



27 April 2022

L & R Smith
PO Box 2622
MAREEBA QLD 4880

Senior Planner: Brian Millard
Direct Phone: 4086 4657
Our Reference: OPW/22/0001

Dear Applicant's

Decision Notice

Planning Act 2016

I refer to your application and advise that on 27 April 2022 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:	OPW/22/0001
Street Address:	Macadamia Street, Arriga
Real Property Description:	Lot 115 on SP224659
Planning Scheme:	Mareeba Shire Council Planning Scheme 2016

DECISION DETAILS

Type of Decision:	Approval
Type of Approval:	Development Permit for Operational Works - Bulk Earthworks (Water Storage Dam)
Date of Decision:	27 April 2022

CURRENCY PERIOD OF APPROVAL

The currency period for this development approval is two (2) years starting 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*.)

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) General**

- (i) All operational works must be designed and constructed in accordance with the procedures as set out in the FNQROC Development Manual.
- (ii) 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, and 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 the requirements and procedures of the FNQROC Development Manual and good engineering practice; and
 - to ensure compliance with the following conditions of approval.
- (iii) Council's examination of the documents should not be taken to mean that the documents have been checked in detail and Council takes no responsibility for their accuracy. If during construction, inadequacies of the design are discovered, it is the responsibility of the Principal Consulting Engineer to resubmit amended plans to Council for approval and rectify works accordingly.
- (iv) Note, this approval is for a water storage dam only. The dam is NOT to be used for swimming. If it is to be used for swimming then a separate Development Permit will need to be obtained for building work.

- (b) Filling or excavation (excluding access roads and where necessary to repair and raise the existing spillway) is not permitted within 1.5 metres of any property boundary.

(c) Hours of Work

- (i) 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.
- (ii) No variation to the above working hours is allowed unless otherwise agreed in writing by Council.

(d) Transportation of Soil

- (i) 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 pavement from

works on the subject land, it must be removed no later than at the end of each working day. Sediment must not enter Council's stormwater drainage network.

(e) Dam Construction

- (i) Dam construction must be undertaken in accordance with design plan submitted with the application.
- (ii) Within three (3) months following the completion of construction of dam works, any disturbed areas are grassed to provide a coverage of at least 8m² in every 10m² to minimise the potential for erosion or dust.

REFERRAL AGENCIES

Not Applicable.

APPROVED PLANS

The following plans are Approved plans for the development:

Plan/Document Number	Plan/Document Title	Prepared by	Dated
-	Erosion Plan	-	-
-	Cross section of dam wall	Levi Smith	-
-	Position of dam on block, showing full view of spillway into the current existing drain along the roadside	Levi Smith	-
-	Diagram showing existing dam and the new proposed extension	Levi Smith	-

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) A number of other charges or payments may be payable as conditions of approval. The applicable fee is set out in Council's Fees & Charges Schedule for each respective financial year.
- (b) 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.

(c) 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.

(d) 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.

(e) 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.

FURTHER DEVELOPMENT PERMITS REQUIRED

Not Applicable.

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
Appeal Rights

Approved Plans/Documents

Levi Smith - Lot 115 Macadamia Street, Arriga

The proposed extension works to the dam will be constructed by digging the new section and leaving a wall between the new and old storage. Once the new dam has been prepared and rolled the wall between the two will be removed.

All work will be undertaken by a licensed professional operator.

Clay, (which our soil contains deeper under the surface) will be used to repair and raise the existing spillway. The new spillway will be lower and wider than the existing one, to ensure that once it is repaired no future erosion will occur.

Potential erosion to the new proposed spillway will be managed with the use of rocks.

A levy wall (mound) will be used to direct water from the new spillway to the front of the block utilising the natural lay of the land, and into the main drain between the property boundary and the road.

The dam will be fenced off from livestock and grass and native land cover planned to aid in the control of erosion.

21/4/2022
B. [Signature]

Cross section of dam wall

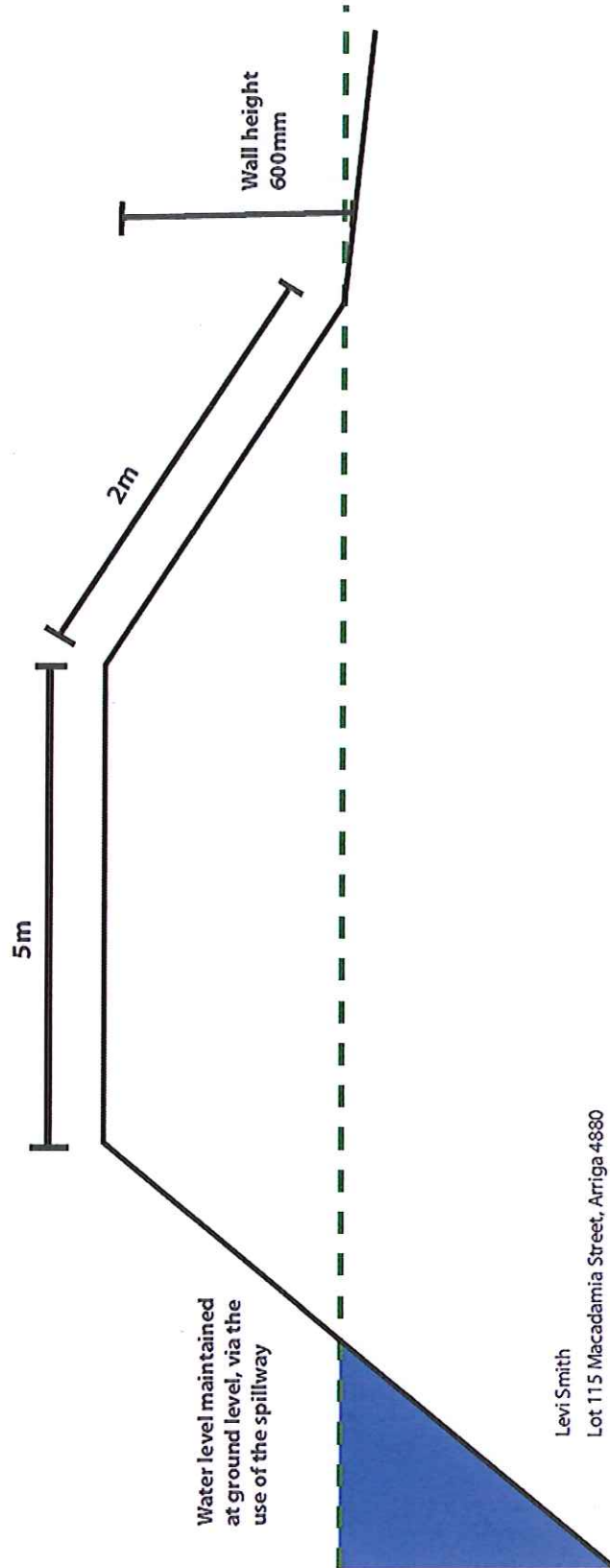


Diagram not drawn to scale

Levi Smith
Lot 115 Macadamia Street, Arriipa 4880
M: 0410 104 493
wdsaddlery@gmail.com

27/4/2022
B. n [Signature]

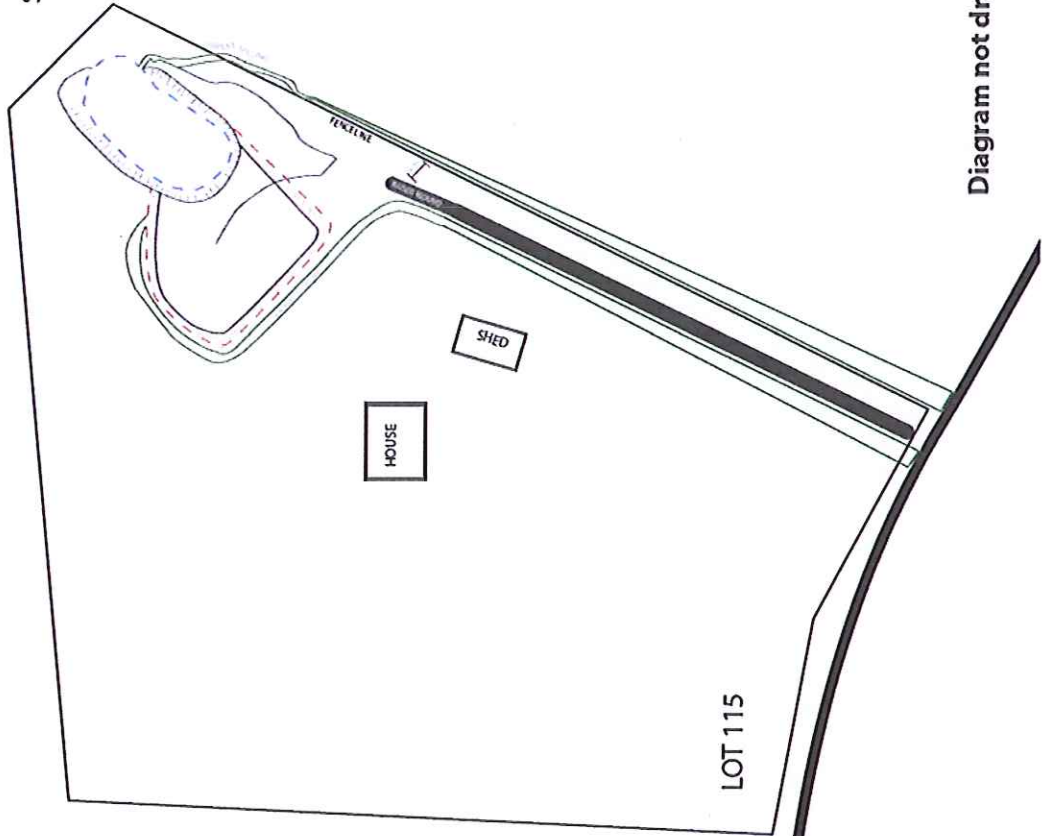


Diagram not drawn to scale

Position of dam on block, showing full view of spillway into the current existing drain along the roadside.

MACADAMIA STREET

Levi Smith
Lot 115 Macadamia Street, Arriga 4880
M: 0410 104 493
wdsaddlery@gmail.com

27/4/2022
[Handwritten Signature]

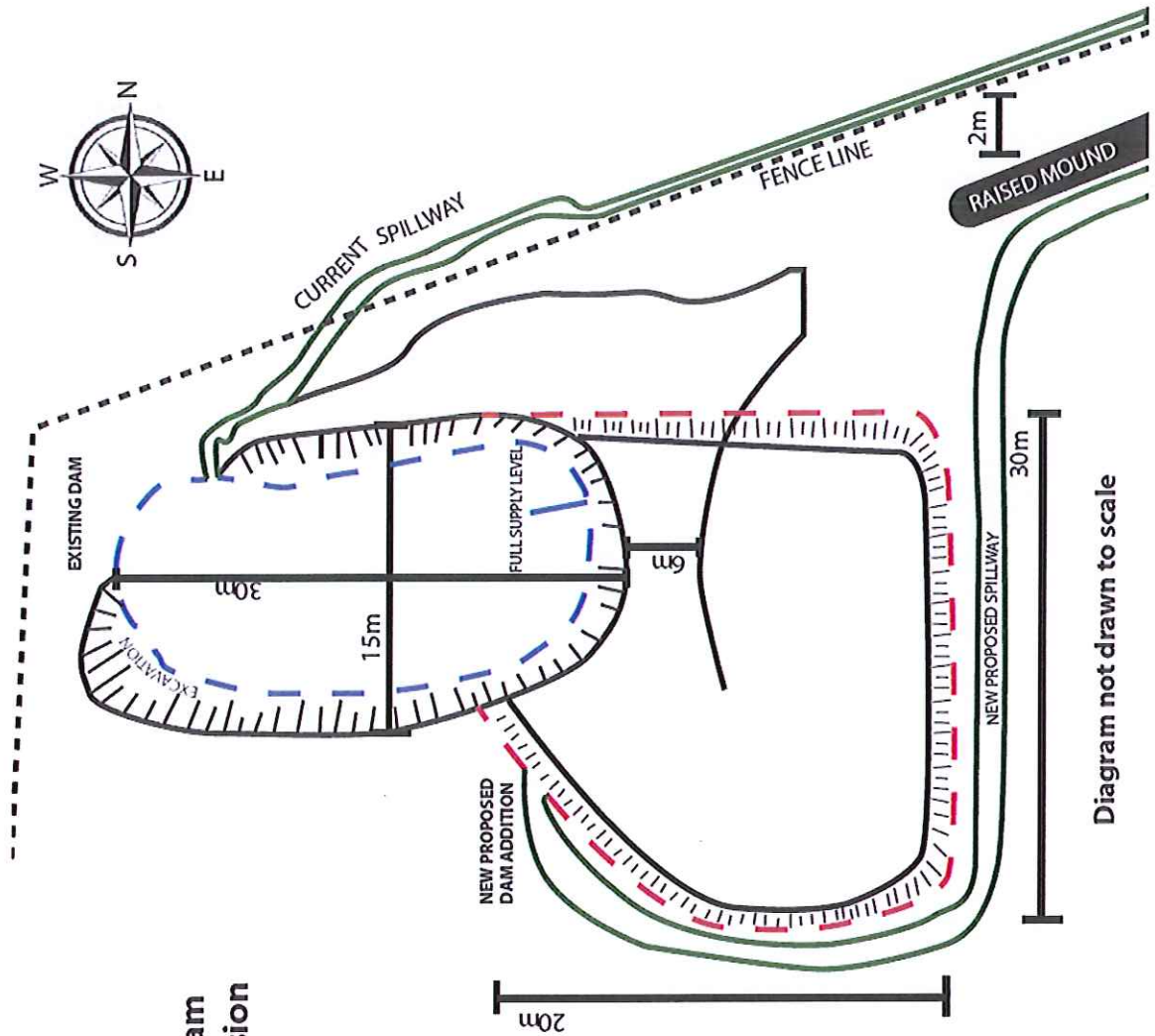


Diagram showing existing dam and the new proposed extension

EXISTING DAM

- Maximum water height is at ground level
- Depth 2.2 meters

Levi Smith
 Lot 115 Macadamia Street, Arriga 4880
 M: 0410 104 493
 wdssaddlery@gmail.com

21/4/2022
[Handwritten Signature]

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.