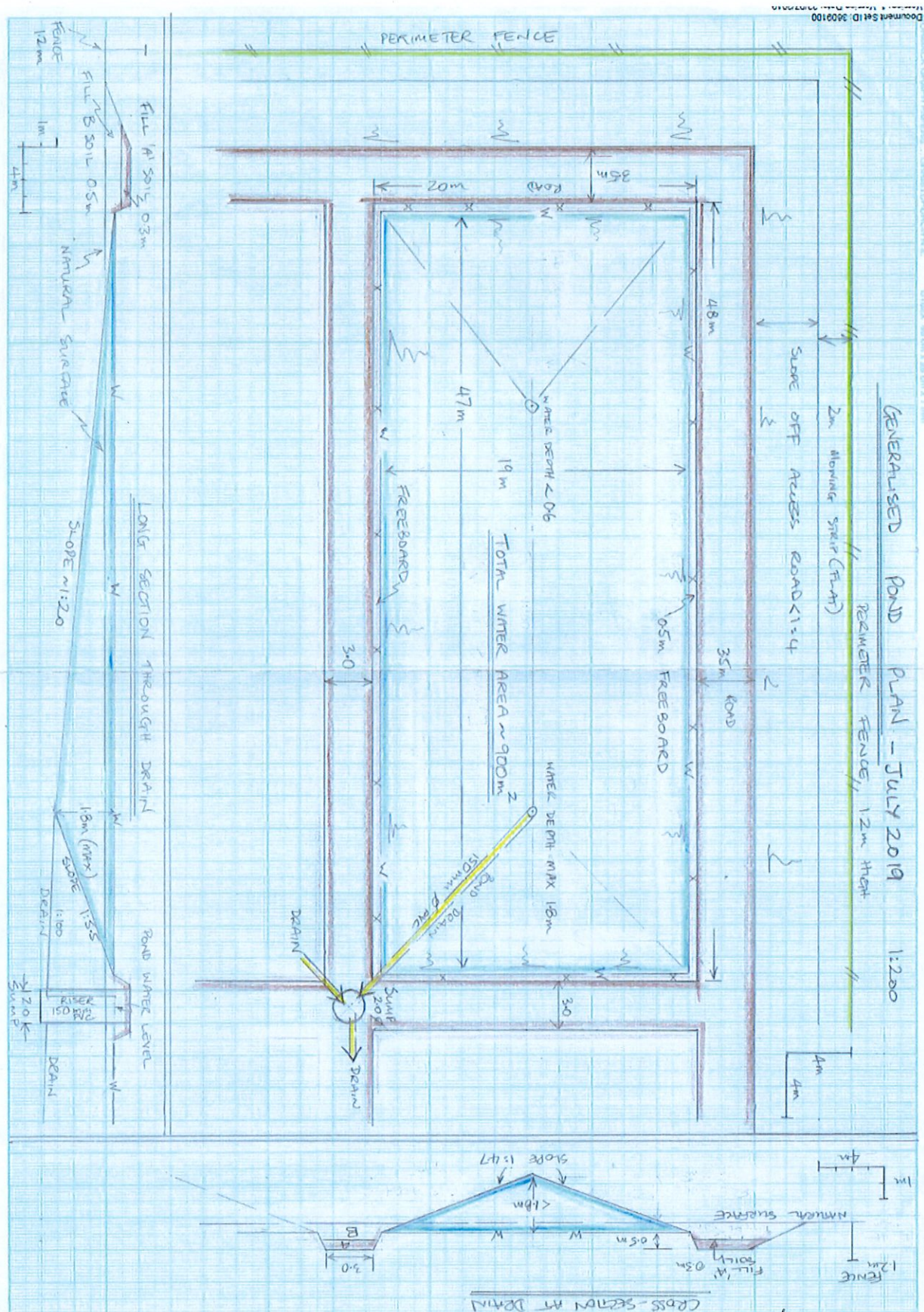


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Referral Agency Response

R29-N



Department of
State Development,
Manufacturing,
Infrastructure and Planning

SARA reference: 1904-10584 SRA
Council reference: MCU/19/0003

29 July 2019

Chief Executive Officer
Mareeba Shire Council
PO Box 154
Mareeba QLD 4880
planning@msc.qld.gov.au

Attention: Carl Ewin

Dear Sir/Madam

Changed SARA response—321 Malone Road, Mareeba

(Given under section 28 of the Development Assessment Rules)

On 22 July 2019 the department received notice of a change to the development application described below. The department has assessed the changes and now provides this changed referral agency response which replaces the response dated 7 June 2019.

Response

Outcome:	Changed referral agency response – with conditions.
Date of response:	29 July 2019
Conditions:	The changed conditions in Attachment 1 must be attached to any development approval.
Advice:	Advice to the applicant is in Attachment 2 .
Reasons:	The reasons for the referral agency response are in Attachment 3 .

Development details

Description:	Development permit	Material change of use for aquaculture and associated operational works for bulk earthworks
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Far North Queensland regional office
Ground Floor, Cnr Grafton and Hartley
Street, Cairns
PO Box 2358, Cairns QLD 4870

1904-10584 SRA

SARA role:	Referral Agency.
SARA triggers:	Schedule 10, Part 5, Division 4, Table 2, Item 1 and Schedule 10, Part 6, Division 1, Subdivision 3, Table 1, Item 1- (Planning Regulation 2017) Development application for a material change of use for an environmentally relevant activity and aquaculture
SARA reference:	1904-10584 SRA
Assessment Manager:	Mareeba Shire Council
Street address:	321 Malone Road, Mareeba
Real property description:	Lot 2 on RP737772
Applicant name:	Glenn and Marisa Beere
Applicant contact details:	PO Box 2842 Mareeba QLD 4880 gmbeere@tpg.com.au
Environmental Authority:	This referral included an application for an environmental authority under section 115 of the <i>Environmental Protection Act 1994</i> . Below are the details of the decision: <ul style="list-style-type: none">• Approved• Reference: EA0001805• Effective date: On a date to be decided later Prescribed environmentally relevant activity (ERA): ERA 01- Aquaculture, 1: Cultivating or holding crustaceans in enclosures that are on land and have a total area of, (a) more than 100 square metres If you are seeking further information on the environmental authority, the Department of Environment and Science's website includes a register. This can be found at: www.des.qld.gov.au

Representations

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

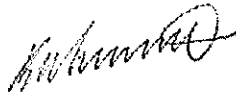
Copies of the relevant provisions are in **Attachment 4**.

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

1904-10584 SRA

For further information please contact Joanne Manson, Principal Planning Officer, SARA Far North QLD on 40373228 or via email CairnsSARA@dsdmip.qld.gov.au who will be pleased to assist.

Yours sincerely



Brett Nancarrow
Manager (Planning)

cc Glenn and Marisa Beere, gmbeere@tpg.com.au

enc Attachment 1 – Changed referral agency conditions
Attachment 2 – Advice to the applicant
Attachment 3 – Reasons for referral agency response
Attachment 4 – Change representation provisions
Attachment 5 – Approved plans and specifications

1904-10584 SRA

Attachment 1— Changed referral agency conditions

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

No.	Conditions	Condition timing				
Material change of use						
Schedule 10, Part 5, Division 4, Table 2, Item 1- Environmentally relevant activities —The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of the Department of Environment and Science to be the enforcement authority for the development to which this development approval relates for the administration and enforcement of any matter relating to the following conditions:						
1.	<p>The Environmentally Relevant Activity for Aquaculture must be undertaken generally in accordance with the following plans:</p> <ul style="list-style-type: none">Plan Showing All Development Infrastructure, prepared by G and M Beere, dated March 2019.Detail Plan of Pond Area, prepared by G and M Beere, dated Mar 2019	Prior to commencement and be maintained at all times				
Schedule 10, Part 6, Division 1, Subdivision 3, Table 1, Item 1—Aquaculture —The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of the Department of Agriculture and Fisheries to be the enforcement authority for the development to which this development approval relates for the administration and enforcement of any matter relating to the following conditions:						
2.	<p>Development authorised under this approval is limited as follows: Redclaw pond aquaculture being limited to 24 grow-out ponds and one storage dam and shown in:</p> <ul style="list-style-type: none">Plan Showing All Development Infrastructure, prepared by G and M Beere, dated March 2019.NNW Long Section Through Sediment Dam, prepared by G and M Beere, received 5 April 2019NNW Long Section Along Main Drain, prepared by G and M Beere, received 5 April 2019Generalised Pond, Cross Section At Drain and Long Section Through Drain plan, prepared by G and M Beere, received 5 April 2019 received 22 July 2019	At all times				
3.	<p>The approved fisheries resources the subject of this approval are limited to the following species.</p> <table><tr><td>Common Name</td><td>Scientific Name</td></tr><tr><td>Redclaw</td><td><i>Cherax quadricarinatus</i></td></tr></table> <p>Hereafter referred to as the "approved species".</p>	Common Name	Scientific Name	Redclaw	<i>Cherax quadricarinatus</i>	Prior to commencement of use and to be maintained at all times
Common Name	Scientific Name					
Redclaw	<i>Cherax quadricarinatus</i>					
4.	<p>The water surface area associated with the grow out ponds is limited to a combined maximum area of 45,600-m² 2.2 hectares and must be carried out generally in accordance with the following plans:</p> <ul style="list-style-type: none">Plan Showing All Development Infrastructure, prepared by G and M Beere, dated March 2019.	Prior to commencement of use and to be maintained at all times				

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5.	<p>Provide written notice to notifications@daf.qld.gov.au, when the development authorised under this approval:</p> <p>(a) will start, and</p> <p>(b) when it has been completed.</p> <p>These notices must state this permit number 1904-10584 SRA.</p>	<p>(a) At least 5 business days but no greater than 20 business days prior to commencement of the works</p> <p>(b) Within 15 business days of the completion of the fisheries development works</p>
6.	Spoil is not disposed of within waterways.	At all times
7.	This aquaculture development constitutes a place that is required to be open for inspection by an inspector at all times, pursuant to section 145 of the <i>Fisheries Act 1994</i> .	At all times
8.	<p>Inform the assessing authority Department of Agriculture and Fisheries via notifications@daf.qld.gov.au of any changes to the personal contact details for this development approval.</p> <p>Note: Forms for reporting a change in contact details can be found at https://www.daf.qld.gov.au/fisheries/aquaculture/aquaculture-approvals</p>	Within 28 days of change to personal contact details
9.	Aquaculture fisheries resources must not be sold, traded or given away for the purposes of using for bait. This includes the use of whole fish and any part of the fish.	At all times
10.	<p>Provide an annual aquaculture production return in the approved form to the Department of Agriculture and Fisheries. This includes lodging a nil return when no activity has occurred.</p> <p>Note: This is an information requirement pursuant to section 118 of the <i>Fisheries Act 1994</i>. Details on how to lodge and electronic aquaculture production return will be sent to operators annually.</p>	By close of business on the 31 July each year
11.	<p>Aquaculture fisheries resources must not be released into Queensland waters (as defined in the <i>Acts Interpretation Act 1954</i>) with the exception of all grow-out ponds approved under condition 2.</p> <p>Note: It is an offence under the <i>Fisheries Act 1994</i> to unlawfully release aquaculture fisheries resources, or cause aquaculture fisheries resources to be released, into Queensland waters. Maximum penalty—2000 penalty units.</p>	At all times
12.	<p>The movement of fisheries resources into, or within, Queensland must comply with the current version of Health protocol for the movement of live freshwater crayfish and prawns Aquaculture Protocol FAMPR006</p> <p>Note: Health protocols and application form FDU1398 can be found at https://www.daf.qld.gov.au/fisheries/aquaculture/management-and-policies</p> <p>Note: Commonwealth quarantine protocols must be successfully completed for the relevant organisms of any species prior to their introduction to the approved aquaculture area.</p>	At all times
13.	Maintain control over the release of water from all ponds, tanks and drainage systems within the approved aquaculture area.	Upon commencement of the use and to be maintained at all times

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	Note: Control may be achieved through ensuring ponds, tanks and containers integrity at all times, having adequate freeboard to avoid any overtopping, preventing overland flow, ensuring all equipment intended to control releases is functioning correctly at all times and backup systems or equipment are in place.	
14.	Provide an impervious perimeter barrier to prevent the overland release of Redclaw from the approved aquaculture area.	Prior to the commencement of the use and to be maintained at all times
15.	Install screening of 250 µm at all points of water release or discharge from ponds drainage systems within the approved aquaculture area to prevent the escape of any aquaculture fisheries resources (eggs, juveniles or adults) into Queensland waters (as defined in the <i>Acts Interpretation Act 1954</i>).	Prior to the commencement of the use and to be maintained at all times
16.	Install screening of 250 µm on all intake waters to prevent the movement of any juvenile or adult wild fauna (excepting zooplankton) into the approved aquaculture area.	Prior to the commencement of the use and to be maintained at all times
17.	All ponds, drainage systems and storage dam must be constructed in a manner and with materials that prevent water leakage to Queensland waters.	Prior to the commencement of the use and to be maintained at all times

1904-10584 SRA

Attachment 2—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) [v2.4]. If a word remains undefined it has its ordinary meaning.
2.	<p>Immediately report any unusual clinical signs or mortalities of any fisheries resources brought into Queensland, to the Queensland Boating and Fisheries Patrol. If directed, specimens must be forwarded to a veterinary laboratory.</p> <p>Note: Information on reporting disease in aquaculture can be found at https://www.business.qld.gov.au/industry/fisheries/aquaculture/health-pests-and-diseases-of-aquaculture/managing-disease-in-aquaculture-farms/identifying-and-reporting-disease-in-aquaculture</p>
3.	<p>This approval does not permit the harvest of broodstock and culture stock.</p> <p>Note: Broodstock and/or culture stock may be purchased from the holder of an authority or licence that authorises the sale of the approved species. In Queensland, this includes from a commercial fisher holding an appropriate <i>Fisheries Act 1994</i> licence.</p> <p>Note: Forms to apply for the collection of broodstock or culture stock for aquaculture under a <i>Fisheries Act 1994</i> General Fisheries Permit can be found at https://www.daf.qld.gov.au/fisheries/aquaculture/aquaculture-approvals</p> <p>Note: Depending on the species sought and its location, additional permits may be required under other legislation, for example the <i>Environmental Protection and Biodiversity Conservation Act 1999</i>, the <i>Great Barrier Reef Marine Park Act 1975</i>, the <i>Nature Conservation Act 1992</i>.</p>
4.	<p>This approval does not provide any entitlement to access or harvest an aquaculture fisheries resource that becomes an unauthorised escape or release, including but not limited to:</p> <ul style="list-style-type: none"> (a) animal(s) stocked within the approved aquaculture area that move outside the area; or (b) spawn or progeny of an aquaculture fisheries resource should such eggs, larvae, juveniles or adult progeny become distributed outside of the approved aquaculture area. <p>The responsibility for any impact of unauthorized escapes or releases of aquaculture fisheries resources is with the operator. Additional permits may be required under the <i>Fisheries Act 1994</i> to authorise processes required to be readily available to effectively manage this risk.</p>

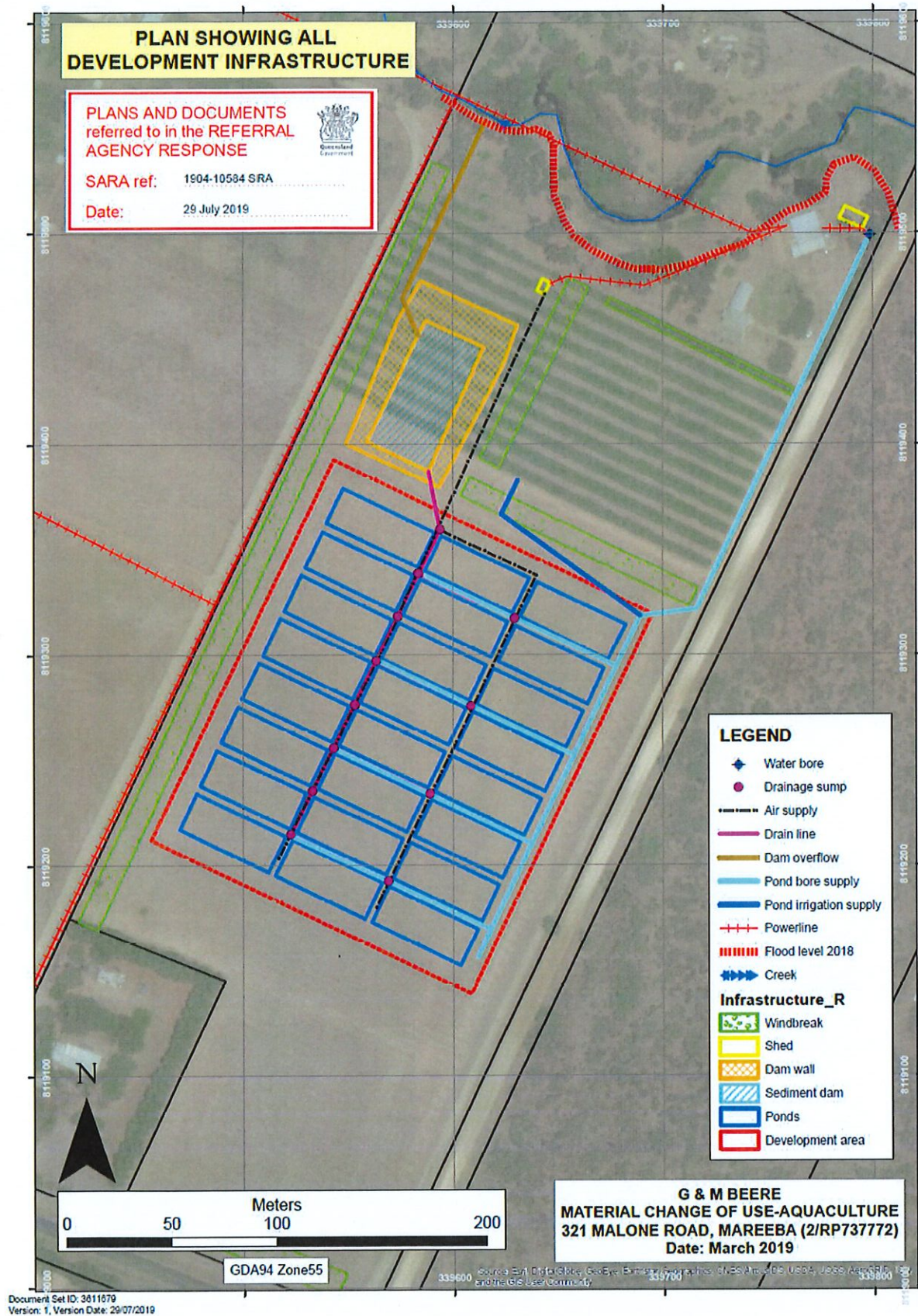
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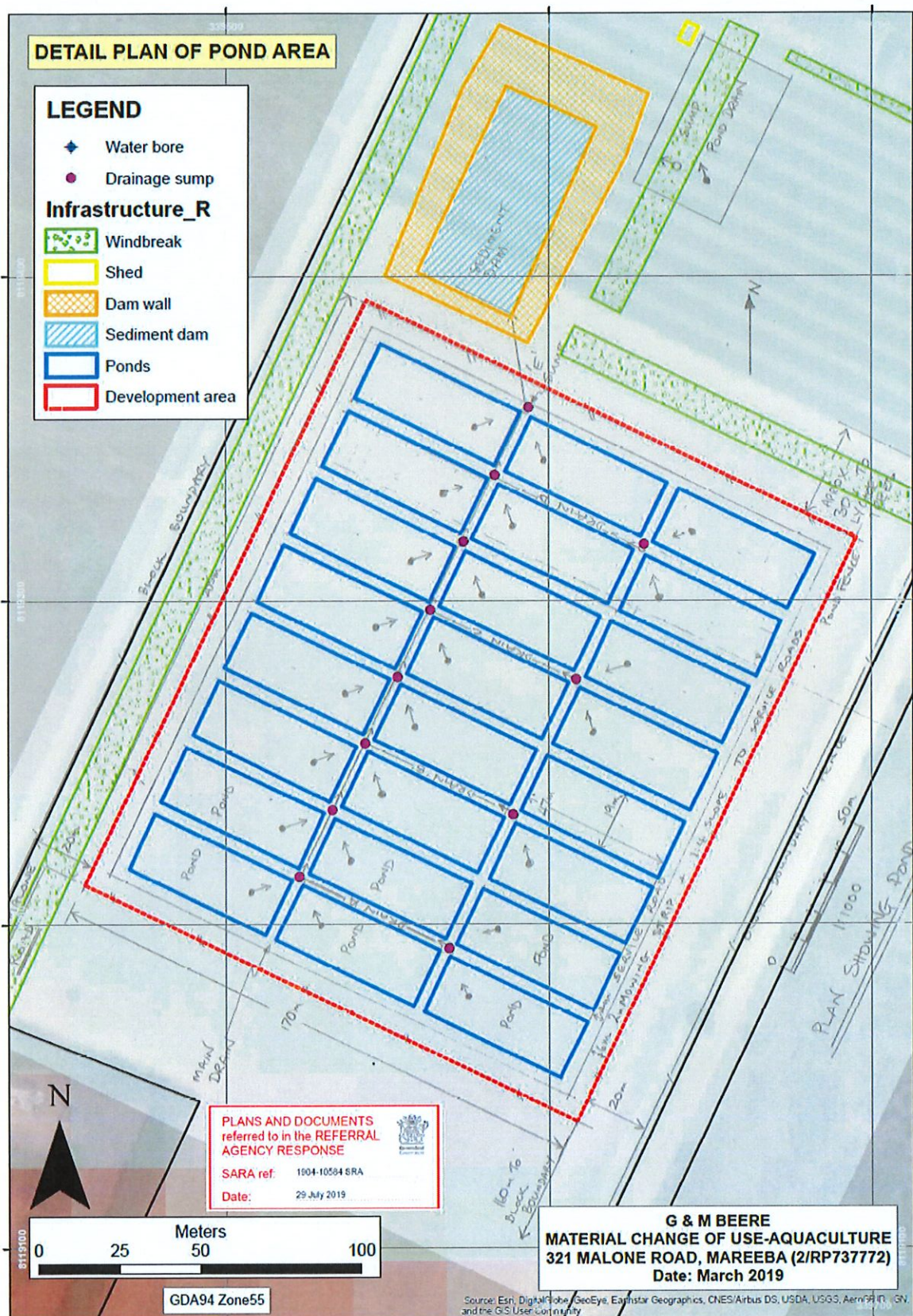
Attachment 3—Reasons for referral agency response*(Given under section 56(7) of the Planning Act 2016)***The reasons for the department's decision are:**

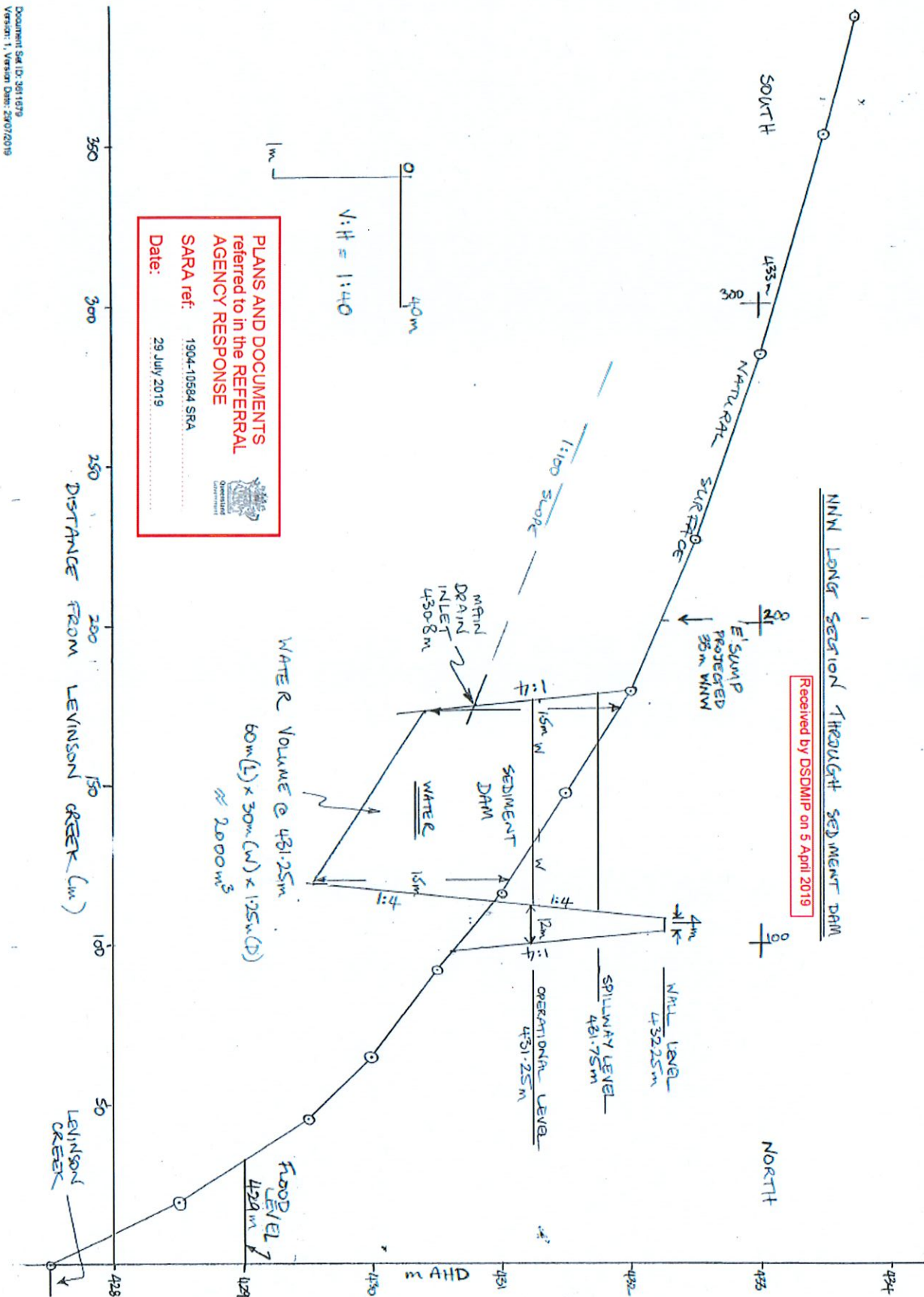
- The department carried out an assessment of the development application against the relevant state codes and with conditions the proposal complies with the relevant performance outcomes.
- The proposed development is located and designed to avoid and mitigate environmental harm on the environmental values of the natural environment.
- The proposed development appropriately carries out the use of fisheries and aquaculture fisheries resources.
- The proposed development meets standards in the prevention, control and eradication of disease in fish.
- The proposed development suitably contains aquaculture fisheries resources to prevent escape and release
- The proposed development meets the relevant standards for aquaculture.
- The proposed development does not impact on matters of state environmental significance.

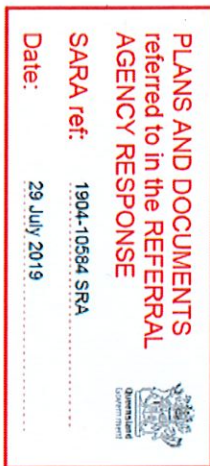
Material used in the assessment of the application:

- The development application material and submitted plans
- *Planning Act 2016*
- *Planning Regulation 2017*
- *The State Development Assessment Provisions (version [2.4])*, as published by the department
- *The Development Assessment Rules*
- SARA DA Mapping system
- State Planning Policy mapping system









Appeal Rights

PLANNING ACT 2016 & THE PLANNING REGULATION 2017

Chapter 6 Dispute resolution

Part 1 Appeal rights

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 of the *Planning Act 2016* 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.

(Refer to Schedule 1 of the Planning Act 2016)

- (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 has 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 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 the rules of the P&E Court.