



**TWEED**  
SHIRE COUNCIL

**Mayor:** Cr K Milne

**Councillors:** P Allsop  
R Byrnes  
C Cherry (Deputy Mayor)  
R Cooper  
J Owen  
W Polglase

# Agenda

## **Planning Committee Meeting Thursday 11 May 2017**

held at Harvard Room, Tweed Heads Administration Building, Brett Street, Tweed Heads commencing at 5.00pm

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - SECT 79C

### 79C Evaluation

(1) Matters for consideration-general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

- (i) any environmental planning instrument, and
- (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
- (iii) any development control plan, and
- (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
- (v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979 ),

that apply to the land to which the development application relates,

- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.

**Note:** See section 75P (2) (a) for circumstances in which determination of development application to be generally consistent with approved concept plan for a project under Part 3A.

The consent authority is not required to take into consideration the likely impact of the development on biodiversity values if:

- (a) the development is to be carried out on biodiversity certified land (within the meaning of Part 7AA of the Threatened Species Conservation Act 1995 ), or
- (b) a biobanking statement has been issued in respect of the development under Part 7A of the Threatened Species Conservation Act 1995 .

(2) Compliance with non-discretionary development standards-development other than complying development If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:

- (a) is not entitled to take those standards into further consideration in determining the development application, and
- (b) must not refuse the application on the ground that the development does not comply with those standards, and
- (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards,

and the discretion of the consent authority under this section and section 80 is limited accordingly.

- (3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:
  - (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 80 is not limited as referred to in that subsection, and
  - (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

**Note:** The application of non-discretionary development standards to complying development is dealt with in section 85A (3) and (4).

- (4) Consent where an accreditation is in force A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the Building Code of Australia if the building product or system is accredited in respect of that requirement in accordance with the regulations.
- (5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).
- (6) Definitions In this section:
  - (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and
  - (b) "non-discretionary development standards" means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

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**Items for Consideration of Council:**

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<b>1</b>	<b>[PR-PC] Development Application DA03/0445.03 for an Amendment to Development Consent DA03/0445 for Use of an Existing Stock &amp; Domestic Water Bore for the Purpose of a Rural Industry Comprising the Harvesting &amp; Bottling of Mineral Water at Lot 1 DP 735658 No. 477 Urliup Road, Urliup</b>	<b>6</b>
<b>2</b>	<b>[PR-PC] Development Application DA15/0664 for Upgrading Works on Urliup Road associated with DA03/0445 at Road 5720 Urliup Road, Urliup</b>	<b>28</b>
<b>3</b>	<b>[PR-PC] Development Application DA17/0073 for Alterations and Additions to Existing Brewery at Lot 207 DP 1122768 No. 35-37 Kite Crescent, South Murwillumbah</b>	<b>75</b>
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<b>6</b>	<b>[PR-PC] Planning Proposal PP16/0004 The Palms Shopping Village, Dry Dock Road Tweed Heads South</b>	<b>134</b>
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## REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 1 [PR-PC] Development Application DA03/0445.03 for an Amendment to Development Consent DA03/0445 for Use of an Existing Stock & Domestic Water Bore for the Purpose of a Rural Industry Comprising the Harvesting & Bottling of Mineral Water at Lot 1 DP 735658 No. 477 Urliup Road, Urliup

SUBMITTED BY: Development Assessment and Compliance

Validms



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- |       |  |
|-------|--|
| 1     | Civic Leadership   |
| 1.2   | Improve decision making by engaging stakeholders and taking into account community input       |
| 1.2.1 | Council will be underpinned by good governance and transparency in its decision making process |

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### SUMMARY OF REPORT:

Council is in receipt of two applications that both relate to DA03/0445 which originally granted approval to a rural industry, comprising the harvesting & bottling of mineral water at 477 Urliup Road, Urliup.

The first and subject application is a Section 96 Modification to DA03/0445 with a reference number of DA03/0445.03 which seeks to change a condition of their consent which currently limits the applicant to the use of 6m trucks (for a maximum of 6 deliveries a day (i.e. 12 trips). The Modification seeks permission to use 19m trucks instead of the already allowed 6m trucks for the same number of trips per day (6 deliveries a day i.e. 12 trips).

The second application is a new Development Application with a reference number of DA15/0664 which seeks Council approval to undertake upgrading works (and tree clearing) to the road reserve of Urliup Road to accommodate the proposed 19m trucks for the water extraction business at 477 Urliup Road. The works proposed to Urliup Road have been based on trying to get the width required for a 12.5 single unit truck (for example a garbage truck) and a 19m articulated vehicle with a 0.6m separation for sections of road only where adequate stopping sight distance is not achievable. This has resulted in the applicant proposing work to 13 bends along Urliup Road stretching along approximately 4km (originally when first lodged works were only proposed to 3 bends, however in November 2016 the amended plans showed works to 13 bends). The works currently proposed by the applicant have been costed by the applicant to be in the order of approximately \$260,230. The application also proposes offsetting for any trees lost within road reserve, such offsetting would occur within the applicant's land at 477 Urliup Road, Urliup.

At the Planning Committee Meeting held on 2 March 2017 Council reviewed a report on the Status of these two applications and resolved that "a 79C Merit Assessment Report be

submitted to the Planning Committee meeting of 11 May 2017 based on the information currently before Council to enable Council to determine the application.” Accordingly this report is the 79C Merit Assessment Report for DA03/0445.03 based on the information currently before Council.

DA03/0445.03 seeks to modify Condition 3 of the consent to allow 19m trucks where the consent currently limits the operation of the business to utilising trucks that are no greater in length than 6m.

Whilst DA15/0664 has been lodged to undertake roadworks to improve the standard of Urliup Road to better accommodate larger trucks Councils assessment of DA15/0644 has indicated that the road works proposed are not to an adequate standard to safely support a 19m truck and accordingly DA15/0664 is recommended for refusal (see that item on the same business paper).

Accordingly as the recommendation is to refuse DA15/0664 Council cannot recommend approval of DA03/0445.03 as Urliup Road is not considered suitable to safely accommodate a 19m truck with the regularity proposed within DA03/0445.03.

In terms of other options for Council determination, it is noted that Council has previously resolved not to further defer this application to seek additional technical information, and the applicants have stated that are not prepared to submit any further information.

In respect of the option for Council to seek to approve this application, a confidential legal opinion has been provided by Council’s solicitors (Attachment 1 to this report), which provides guidance on the extent of risk that is posed by this action.

It should also be noted that Urliup Road was affected by the March 2017 Flood Event and the applicant for this application worked with Council to restore access to Urliup Road in a very timely manner after the event.

## **RECOMMENDATION:**

**That:**

- 1. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
  - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**
- 2. Development Application DA03/0445.03 for an amendment to Development Consent DA03/0445 for use of an existing stock & domestic water bore for the purpose of a rural industry comprising the harvesting & bottling of mineral water at Lot 1 DP 735658 No. 477 Urliup Road, Urliup be refused for the following reasons:**
  - 1. Urliup Road is not considered suitable to accommodate 19m trucks on the regularity proposed by DA03/0445.03.**
  - 2. The subject application is not considered in the public interest due to overall safety issues.**

**REPORT:**

**Applicant:** L Karlos  
**Owner:** Eniflat Pty Ltd  
**Location:** Lot 1 DP 735658; No. 477 Urliup Road, Urliup  
**Zoning:** RU2 Rural Landscape  
**Cost:** Nil Applicable to the S96 Application

**Background:**

Site Details

The Karlos property is described as Lot 1 DP 735658, No. 477 Urliup Road, Urliup. The land has an area of 14.41 hectares and has a frontage of approximately 110 metres to Urliup Road.

The land is relatively flat adjacent to Urliup Road, rising steeply to the south-east. An existing dwelling is sited on the lower portion of the site and is surrounded by ancillary buildings. Surrounding land uses comprise rural land holdings used primarily for cattle grazing and a small number of residences.



**Subject Site**

Urliup Road is located approximately 9km west of the Pacific Motorway at Tweed Heads. To get to Urliup Road a truck would generally travel west along Kennedy Drive, Golan Drive, Scenic Drive, Bilambil Road and then turn onto Urliup Road.

Urliup Road is a rural low volume road with varying seal widths, several creek crossings, tight radius curves and a 100km/h posted speed limit.

### DA History & Current Proposal

DA03/0445 has a lengthy history. The original application DA03/0445 was approved on 14 August 2003 which involved the use of an existing stock & domestic water bore for the purpose of a rural industry comprising the harvesting & bottling of mineral water.

As a part of the original approval the following information was received from the applicant in relation to the road use:

- The only vehicle involved in deliveries will be the Karlos' family Toyota Landcruiser. I required a two wheel trailer (approximate length 4m) will be attached to this vehicle.
- It is expected that deliveries will only occur on a basis of one to two times a week.
- Delivery times will be co-ordinated so as to not interfere with the school bus which services Urliup Road.

As such, the following conditions were placed within the consent:

3. *Delivery trucks are limited to six (6) metres in length, unless prior written approval is obtained from Council's Director - Development Services.* [GENNS02]
4. *Daily delivery movements are restricted to two (2) trips per day.* [GENNS03]

In September 2012 Council received complaints Council's that the applicant was not complying with the above conditions of consent.

Subsequently Council received S96 Modification (DA03/0445.02) on 25 November 2013 which sought to modify two conditions of consent to allow a delivery truck size of 14 metres, and a maximum of 12 trips per day (6 trips in and 6 trips out of the site).

The use of the articulated trucks on Urliup Road was of great concern as Urliup Road is restricted in its configuration. Subsequently that modification was originally recommended for refusal (5 February 2015 Planning Committee Meeting). However throughout the assessment of DA03/0445.02 the applicant amended their application to utilise a 6m truck as originally approved but to increase the number of trips per day from 2 to 10. This amended application was recommended for approval and was ultimately approved at the Council meeting held 19 March 2015 (for a 12 month trial period from 20 March 2015 to 20 March 2016).

S96 Modification DA03/0445.03 was originally lodged in August 2015 and originally sought to:

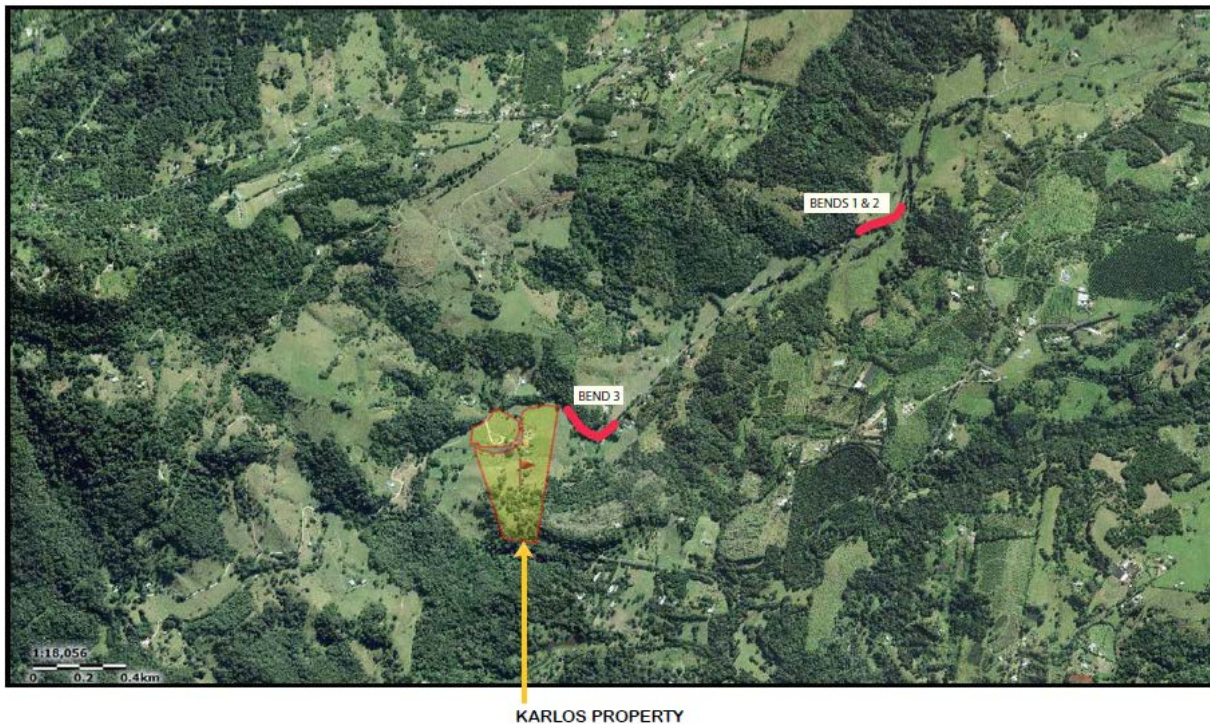
1. Enable delivery vehicles up to 14m in length to visit the site
2. Permit operations between 6am and 5.30pm even days a week
3. Permit a maximum of 6 deliveries per day (12 trips)



4. Delete the trial period as approved by DA03/0445.02

The S96 acknowledged that the increased truck size raises issue with respect to conditions on Urliup Road. To substantiate the additional truck size the applicant proposed that upgrading works to Urliup Road would be funded by the applicant.

DA15/0664 was initially lodged in August 2015 to accommodate the proposed 14m trucks and works for the 14m trucks only involved 3 bends with poor sight distance:



In November 2015 Council undertook a detailed assessment of the proposed works to the 3 bends being proposed to accommodate the 14m trucks and asked the applicant for detailed additional information in regard to Roads and Stormwater and Ecology.

As a result of this substantial request for information the applicant lodged S96 Modification DA03/0445.04 to address the matters out of DA03/0445.03 that did not relate to truck size as the applicant needed to get additional truck movements without the truck size matter holding up the other matters which were:

1. Permit operations between the times of 6am and 6pm seven days per week.
2. Permit a maximum of 6 deliveries (i.e. 12 trips) per day.
3. Delete the trial period restriction relating to the number of deliveries per day.

This application (DA03/0445.04) was approved at the Planning Committee Meeting of 2 June 2016. The report forms an attachment to this business paper for background purposes.

This left DA03/0445.03 and DA15/0664 undetermined and awaiting additional information from the applicant.

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The applicant officially responded to Council's request for information from November 2015 on 9 November 2016 with a comprehensive bundle of documents. This material detailed several changes.

**DA03/0445.03 now seeks consent to:**

1. Enable delivery vehicles up to 19m in length to visit the site

The applicant has justified his position and more specifically the change from a 14m truck to a 19m truck based on changes to the industry which the applicant has detailed as follows:

- "1. The history of the industry is such that, for some time now, 19 meter trucks have been the standard particularly in Victoria where a large amount of haulage is operated by Blackmount who don't run the 6 meter trucks as they are not financially viable. Blackmount have been contracted (after our application for 14 meter trucks) by our primary customer here on the coast and have since taken over haulage here on the coast for our main customer. The 14 meter application we made, before Blackmount took over, was to cater for the old haulage company which used 14 meter trucks. We have been told by our main customer and Blackmount that the 6 meter trucks are being kept on just so we can personally "stay financially alive" until we have approval for 19 meter trucks from the TSC. This 6 meter truck operating period has been given a deadline by our main customer, perspective customers and Blackmount of only a few more months. On this point, without approval for 19 meter trucks, our business will die. (refer Blackmount letter by Director Tim Carey attached).*

*Since we have been restricted to 6 meter trucks, we have suffered immensely financially. The massive pay cut in cents perlitre is half of what we would be paid using the 19 meter trucks. Combine this with council restrictions of being able to offload a maximum amount of less than half of what we are lawfully allowed to extract by the NSW office of water and around 100k in bills for various reports and other requests from council which have taken over a year to put together and we are seriously looking at financial ruin without 19 meter truck approval. I don't think I can make that point clear enough. I have been personally needing to go and do labouring at my age with an old family friend Robert Dawes just to be able to pay household bills and afford groceries. These 6 meter trucks have drastically slashed our family's income at a time we have been required to put together the material and reports which have sent overheads with no return through the roof.*

*All this has also made our financial contribution to the Aboriginal community suffer as well (refer Waddi springsattachment) We are the only source of water to Waddi Springs. Something we have been doing for many years.*

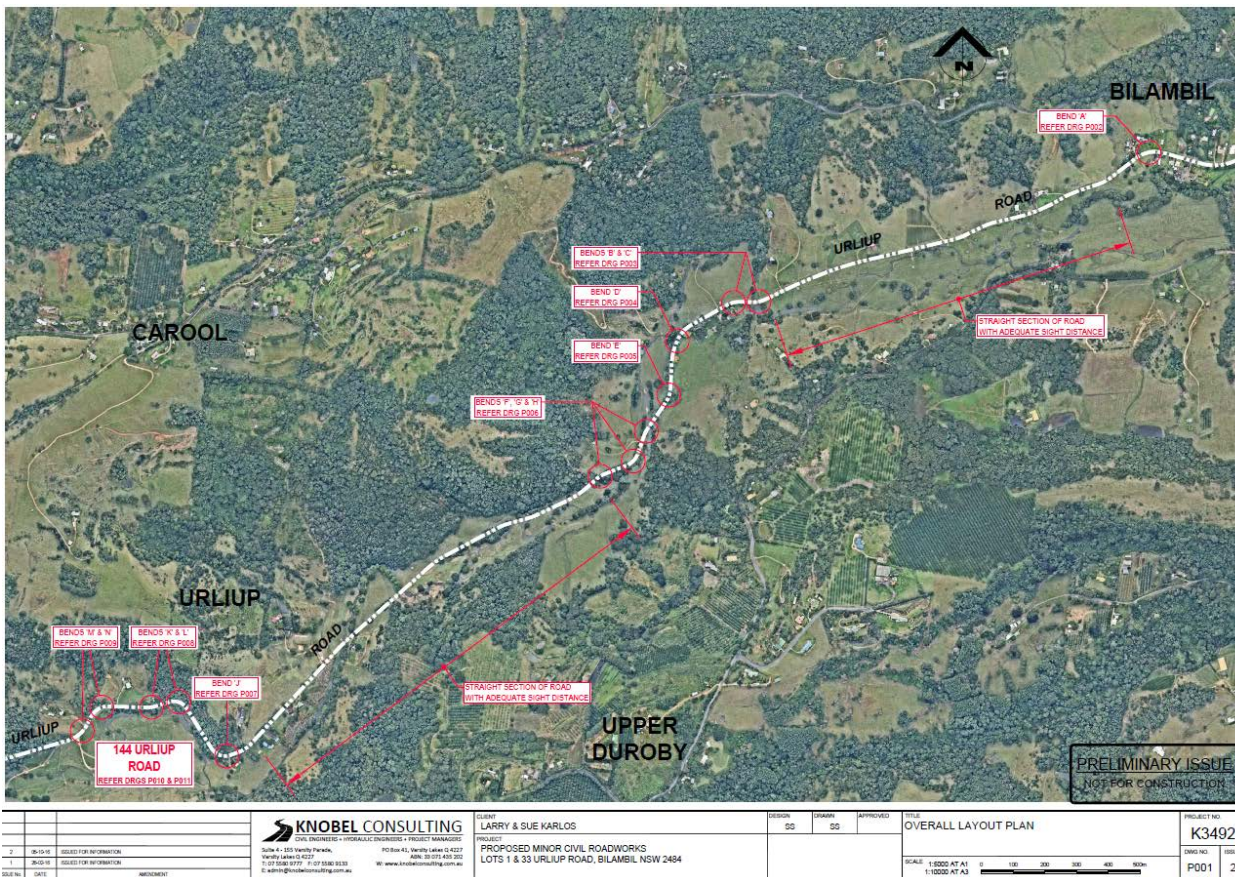
2. *We are a good environmentally friendly, hard working family business in the Tweed Shire who have in good faith, spent close to 100k and over a year in time to go above and beyond what the TSC has asked of us (with reference to material attached to B&P surveys app on our behalf) among other works. My son resigned his full time career as an airline captain and position training pilots for the airline he worked at for the past 8 years in Perth to return here just to make dealing with all this his full time job.*



- I would like to emphasise the fact that this application has nothing to do with increasing the capacity of what we are already entitled to under our commercial licenses issued by the NSW Office of Water.

19 meter vehicles will be a far more economically viable way of transporting our allocated 60ML/year as opposed to the current smaller truck options. It will also have a significantly reduced environmental impact in terms of reduced emissions compared to the number vehicle movements required with the current trucks, combined with the fact that the emissions generated per litre of water transported is significantly less with the 19 meter trucks. In summary, for us to transport our licensed allocation with the current vehicle size would require us to just over double the amount of current truck movements on the road. With the 19 meter truck option, we won't need any more truck movements to transport our allocated amount. This would require condition 3 to be amended to reflect a 19 meter truck. Please note that this S96 application should be considered in conjunction with DA15/0664 which proposes alterations to Urliup road to accommodate the proposed 19 meter trucks."

DA15/0664 now seeks to undertake works to 13 bends (not the original 3) along 4km of Urliup Road:



The engineering report states that the submitted plans demonstrating the extent of works have been based on the following parameters:



- 80kph generally adopted for sight distance analysis. Note that the existing road is sign posted as 'drive to suit conditions'.
- Design speeds were calculated for individual bends as required based on existing horizontal radii & super elevation and reference to AGRD-03 Fig. 7.6.
  - o Bend 'M' = 50 kph
  - o Bend 'N' = 60 kph
  - o Bend 'J' = 55 kph

Stopping sign distance (SD) analysis:

- Based on AGRD-03 Section 5.3 & Table 5.4.
- 110m SSD generally adopted to suite 80kph design speed. Reaction time in line with AGRD-03 Table 5.2.
- 50m SSD for Bend 'J' based on calculated operating speed of bend.

Safe intersection sight distance (SISD) analysis:

- Based on AGRD-Part 4A Section 3.2.2 & Table 3.2.
- Values are based on calculated operating speeds of adjacent bends.

Widening philosophy:

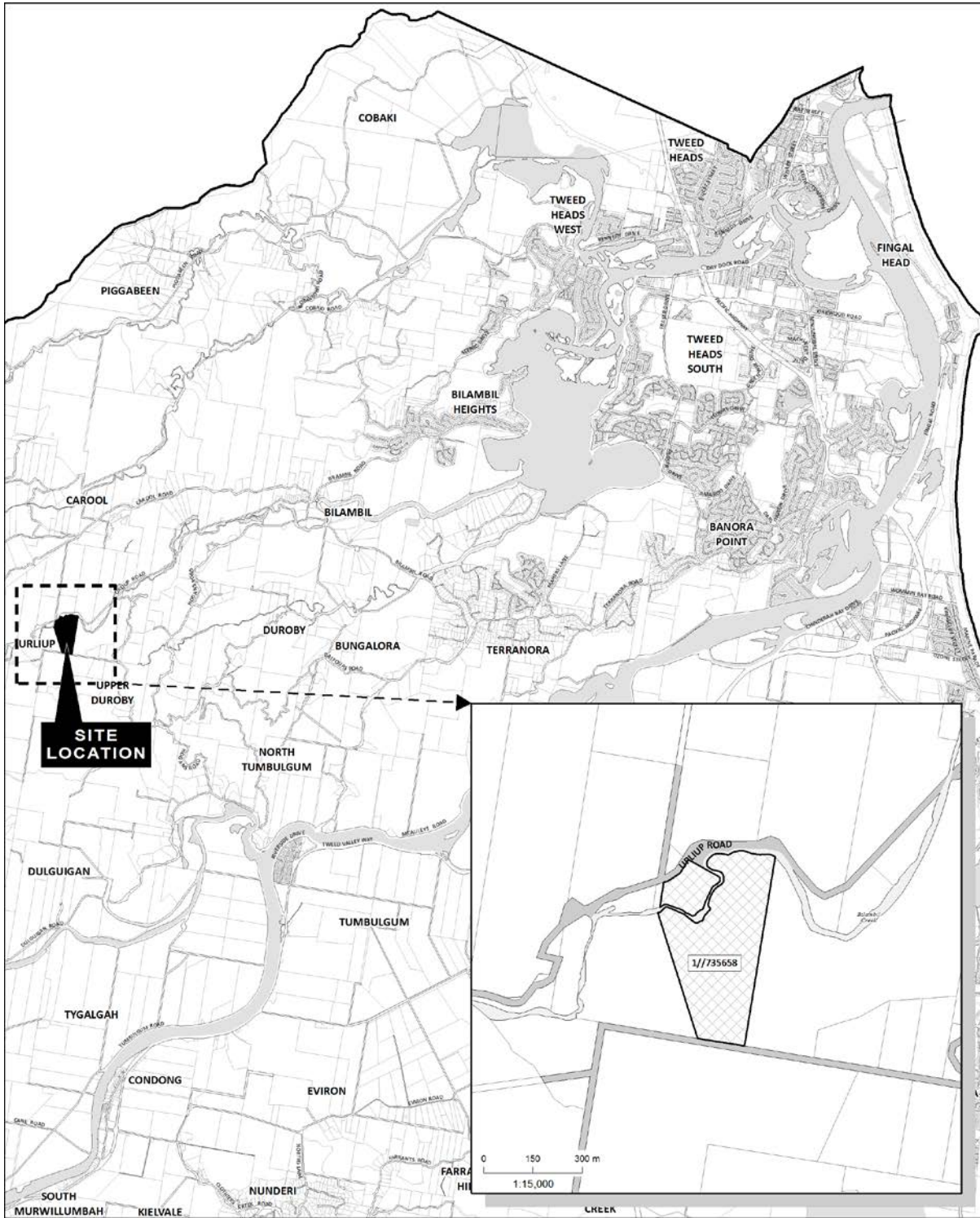
- The proposed road widening is based on the width required for safe passing of a 12.5m single unit truck & a 19.0m articulated vehicle with a 0.6m separation (for sections of road only where adequate SSD is not achievable).

Furthermore the engineering report acknowledges that the cut barriers on certain bends will result in the following batter slopes:

CUT BARRIERS AFFECTED		
BEND	EXISTING BATTER SLOPE (X IN Y)	PROPOSED BATTER SLOPE (X IN Y)
G	1 IN 1	1 IN 1
H	1.25 IN 1	1.25 IN 1
J	1 IN 1.6 TO 1.50 IN 1	1.25 IN 1
L	2 IN 1	2 IN 1
M	1 IN 2	1 IN 2
N	1.5 IN 1	1.5 IN 1

An amended Ecology Report was received for DA15/0664 on 2 April 2017.

**SITE DIAGRAM:**



**Locality Plan**  
 Lot 1 DP 735658  
 No. 477 Uarliup Road, Uarliup

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "dial before you dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of issue.</p> <p>Filepath: C:\GIS\PROJ\GIS\GARD\TEMP\PLT\2016\MAPS\2016Map_1000767467_01_NIR.mxd</p>	<p>Cadastre 09/12/2014                  © Land and Property Information (LPI) &amp; Tweed Shire Council.                  Boundaries shown should be considered approximate only.</p>	<p>0 1 2 Km                  1:75,000 @ A4 Portrait                  © 2015 SUEZ                  COPY ONLY - NOT CERTIFIED</p> <p>Map Projection: Universal Transverse Mercator                  Horizontal Datum: Geocentric Datum of Australia 1994                  Grid: Map Grid of Australia, Zone 56</p>	<p><b>Civic and Cultural Centre</b>                  3 Tumbulgum Road                  Murwillumbah NSW 2484</p> <p>PO Box 815                  Murwillumbah NSW 2484</p> <p>T   (02) 6670 2400   1300 292 872                  F   (02) 6670 2429                  W   www.tweed.nsw.gov.au                  E   planning@tweed.nsw.gov.au</p>
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## General Permissibility & Applicable Planning Legislation

DA03/0445 was approved under Tweed Local Environmental Plan 2000 (LEP 2000) as a rural industry. The land at that time was zoned 1(a) where the rural industry was permissible with development consent.

Tweed LEP 2014 has since been gazetted (April 2014) and is now the applicable planning instrument. This LEP has zoned the land RU2 - Rural Landscape in which rural industries are permitted with consent. Rural Industries however have changed in definition and do not include water extraction. A rural industry is now defined as follows:

***rural industry** means the handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes, and includes any of the following:*

- (a) *agricultural produce industries,*
- (b) *livestock processing industries,*
- (c) *composting facilities and works (including the production of mushroom substrate),*
- (d) *sawmill or log processing works,*
- (e) *stock and sale yards,*
- (f) *the regular servicing or repairing of plant or equipment used for the purposes of a rural enterprise.*

Council received a request from Mount Warning Springwater Company who sought to make permissible with consent on their land the expansion of their current water-bottling facility. Planning Proposal PP15/0004 was lodged and it was revealed that the scope of the planning proposal needed to expand beyond an individual site. Accordingly the scope of the planning proposal was consequently broadened and sought to revert the current LEP prohibition to the earlier condition under the former LEP 2000 by enabling this land-use with development consent. This was intended to apply to the RU1 Primary Production and RU2 Rural Landscape zones.

Following further consideration and debate the proposal's application was scaled back and a revised proposal for just RU2 land was referred to the NSW Department of Planning & Environment (DPE) for review.

Clause 7.15 was subsequently inserted into the Tweed LEP 2014 to specifically allow Water Bottling Facilities in Zone RU2 as follows:

### **7.15 Water bottling facilities in Zone RU2 Rural Landscape**

- (1) Despite any other provision of this Plan, development may be carried out with development consent for the purposes of a water bottling facility on land in Zone RU2 Landscape if the consent authority is satisfied that development will not have an adverse impact on natural water systems or the potential agricultural use of the land.
- (2) Despite any other provision of this Plan, development may be carried out with development consent for the construction of a pipe or similar structure on any land for the purposes of conveyancing groundwater to a water bottling facility.

(3) In this clause:

**Water bottling facility** means a building or place at which groundwater from land in Zone RU2 Rural Landscape is extracted, handled, treated, processed, stored or packed for commercial purposes.

However, despite this Clause Section 109B of the Environmental Planning & Assessment Act 1979 applies to the subject site and states that:

- (1) Nothing in an environmental planning instrument prohibits, or requires a further development consent to authorise, the carrying out of development in accordance with a consent that has been granted and is in force.
- (2) This section:
  - (a) applies to consents lawfully granted before or after the commencement of this Act, and
  - (b) does not prevent the lapsing, revocation or **modification**, in accordance with this Act, of a consent, and
  - (c) has effect despite anything to the contrary in section 107 or 109.
- (3) This section is taken to have commenced on the commencement of this Act.

So long as there is an existing development consent in force s109B of the EP&A Act authorises the carrying out of the development in accordance with that consent. The subject Section 96 Application would be amenable to modification in accordance with the Act under Section 96 by operation of section 109B(2)(b).

The Council (or Court on appeal) can only grant consent to the modification if certain matters are met, the main matter being satisfaction under s96(1A)(b) that:

*it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)*

The relevant satisfaction required by s96(1A)(b) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. That is, *Council must be satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted.*

The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.

The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative

exercise is undertaken in isolation. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).

The following assessment undertakes this test and further discusses whether the proposal meets the others test of S96 (minimal environmental impact) and concludes that whilst the proposed Section 96 could be considered to result in a development which is considered to be "essentially or materially" the same as the (originally) approved development the development being proposed is not of minimal environmental impact and is therefore recommended for refusal.

## **CONSIDERATIONS UNDER SECTION 96 & 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

### Section 96 (Modification of consents-generally) 1A

#### **(1A) Modifications involving minimal environmental impact**

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and
- (c) it has notified the application in accordance with:
  - (i) the regulations, if the regulation so require, or
  - (ii) a development consent plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1), (2) and (5) do not apply to such a modification.

#### **“(1A) *Modifications involving minimal environmental impact***

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

- (a) *it is satisfied that the proposed modification is of minimal environmental impact, and*

Environmental impact should consider both the natural and built environments and social and economic impacts in the locality.

The proposed development to utilise 19m trucks instead of 6m trucks will present a safety issue on the public roadway which other people utilise.

At the present moment a 6m truck traverses Urliup Road 6 times a day, fills up with water and leaves the site via Urliup Road.

The proposal seeks to keep the same level of intensity but increase the size of the truck from a 6m truck to a 19m truck.

Council's Traffic Engineer has also reviewed the application and stated that:

*Urliup Road is a rural, low volume road with varying seal widths, limited road shoulders, several creek crossings, tight curves and a 100km/h posted speed limit. However, it is considered that actual speeds of vehicles utilising the road would be significantly lower than the posted limit due to the road's limitations.*

*The question is whether Urliup Road is safe for a 19m truck to traverse the road on a regular basis. Generally, rural roads are constructed to such a standard (pavement) to enable the occasional use that would arise from the expected activities on rural properties. Whilst no assessment has been undertaken of the road pavement, the proposed vehicle is not oversize or overmass and there are no weight restrictions in place.*

*It should be noted that a warning sign has been in place for some time near the Bilambil Road intersection advising that "This road is not suitable for heavy vehicles". The sign would be a result of the limited sight distances that are place along the road and the narrow pavement which limits safe passing opportunities.*

*A review of the crash data (July 2011 to June 2016) on Urliup Road between Bilambil Road and number 477 indicates that there have been two reported crashes, one a minor tow-away and one a crash that led to an injury. Both crashes were single vehicle and the crash type was loss of control on a bend.*

*Traffic counts were carried out for a week in 2013 at both ends of Urliup Road. The count near Bilambil Road indicated an average of 273 vehicles per day (vpd) and the count off Dulguigan Road indicated 324 vpd. Heavy Vehicles, those considered in Class 3 and above, are just over seven vpd on average (2.7% of total vehicles) at the Bilambil Road end and an average of 20 vpd (6.2% of total) at the Dulguigan Road end. Longer heavy vehicles (11.5m to 19.0m), are a smaller percentage at 0.1% at Bilambil end and 0.2% at the Dulguigan end of Urliup Road.*

*There has been significant communication, over an extended period, with the applicant and their consultants on the suitability of Urliup Road to cater for larger vehicles to cart water from the site which is nearly 5kms from Bilambil Village.*

*It is generally agreed that sight distance limitations caused by tight radius curves and vertical adjacent embankments, which necessitate larger vehicles to intrude into oncoming traffic's path of travel, needs to be addressed to allow motorists to avoid collisions. The quotes below from documents submitted by the applicant indicate concurrence with the above.*

**Statement of Environmental Effects, B & P Surveys dated 9/11/2016 Pg 7:**

*“However, after a detailed engineering and ecological investigation of the subject road (Urliup Road) and the proposed works; it has become evident that vehicles up to 19m in length can safely utilise the upgraded roadway and service the proponents growing lawful business.”*

**Jim Glazebrook & Associates Pty Ltd, dated July 2015 Pg3:**

*“With respect to the size of delivery vehicle the previous Section 96 application (prior to its amendment) had proposed a truck length of 16 metres but that has now been reduced to 14 metres. It was previously agreed with Council that to accommodate the larger truck size some upgrading works (primarily for sight distance improvement) would need to be undertaken on Urliup Road. The applicant has previously agreed to fund that work.”*

*Without completion of works identified by the applicant to upgrade the curves and embankments it would difficult to recommend approval of the application. The associated risks of a 19m truck regularly (12 times a day) using Urliup Road poses a crash risks to other road users. The level of the risk is difficult to determine as this would be a function of traffic volumes and road user behaviour. The traffic volumes are very low and to some extent road user behaviour can be managed by signage. However, given that the applicant has identified that the road requires upgrading to cater for the larger vehicle use; support for the s96 in its current form cannot be provided.*

**Pilot Vehicle**

*The Applicant has verbally put forward that they would accept a condition of consent to have the 19m delivery vehicles escorted by a Pilot Vehicle.*

*Pilot vehicles are controlled by the requirements under the Heavy vehicle National Law, the Oversize and Overmass Escort Vehicle Driver Scheme. Roads and Maritime Services (RMS) provide Business Rules for Accredited Providers and Authorised Escort Vehicle Drivers.*

*A pilot vehicle is a vehicle that accompanies an oversize vehicle to warn other road users of the oversize vehicle's presence. An escort vehicle (which requires accreditation) is a pilot vehicle driven by a police officer or another person authorised to direct traffic under Australian road law. The Pilot vehicle operator cannot direct traffic or other road users.*

*The RMS has advised that the minimum requirements for a Pilot Vehicle could include:*

### *3.1 Pilot vehicle requirements*

*(Part 5, Schedule 2 Road Transport (Mass, Loading and Access) Regulation 2005)*

*3.1.1 A pilot vehicle must have 4 or more wheels and a GVM of:*

- (a) 6.5 tonnes or less in the case of a rear pilot vehicle if two pilot vehicles are required, or*
- (b) 4.5 tonnes or less in any other case.*

*3.1.2 A pilot vehicle must have a warning sign on its roof.*

*3.1.3 A pilot vehicle must only have a warning light attached:*

- (a) above or below the sign, or*
- (b) each side of the sign.*

### **School Bus**

*Verbal advice was received from the operator of the school bus service on Uriup Road, who was contacted by the Applicant and asked to pass on to Council, that he had no concerns with the proposed use of the 19m truck subject to it not using the road between the hours of 7:45 am- 8:15am and 3:45pm – 4:15pm school days. Should Council require conditions of consent to approve the application then a suitable condition in relation to restricted operation during school bus hours should be included.*

### **Traffic Engineer Conclusion:**

*The applicant's consultants have advised that Uriup Road should be upgraded to cater for regular use by a 19m truck and as road upgrades are not to be considered in this s96 application, the application to increase the length of the service trucks to 19 metres is not supported.*

*If the Council wanted to approve the application the following traffic conditions could be imposed:*

- 1. The use of any heavy vehicle larger than 6m on Uriup Road shall be outside the hours of 7:45 am- 8:15am and 3:45pm – 4:15pm school days.*



2. *The use of a vehicle larger than 6m on Urliup Road must be accompanied by a Pilot Vehicle and its use must comply with the Roads and Maritime Services requirements in relation to attached signage and lights. Additionally, a log book is to be maintained and presented on request to Council officers. The Log book is to contain the following data:*
  - *Date and time of arrival at destination of each truck movement on Urliup Road.*
  - *Brief details of any incident or accident during the movement.*
  - *Details of accompanying pilot vehicle including driver details and vehicle registration.*
  
3. *Warning signage erected and approved by Council, in relation to expected heavy vehicle movements, are to be installed on Urliup Road between Bilambil Road and the driveway at number 477 and the associated costs borne by the applicant."*

In regard to the physical impact on the land it should be noted that the NSW Office of Water Licenses for the site results in an allowable 55,000,000 litres per year or 1,057,692 litres per week. There are no issues with the water extraction portion of the operation as the license will not be amended as a result of the increase in truck size. There are no other physical changes to the development site proposed.

For the reasons discussed above the proposed changes to the size of the trucks is not considered to represent minimal environmental impact and therefore **cannot be supported.**

### **Additional Traffic Engineering Comment on Road Capacity Impact**

Road pavements are susceptible to increased loading from vehicles. This is not a linear relationship – larger vehicles do exponentially more damage than smaller vehicles. This information is important when designing road pavements for repairs and upgrades. While the proposal does not increase the number of trips on Urliup Road (average 273 vehicles per day in 2013), it does increase the loading on the pavement as the proposed 19m trucks have a significantly larger payload than the approved 6m trucks. No pavement testing has been undertaken by Council or the developer's consultants, so the true impacts of the 19m trucks in terms of reducing pavement life can be estimated. However on a preliminary assessment the impacts in terms of increased equivalent standard axles (ESAs) on Urliup Road are likely to be significant. Based on traffic volumes and vehicle classes recorded in 2013, the Bilambil end of Urliup Road is subject to  $5.4 \times 10^4$  ESAs. With the introduction of 19m trucks, the ESAs could increase to  $1.5 \times 10^5$  ESAs (178%). It is likely that this will reduce pavement life on Urliup Road, but the degree of accelerated wear cannot be determined without pavement testing.

- (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

This test requires a comparison between the development, as originally approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the approved development.

The comparative task does not merely involve a comparison of the physical features or components of the development as approved and modified where that comparative exercise is undertaken in isolation. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).

The proposed development could be considered to be substantially the same development. The use will not change as a result of this application. The original application was approved as a Rural Industry and the development will continue to operate in the same manner just with larger trucks.

However, the larger trucks as proposed by DA03/0445.03 would result in trucks and existing road users being placed in an unsafe situation which is not supported as detailed above.

- (c) *it has notified the application in accordance with:*
- (i) *the regulations, if the regulations so require, or*
  - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

*Subsections (1), (2) and (5) do not apply to such a modification.*

The subject applications (DA03/0445.03 and DA15/0664) have generated a great deal of public interest. The first round of public notification attracted 25 objection letters, while the second round of public notification attracted 65 objection letters and 34 letters of support.

The letters of objection focus on matters such as:

- Road safety (crash history)
- Road suitability (e.g. heavy vehicles across causeways that are not strong enough)
- Road conflict issues between people walking/cycling, horse riding and driving
- The loss of trees in such a visually attractive rural landscape
- The impact on flora and fauna

- Generally opposed to water extraction
- Additional damage to road shoulders
- No submitted traffic assessment
- The applicants history of noncompliance (speeding truck drivers, out of hours, larger truck sizes)
- The general area of the amenity will be compromised
- The current 6m truck is too big for safe travel
- The weekends should at least be truck free
- Bigger trucks will be noisier
- The application does not meet the S96 test, should be a new DA

Many of these objections are concurred with and accordingly the application is recommended for refusal. A copy all the objections can be provided to the Councillors upon request.

The letters of support were noted however they do not change the safety concerns expressed in this report.

- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.*
- (4) *The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.”*

#### Section 79C(1) (Evaluation)

- (1) *Matters for consideration-general in determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:*
- (a) *the provisions of:*
- (i) *any environmental planning instrument, and*
  - (ii) *any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and*
  - (iii) *any development control plan, and*
  - (iiia) *any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*

- (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*

Comment:

**Tweed Local Environmental Plan 2014**

Clause 1.2 – Aims of the Plan

The aims of this plan as set out under Section 1.2 of this plan are as follows:

- (1) *This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.*
- (2) *The particular aims of this Plan are as follows:*
- (a) *to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,*
  - (b) *to encourage a sustainable, local economy, small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed Shire,*
  - (c) *to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, the built environment, and cultural heritage,*
  - (d) *to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,*
  - (e) *to promote building design which considers food security, water conservation, energy efficiency and waste reduction,*
  - (f) *to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,*
  - (g) *to conserve or enhance the biological diversity, scenic quality, geological and ecological integrity of the Tweed,*
  - (h) *to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,*
  - (i) *to conserve or enhance areas of defined high ecological value,*

- (j) *to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.*

The proposed amendment of the approved rural industry by increasing the size of the trucks used in the operation is not an opportunity to revisit the entire application but rather only consider the amendment being sought. Given the application before Council does not seek to extract additional material rather just increase the truck size, it is considered that this portion of the development is consistent with the aims of the Plan.

It is therefore considered that the proposed development is consistent with the aims of the Tweed LEP 2014.

### Clause 2.3 – Zone objectives and Land use table

The RU2 Rural Landscape zone objectives are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To provide for a range of tourist and visitor accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is linked to an environmental, agricultural or rural industry use of the land.*

Water Bottling Facilities are now permissible with consent in the zone, however the site benefits from Section 109B of the Environmental Planning & Assessment Act 1979 and states that:

- (1) *Nothing in an environmental planning instrument prohibits, or requires a further development consent to authorise, the carrying out of development in accordance with a consent that has been granted and is in force.*
- (2) *This section:*
  - (a) *applies to consents lawfully granted before or after the commencement of this Act, and*
  - (b) *does not prevent the lapsing, revocation or modification, in accordance with this Act, of a consent, and*
  - (c) *has effect despite anything to the contrary in section 107 or 109.*
- (3) *This section is taken to have commenced on the commencement of this Act.*

So long as there is an existing development consent in force s109B of the EP&A Act authorises the carrying out of the development in accordance with that consent. The subject Section 96 Application would be amenable to modification in accordance with Act under Section 96 by operation of section 109B(2)(b) as discussed earlier.

### Clause 7.1 - Acid sulfate soils

The subject site is mapped as a Class 5 Acid Sulfate Soils area.

The proposed S96 Application does not seek approval for any additional works that would be within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

Clause 7.1 is considered satisfied.

### **Tweed Development Control Plan**

#### A2-Site Access and Parking Code

As discussed earlier in this report the proposed development was referred to Council's Traffic Engineer in relation to the impact on traffic and it was concluded that without completion of works identified by the applicant to upgrade the curves and embankments to Council's satisfaction it would difficult to recommend approval of the application. The associated risks of a 19m truck regularly (12 times a day) using Uriup Road poses a crash risks to other road users. The level of the risk is difficult to determine as this would be a function of traffic volumes and road user behaviour. The traffic volumes are very low and to some extent road user behaviour can be managed by signage. However, given that the applicant has identified that the road requires upgrading to cater for the larger vehicle use; support for the S96 in its current form cannot be provided.

#### A11-Public Notification of Development Proposals

The proposed S96 application was advertised in accordance with this section of the Development Control Plan. Submissions have been received and considered in relation to the proposed amendment. These submissions are addressed in this report.

### **State Environmental Planning Policies**

There are no State Environmental Planning Policies which specifically apply to the subject proposal.

### **Minimal Environmental Impact**

The above 79C Assessment demonstrated that the proposed modification results in a negative environmental impact due to public safety issues and is therefore recommended for refusal.

### **Substantially the Same Development**

The proposed development could be considered as being substantially the same development in this instance, however, the proposal fails the other tests of minimal environmental impact and is therefore recommended for refusal.

**OPTIONS:**

1. Refuse the Application as recommended; or
2. Defer the application to provide additional time for the applicant to submit more detailed technical information in respect of Council's current concerns; or
3. Give in-principle approval to the application, and the officers bring back a report to the June Planning Committee Meeting providing recommended modified conditions of approval.

Option 1 is recommended.

In terms of Option 2, it is noted that Council has previously resolved not to further defer this application to seek additional technical information, and the applicants have stated that are not prepared to submit any further information.

In respect of Option 3, a confidential legal opinion has been provided by Council's solicitors (Attachment 1 to this report), which provides guidance on the extent of risk that is posed by this action.

**CONCLUSION:**

The subject application seeks the amendment of an existing approved rural industry. The proposed amendment involves increasing the size of the allowable trucks from a 6m truck to a 19m truck. It is considered that the proposed amendment to the original consent is not minor in nature and should not be supported in this instance. The above assessment is considered to demonstrate that the proposal cannot result in a safe outcome for all road users and is therefore recommended for refusal.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

Yes, legal advice has been attached.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

(Confidential) Attachment 1. Legal advice provided by Maddocks Solicitors dated 15 April 2017 (ECM 4496071)

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2 [PR-PC] Development Application DA15/0664 for Upgrading Works on Urliup Road associated with DA03/0445 at Road 5720 Urliup Road, Urliup

SUBMITTED BY: Development Assessment and Compliance

Validms



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
  - 1.2 Improve decision making by engaging stakeholders and taking into account community input
  - 1.2.1 Council will be underpinned by good governance and transparency in its decision making process
- 

### SUMMARY OF REPORT:

Council is in receipt of two applications that both relate to DA03/0445 which originally granted approval to a rural industry, comprising the harvesting & bottling of mineral water at 477 Urliup Road, Urliup.

The first is a Section 96 Modification to DA03/0445 with a reference number of DA03/0445.03 which seeks to change a condition of their consent which currently limits the applicant to the use of 6m trucks (for a maximum of 6 deliveries a day (i.e. 12 trips). The Modification seeks permission to use 19m trucks instead of the already allowed 6m trucks for the same number of trips per day (6 deliveries a day i.e. 12 trips). A report on this application is provided as a separate item on this Business Paper agenda.

The second and **subject application** is a new Development Application with a reference number of DA15/0664 which seeks Council approval to undertake upgrading works (and tree clearing) to the road reserve of Urliup Road to accommodate the proposed 19m trucks for the water extraction business at 477 Urliup Road. The works proposed to Urliup Road have been based on trying to get the width required for a 12.5m single unit truck (for example a garbage truck) and a 19m articulated vehicle with a 0.6m separation for sections of road only where adequate stopping sight distance is not achievable. This has resulted in the applicant proposing work to 13 bends along Urliup Road stretching along approximately 4km (originally when first lodged works were only proposed to 3 bends, however in November 2016 the amended plans showed works to 13 bends). The works currently proposed by the applicant have been costed by the applicant to be in the order of approximately \$260,230. The application also proposes offsetting for any trees lost within road reserve, such offsetting would occur within the applicant's land at 477 Urliup Road, Urliup.

At the Planning Committee Meeting held on 2 March 2017 Council reviewed a report on the Status of these two applications and resolved that "a 79C Merit Assessment Report be submitted to the Planning Committee meeting of 11 May 2017 based on the information currently before Council to enable Council to determine the application." Accordingly this



report is the 79C Merit Assessment Report for DA15/0664 based on the information currently before Council.

The following report will detail that both applications have had an extensive development history in which the applicant has been asked for substantial amounts of information in order for Council Officer's to make a proper assessment of the impacts of the development being requested.

It is acknowledged that Uriup Road is a low-volume rural road, which does not comply with Council's contemporary rural road standard (Development Design Specification D1 – Road Design) in the subject area. It is not feasible (or arguably reasonable) for the proposed upgrade works to retrofit the road to this standard to achieve full seal widths, shoulder widths and clear zone widths to accommodate the proposed trucks dimensions from the water extraction development.

The upgrade standard to be adopted for the purpose of any approval issued for the subject Application would need to be a compromise of Council's contemporary rural standards, and would carry with it liability risks. However, given the age of the current road infrastructure, the significant slope, alignment and ecological constraints along the road corridor, the low volumes of traffic pre and post development, and the benefits that other landholders can receive by virtue of the developer's works, this approach is considered reasonable.

However, in determining the necessary standard for the upgrade works, it is appropriate to ensure that adequate design, certification, risk assessment and mitigation is undertaken by the developer to protect the public interest, and accordingly as the applicant did not want to provide any further information to address these matters Council resolved to determine the application as currently submitted by the applicant.

Therefore the application as currently lodged does not demonstrate appropriate batter slopes, pavement designs, road widening at particular bends and does not outline what effect such extra works would have on ecology.

The applicant is of the opinion that they have more than satisfied their obligations given that they are proposing to upgrade Council's infrastructure at their own personal expense. The applicant has indicated that any further additional information or work being requested should now be provided by Tweed Shire Council.

The applicant has made the following additional statements:

- *"If a rural road is not up to the standard for serving its rural business, then the answer is to fix the problem, not let the problem dictate that the business' on that road must suffer"*
- *"One solution may be to allow the business to operate 24/7, this would also place trucks on the road at night which is a much safer time and equalling less movements required by day (if any in some cases where most or all daily movements can be accomplished at night) Our business (as per my understanding) is currently restricted by operating hours reflecting trade hours in residential areas for noisy operations. Our business is in a rural area and our operation is 100% dead silent. If it is possible to add this to the DA when it goes up for vote as a condition, then I think it would be a positive outcome for all."*

- *"I understand that there are officers within the council who are seeing it fit to not recommend our proposed road works for approval based on us not giving a guarantee that all our works will hold up in a storm event. Our guarantee is simply that any works we carry out on the road will improve the current state of the road. This is the only fair guarantee that any sensible and reasonable person could ever give. Given the recent storm event that saw that the very council officers demanding a guarantee from us had their road absolutely destroyed and annihilated in the storm event of March 30/31, I use this event as a direct example and straight up evidence to support our case all along! No one in their right mind can give the guarantee that these few individual officers are demanding and this recent storm event proves that beyond doubt and has exposed these officers and the infrastructure for which they are responsible and now lays to complete waste with Urliup road being a NO THROUGH ROAD. The council officers are in no position to decline our proposal for recommendation of approval when their standard of work was absolutely destroyed. This would also form a key point of our case going to court which could not be denied (as it has happened quite spectacularly)."*

One of the factors for consideration in determining development applications involving significant works/costs is whether Council as the consent authority can legally link the works/costs with the development being proposed. Is there a nexus between the two factors? In this case does the proposal to increase from a 6m truck to a 19m truck (for the already approved 6 deliveries a day) justify the works being proposed/asked for by Council? As such, it should be noted that agricultural trucks such as dairy trucks or general rural trucks do not require separate development approval to use existing roads such as Urliup Road. Both the applicant and Council staff agree that some work needs to be done to Urliup Road to make it safe for a 19m truck and other road users however what is in dispute is the level of work being required and who should pay for these works. If Council's road work crew were doing the work or if a developer were doing the work for a new road in a new subdivision more detail and more design work would be required. However the applicant is arguing that the road is in such a poor state of repair that their proposed improvements are more than adequate to accommodate the development being proposed. The applicant is therefore asking Council to fund any additional difference beyond \$260,230 worth of road works required in Council's opinion to upgrade the road to Council satisfaction. It should be noted that Council officers have not costed the proposed works, however, the applicant's estimation may be understated.

One of the most difficult ecological issues to resolve on DA15/0664 is whether Bend L and K can be re-designed to retain two (2) threatened *Syzygium moorei* (Durobby) specimens listed under the *Threatened Species Conservation Act 1995* and *Environment Protection and Biodiversity Conservation Act 1999*. If these trees are to be retained through redesign additional works will likely also be required to Bend K. If the larger of these two trees cannot be retained the applicant would need to justify why a Species Impact Statement is not required given the limited local population.

The subject application was publically notified on multiple occasions and attracted a great deal of public interest. The first round of public notification attracted 25 objection letters, while the second round of public notification attracted 61 objection letters and 34 letters of support. The nature of the objections primarily focuses on road safety issues and concern that the road is not suitable to accommodate 19m trucks. There are also many submissions indicating that they oppose water extraction and that they do not believe water extraction to

be environmentally sustainable. It should be noted that whilst this application relates to trucking of extracted water the approvals being sought are not for the extraction of water itself as all the necessary approvals for water extraction are already in place. The applications currently before Council relate to the truck size associated with DA03/0445 and whether Urliup Road is at or can be upgraded to an acceptable level to cater for 19m trucks.

As the applicant has not provided the additional engineering information in regard to batter slopes, pavement designs, road widening at particular bends and the impact this all has on ecology Council Officers have recommended the subject application be refused as the works being proposed are below Council Standards and the road works being proposed cannot guarantee a safe route for the 19m trucks and other vehicle users. Furthermore, the works necessary to satisfy Council from an engineering perspective would likely have substantial impacts on flora and fauna.

In terms of other options for Council determination, it is noted that Council has previously resolved not to further defer this application to seek additional technical information, and the applicants have stated that are not prepared to submit any further information.

In respect of the option for Council to seek to approve this application, a confidential legal opinion has been provided by Council's solicitors (Attachment 1 to this report), which provides guidance on the extent of risk that is posed by this action.

It should also be noted that Urliup Road was affected by the March 2017 Flood Event and the applicant for this application worked with Council to restore access to Urliup Road in a very timely manner after the event.

## **RECOMMENDATION:**

**That:**

- 1. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
  - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**
  
- 2. Development Application DA15/0664 for upgrading works on Urliup Road associated with DA03/0445 at Road 5720 Urliup Road, Urliup be refused for the following reasons:**
  - 1. The works proposed by DA15/0664 are not to an engineering standard that is considered suitable to accommodate 19m trucks as proposed by the regularity in DA03/0445.03.**
  
  - 2. The development as proposed does not satisfy Tweed LEP 2014 Clause 7.10 (e) "Suitable Road Access".**
  
  - 3. The development poses an unacceptable direct, indirect and cumulative impact on significant local ecological values including threatened species, their habitats and Endangered and Threatened Ecological Communities listed under the *Threatened Species Conservation Act 1995* and/or**

***Environment Protection and Biodiversity Conservation Act 1999* and as such fails to satisfy Section 5A of the EP&A Act.**

- 4. The subject application is not considered in the public interest due to overall safety issues.**

**REPORT:**

**Applicant:** L Karlos  
**Owner:** Tweed Shire Council  
**Location:** Road 5720 Urliup Road, Urliup  
**Zoning:** RU2 Rural Landscape  
**Cost:** \$260,230 (however, total cost of works yet to be verified)

**Background:**

Site Details

The Karlos property is described as Lot 1 DP 735658, No. 477 Urliup Road, Urliup. The land has an area of 14.41 hectares and has a frontage of approximately 110 metres to Urliup Road.

The land is relatively flat adjacent to Urliup Road, rising steeply to the south-east. An existing dwelling is sited on the lower portion of the site and is surrounded by ancillary buildings. Surrounding land uses comprise rural land holdings used primarily for cattle grazing and a small number of residences.



**Subject Site**

Urliup Road is located approximately 9km west of the Pacific Motorway at Tweed Heads. To get to Urliup Road a truck would generally travel west along Kennedy Drive, Golan Drive, Scenic Drive, Bilambil Road and then turn onto Urliup Road.

Urliup Road is a rural low volume road with varying seal widths, several creek crossings, tight radius curves and a 100km/h posted speed limit.

DA History (DA03/0445) & Current Proposal (DA15/0664)

DA03/0445 has a lengthy history. The original application DA03/0445 was approved on 14 August 2003 which involved the use of an existing stock & domestic water bore for the purpose of a rural industry comprising the harvesting & bottling of mineral water.

As a part of the original approval the following information was received from the applicant in relation to the road use:

- The only vehicle involved in deliveries will be the Karlos' family Toyota Landcruiser. It required a two wheel trailer (approximate length 4m) will be attached to this vehicle.
- It is expected that deliveries will only occur on a basis of one to two times a week.
- Delivery times will be co-ordinated so as to not interfere with the school bus which services Urliup Road.

As such, the following conditions were placed within the consent:

3. *Delivery trucks are limited to six (6) metres in length, unless prior written approval is obtained from Council's Director - Development Services.* [GENNS02]
4. *Daily delivery movements are restricted to two (2) trips per day.* [GENNS03]

In September 2012 Council received complaints Council's that the applicant was not complying with the above conditions of consent.

Subsequently Council received S96 Modification (DA03/0445.02) on 25 November 2013 which sought to modify two conditions of consent to allow a delivery truck size of 14 metres, and a maximum of 12 trips per day (6 trips in and 6 trips out of the site).

The use of the articulated trucks on Urliup Road was of great concern as Urliup Road is restricted in its configuration. Subsequently that modification was originally recommended for refusal (5 February 2015 Planning Committee Meeting). However throughout the assessment of DA03/0445.02 the applicant amended their application to utilise a 6m truck as originally approved but to increase the number of trips per day from 2 to 10. This amended application was recommended for approval and was ultimately approved at the Council meeting held 19 March 2015 (for a 12 month trial period from 20 March 2015 to 20 March 2016).

S96 Modification DA03/0445.03 was originally lodged in August 2015 and originally sought to:

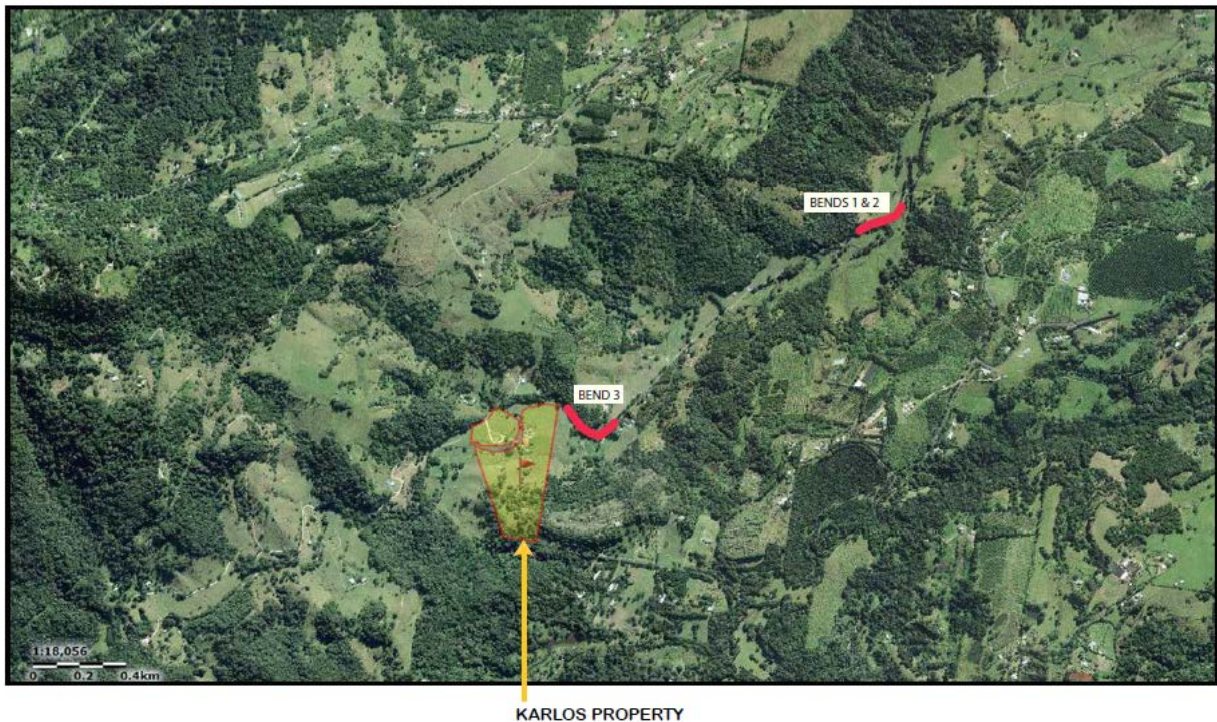
1. Enable delivery vehicles up to 14m in length to visit the site
2. Permit operations between 6am and 5.30pm even days a week
3. Permit a maximum of 6 deliveries per day (12 trips)



4. Delete the trial period as approved by DA03/0445.02

The S96 acknowledged that the increased truck size raises issue with respect to conditions on Urliup Road. To substantiate the additional truck size the applicant proposed that upgrading works to Urliup Road would be funded by the applicant.

DA15/0664 was initially lodged in August 2015 to accommodate the proposed 14m trucks and works for the 14m trucks only involved 3 bends with poor sight distance:



In November 2015 Council undertook a detailed assessment of the proposed works to the 3 bends being proposed to accommodate the 14m trucks and asked the applicant for detailed additional information in regard to Roads and Stormwater as follows:

1. *Provision of an engineering assessment of Urliup Road from Bilambil Village to (and including) the driveway access to the subject property, to confirm that the road is suitable for the design water tanker vehicle, based on applicable Austroads standards, specifically:*

*Austroads Guide to Road Design, Part 3 Geometric Design ensuring that sight distance of minimum 110m is provided to limit the risk of head on crashes on curves where the pavement width does not allow the safe passing (600mm clearance) of the largest design vehicles.*

2. *Submission of proposed designs indicating how the unapproved works on Urliup Road at the driveway access to the property at No. 477 will be remediated to Council's satisfaction. The design is to outline how the embankments will be constructed from the top edge of the concrete structure at a maximum 2:1 gradient with no material to be placed on top of the concrete structure.*
3. *Assessment of Urliup Road to:*

- *confirm that there is a compliant passing width along narrowed straight sections;*
  - *indicate areas where shoulder widening is required; and*
  - *confirm adequate (600mm) clearance for two 2.5m wide vehicles to pass on bends.*
4. *Provision of cross sections associated with the proposed passing bay shown in Drawing C07 Ch10.000 – Ch30.000. Cross sections shall indicate the extent of the work and are to be accompanied by environment assessments.*
  5. *Confirmation that the section of Urliup Road 150m east of the driveway at No. 477 to 450m east of the driveway is suitable for the proposed vehicle use and that adequate sight distance is available to ensure that vehicles are not required to reverse to avoid conflict, especially at the segment with mountable kerbing.*
  6. *The applicant is requested to substantiate the removal of the note in Drawing C06 in relation to vegetation clearing in consideration of the Austroads specifications.*

The following additional information was requested in regards to ecology:

1. *Ecological Assessment*

*General*

- a. *Based on additional flora and fauna survey detailed below a contemporary 7-part test of significance should be performed to satisfy Section 5A of the Environmental Planning & Assessment Act 1979;*
- b. *The local population of threatened species and the extent of the candidate endangered ecological community should be appropriately considered as part of the 7-part test of significance;*
- c. *Ecological impact assessment shall consider any modifications to road design, batters or sight-lines pursuant to Council's transport engineer request items;*
- d. *Based on contemporary survey, conduct an evaluation of the vegetation identified as candidate EEC – Lowland Rainforest having regard for the Environment Protection & Biodiversity Conservation Act 1999 listing advice and diagnostic criteria for Lowland Rainforest of Subtropical Australia (Threatened Ecological Community).*

*Fauna*

- a. *The applicant is requested to undertake fauna survey targeting those species identified as having a high likelihood of occurrence within the study area. Survey should be undertaken generally in accordance with Threatened Biodiversity Survey and Assessment: Guidelines for Development and Activities Working Draft dated November 2004 prepared by Department of Environment and Conservation (NSW);*
- b. *The fauna survey component should involve an assessment of hollow density within those trees likely to be directly impacted by the proposal at Bend 3.*

*Flora*



- a. During a site inspection conducted on 8 September 2015 individuals/aggregations of threatened flora species were flagged/marked where occurring within 10m of the proposed road upgrade works the subject of this application. The species identified include:
- i. *Macadamia tetraphylla* (Rough-shelled Bush Nut) and *Hicksbeachia pinnatifolia* (Red Bopple Nut) listed as Vulnerable under the TSC Act and EPBC Act
  - ii. *Lepiderema pulchella* (Fine-leaved Tuckeroo) listed as Vulnerable under the TSC Act
  - iii. *Endiandra globosa* and *Rhodamnia maideniana* identified as ROTAP species

The applicant is requested to identify the locations of those species detailed above (and additional stems, species identified during additional survey) where occurring within 10m of the proposed road upgrade works on a site plan overlaid with the engineering drawings;

- b. Management recommendations to protect those threatened stems located within 10m of the extent of works during the construction phase shall be provided;
- c. The applicant is requested to rectify Figure 5 in the submitted Assessment of Significance report to show the accurate locations of those *Hicksbeachia pinnatifolia* individuals at Bend 2.

#### *Candidate Endangered Ecological Community*

- a. Calculations shall be provided based on the areal extent of impact (the maximum extent shall be calculated i.e. to the extent of canopy projection) of the proposed road upgrade on candidate EEC - Lowland rainforest in NSW North Coast and Sydney Basin bioregion;
- b. Fragmentation of the candidate EEC should be taken into consideration when undertaking the 7-part test;
- c. Where sight lines are required and would result in the removal disturbance of an EEC alternative road designs should be considered. It is noted that Council is unlikely to support any proposal that would result in removal/disturbance of candidate EEC immediately adjacent Bilambil Creek.

#### *Compensatory Habitat Proposal*

- a. Specifics of the calculation method and adopted ratios for offsetting have not been clearly provided and/or justified by the applicant in the AoS. Council does not concur with the view that offsetting calculations and nomination of an area may be addressed through conditions of consent and that this is normal practice. Council does not have a policy for offsetting and adopts an avoidance approach through prevention and mitigation measures. Offsetting is only considered under exceptional circumstances and where it can be demonstrated that compensation can result without net loss.

As such the applicant is requested to provide detailed information of any offsetting arrangement for evaluation to enable Council to make a determination as to whether those measures proposed are adequate to ensure that cumulative

*direct and indirect on threatened species and communities would be offset. Principles and criteria as referenced under the 'OEH Principles for the Use of Biodiversity Offsets in NSW' should be applied;*

- b. Based on the requested arboricultural impact assessment, compensation for the removal of roadside trees should be incorporated into any offset package (subject to acceptance by Council).*

## 2. Arboricultural Impact Assessment

*The effect of excavation works (root disturbance, increased, exposure) on the long term integrity and health of those trees nominated to be retained should be evaluated. As such the applicant is requested to submit an arboricultural impact assessment (AIA) report and accurate tree survey of all native trees of greater than 200mm dbh or any listed threatened flora species regardless of girth occurring within 10 m of the extent of earthworks (pursuant to any modifications requested by Council's assessing engineer).*

*The AIA should be prepared by a qualified Level 5 AQF arborist generally in accordance with AS4970-2009 Protection of trees on development sites. The tree survey component should be conducted using survey grade equipment with plant identification verified by a qualified ecologist/botanist with experience in rainforest species recognition*

## 3. Alternative Access

*The applicant is requested to clarify whether the alternative access arrangement forms part of this application and if so additional ecological assessment information will be required due to proximity of proposed driveway access and associated structures (holding tanks, shed) to Bilambil Creek and associated riparian vegetation.*

As a result of this substantial request for information the applicant lodged S96 Modification DA03/0445.04 to address the matters out of DA03/0445.03 that did not relate to truck size as the applicant needed to get additional truck movements without the truck size matter holding up the other matters which were:

1. Permit operations between the times of 6am and 6pm seven days per week.
2. Permit a maximum of 6 deliveries (i.e. 12 trips) per day.
3. Delete the trial period restriction relating to the number of deliveries per day.

This application (DA03/0445.04) was approved at the Planning Committee Meeting of 2 June 2016. The report forms an attachment to this business paper for background purposes.

This left DA03/0445.03 and DA15/0664 undetermined and awaiting additional information from the applicant.

The applicant officially responded to Council's request for information from November 2015 on 9 November 2016 with a comprehensive bundle of documents. This material detailed several changes.

**DA03/0445.03 now seeks consent to:**

1. Enable delivery vehicles up to 19m in length to visit the site

The applicant has justified his position and more specifically the change from a 14m truck to a 19m truck based on changes to the industry which the applicant has detailed as follows:

- “1. The history of the industry is such that, for some time now, 19 meter trucks have been the standard particularly in Victoria where a large amount of haulage is operated by Blackmount who don't run the 6 meter trucks as they are not financially viable. Blackmount have been contracted (after our application for 14 meter trucks) by our primary customer here on the coast and have since taken over haulage here on the coast for our main customer. The 14 meter application we made, before Blackmount took over, was to cater for the old haulage company which used 14 meter trucks. We have been told by our main customer and Blackmount that the 6 meter trucks are being kept on just so we can personally "stay financially alive" until we have approval for 19 meter trucks from the TSC. This 6 meter truck operating period has been given a deadline by our main customer, perspective customers and Blackmount of only a few more months. On this point, without approval for 19 meter trucks, our business will die. (refer Blackmount letter by Director Tim Carey attached).*

*Since we have been restricted to 6 meter trucks, we have suffered immensely financially. The massive pay cut in cents perlitre is half of what we would be paid using the 19 meter trucks. Combine this with council restrictions of being able to offload a maximum amount of less than half of what we are lawfully allowed to extract by the NSW office of water and around 100k in bills for various reports and other requests from council which have taken over a year to put together and we are seriously looking at financial ruin without 19 meter truck approval. I don't think I can make that point clear enough. I have been personally needing to go and do labouring at my age with an old family friend Robert Dawes just to be able to pay household bills and afford groceries. These 6 meter trucks have drastically slashed our family's income at a time we have been required to put together the material and reports which have sent overheads with no return through the roof.*

*All this has also made our financial contribution to the Aboriginal community suffer as well (refer Waddi springsattachment) We are the only source of water to Waddi Springs. Something we have been doing for many years.*

- 2. We are a good environmentally friendly, hard working family business in the Tweed Shire who have in good faith, spent close to 100k and over a year in time to go above and beyond what the TSC has asked of us (with reference to material attached to B&P surveys app on our behalf) among other works. My son resigned his full time career as an airline captain and position training pilots for the airline he worked at for the past 8 years in Perth to return here just to make dealing with all this his full time job.*
- 3. I would like to emphasise the fact that this application has nothing to do with increasing the capacity of what we are already entitled to under our commercial licenses issued by the NSW Office of Water.*

19 meter vehicles will be a far more economically viable way of transporting our allocated 60ML/year as opposed to the current smaller truck options. It will also have a significantly reduced environmental impact in terms of reduced emissions compared to the number vehicle movements required with the current trucks, combined with the fact that the emissions generated per litre of water transported is significantly less with the 19 meter trucks. In summary, for us to transport our licensed allocation with the current vehicle size would require us to just over double the amount of current truck movements on the road. With the 19 meter truck option, we won't need any more truck movements to transport our allocated amount. This would require condition 3 to be amended to reflect a 19 meter truck. Please note that this S96 application should be considered in conjunction with DA15/0664 which proposes alterations to Uriiup road to accommodate the proposed 19 meter trucks."

DA15/0664 now seeks to undertake works to 13 bends (not the original 3) along 4km of Uriiup Road:

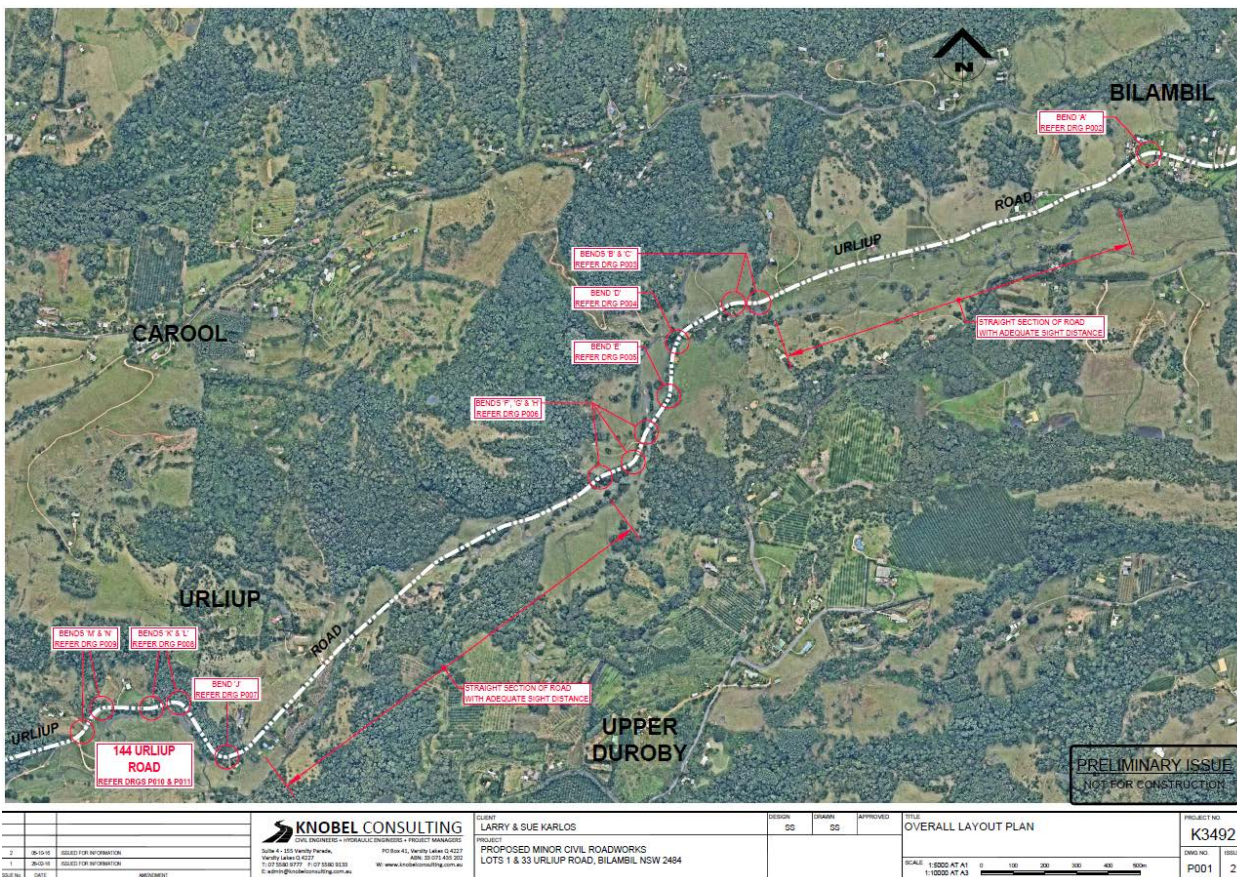


Diagram 1: Red circles indicating the location of the proposed works along Uriiup Road

The engineering report states that the submitted plans demonstrating the extent of works have been based on the following parameters:

- 80kph generally adopted for sight distance analysis. Note that the existing road is sign posted as 'drive to suit conditions'.
- Design speeds were calculated for individual bends as required based on existing horizontal radii & super elevation and reference to AGRD-03 Fig. 7.6.
  - o Bend 'M' = 50 kph



- Bend 'N' = 60 kph
- Bend 'J' = 55 kph

Stopping sign distance (SD) analysis:

- Based on AGRD-03 Section 5.3 & Table 5.4.
- 110m SSD generally adopted to suite 80kph design speed. Reaction time in line with AGRD-03 Table 5.2.
- 50m SSD for Bend 'J' based on calculated operating speed of bend.

Safe intersection sight distance (SISD) analysis:

- Based on AGRD-Part 4A Section 3.2.2 & Table 3.2.
- Values are based on calculated operating speeds of adjacent bends.

Widening philosophy:

- The proposed road widening is based on the width required for safe passing of a 12.5m single unit truck & a 19.0m articulated vehicle with a 0.6m separation (for sections of road only where adequate SSD is not achievable).

Furthermore the engineering report acknowledges that the cut barriers on certain bends will result in the following batter slopes:

CUT BARRIERS AFFECTED		
BEND	EXISTING BATTER SLOPE (X IN Y)	PROPOSED BATTER SLOPE (X IN Y)
G	1 IN 1	1 IN 1
H	1.25 IN 1	1.25 IN 1
J	1 IN 1.6 TO 1.50 IN 1	1.25 IN 1
L	2 IN 1	2 IN 1
M	1 IN 2	1 IN 2
N	1.5 IN 1	1.5 IN 1

An amended Ecology Assessment was received for DA15/0664 on 2 April 2017 which attempts to address a number of concerns raised by Council in regards to Ecology. However it does not detail the extent of impact as required by the engineering works that Council's engineering unit would be requesting.

### Status of Uriiup Road Post 2017 Flooding

Uriiup Road, like many areas, was affected by the March/April 2017 Flood event. Some of the affected areas were photographed and are shown below:

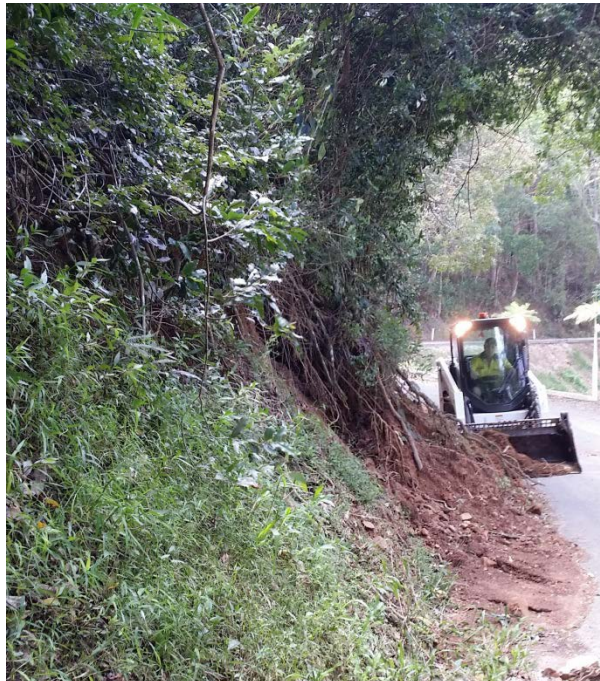






The applicants for this DA (The Karlos family), like many other Tweed property owners, used their own equipment (in consultation with Council) to provide a temporary reinstatement of damaged section of Uriup Road after the flood event.

Below are photos of the reinstatement works being undertaken:









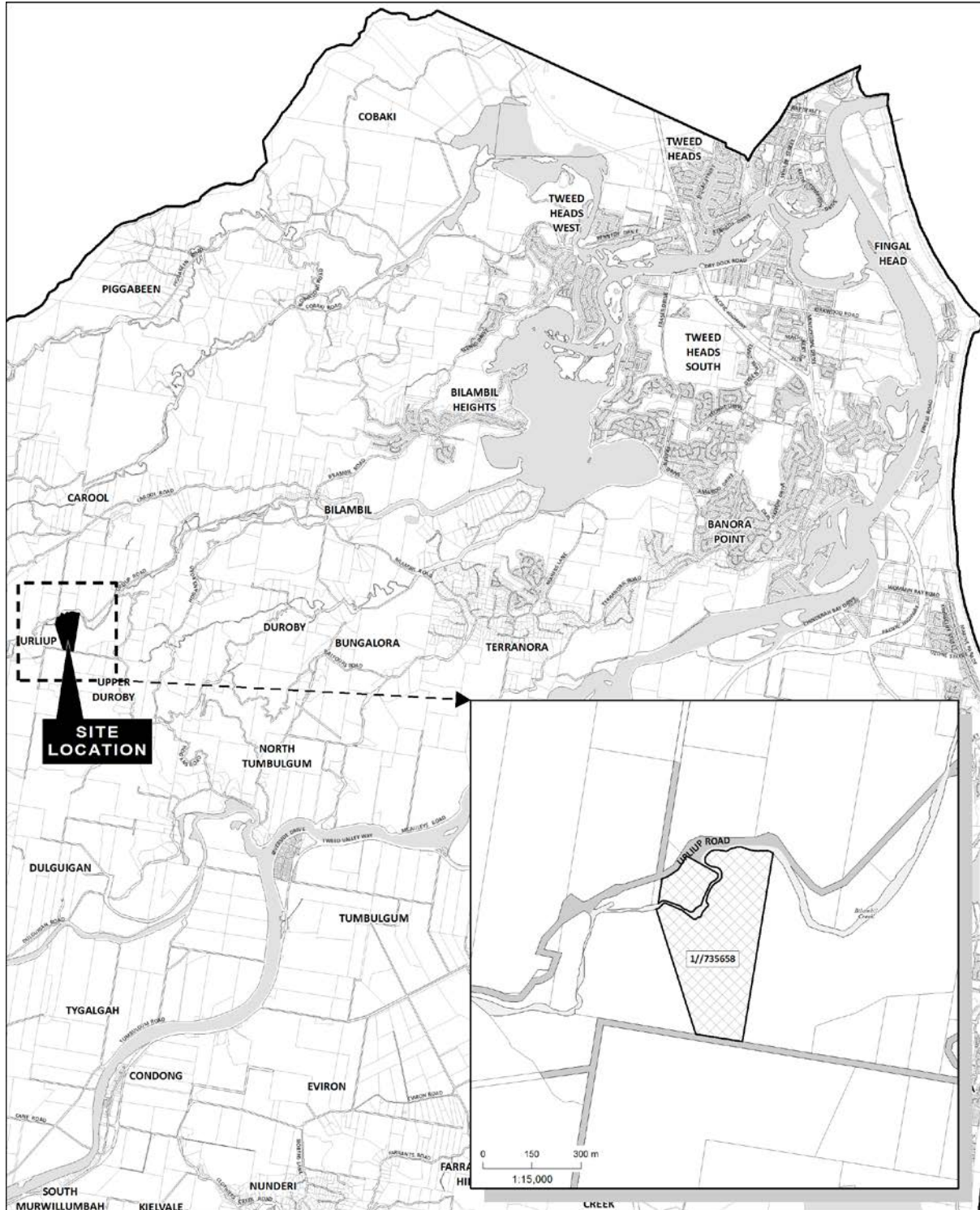




However it should be noted there was no significant damage to road pavements or road batters subject to works under this proposal during the 30 March 2017 flood event.



**SITE DIAGRAM:**



**Locality Plan**  
 Lot 1 DP 735658  
 No. 477 Uriup Road, Uriup

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Call before You Dig" enquiry must be made by calling 2100. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastral 09/12/2014  
 © Land and Property Information (LPI) & Tweed Shire Council.  
 Boundaries shown should be considered approximate only.

0 1 2 Km  
 1:75,000 @ A4 Portrait  
 GDA  
 Map Projection: Universal Transverse Mercator  
 Horizontal Datum: Geocentric Datum of Australia 1994  
 Grid: Map Grid of Australia, Zone 56

Civic and Cultural Centre  
 3 Tumbulgum Road  
 Murwillumbah NSW 2484  
 PO Box 616  
 Murwillumbah NSW 2484  
 T | (02) 6670 2400 | 1300 292 872  
 F | (02) 6670 2429  
 W | www.tweed.nsw.gov.au  
 E | planning@tweed.nsw.gov.au



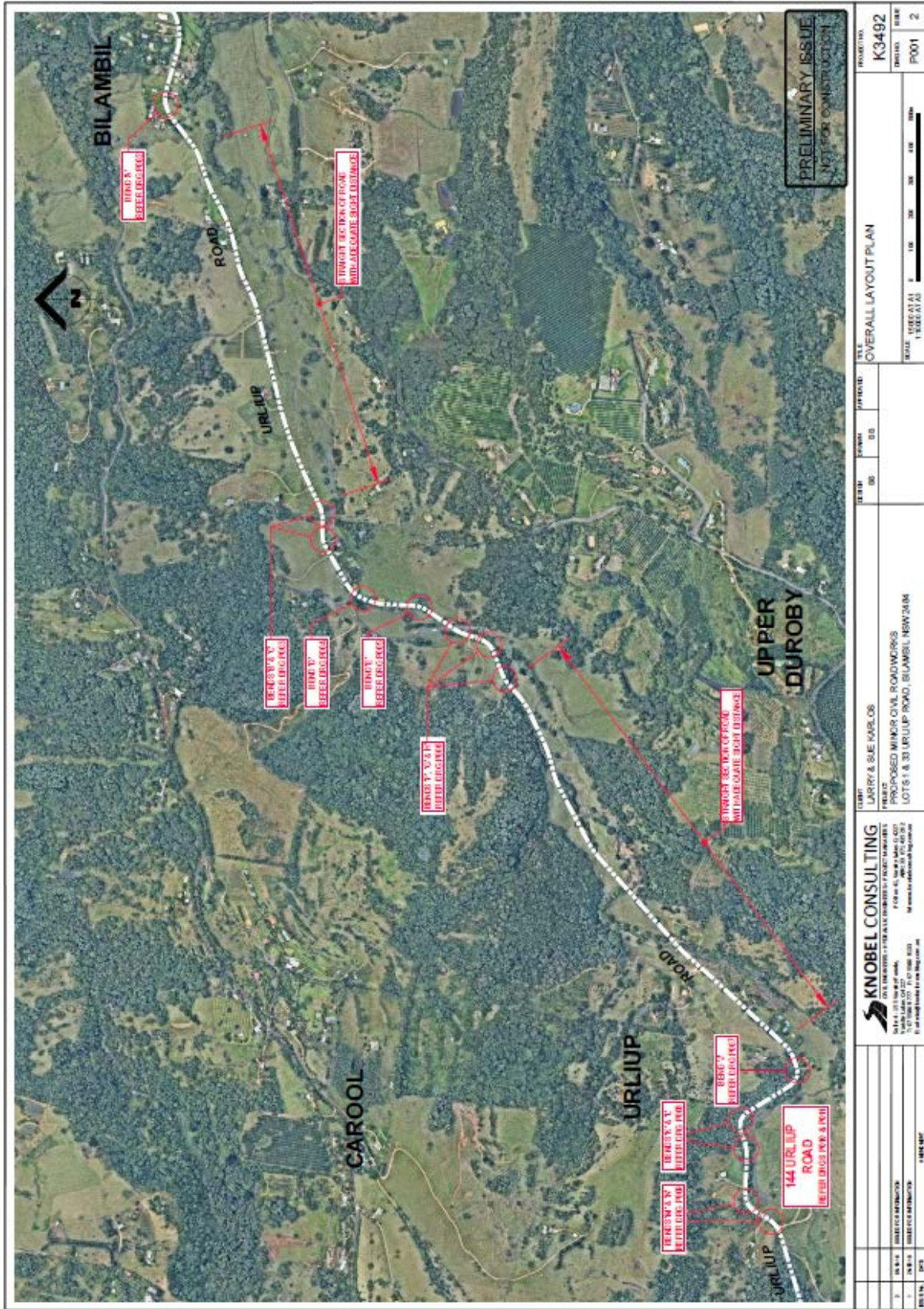
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Author: LSachdev Planning Reform Unit

Date Printed: 09 Dec 2016 10:51

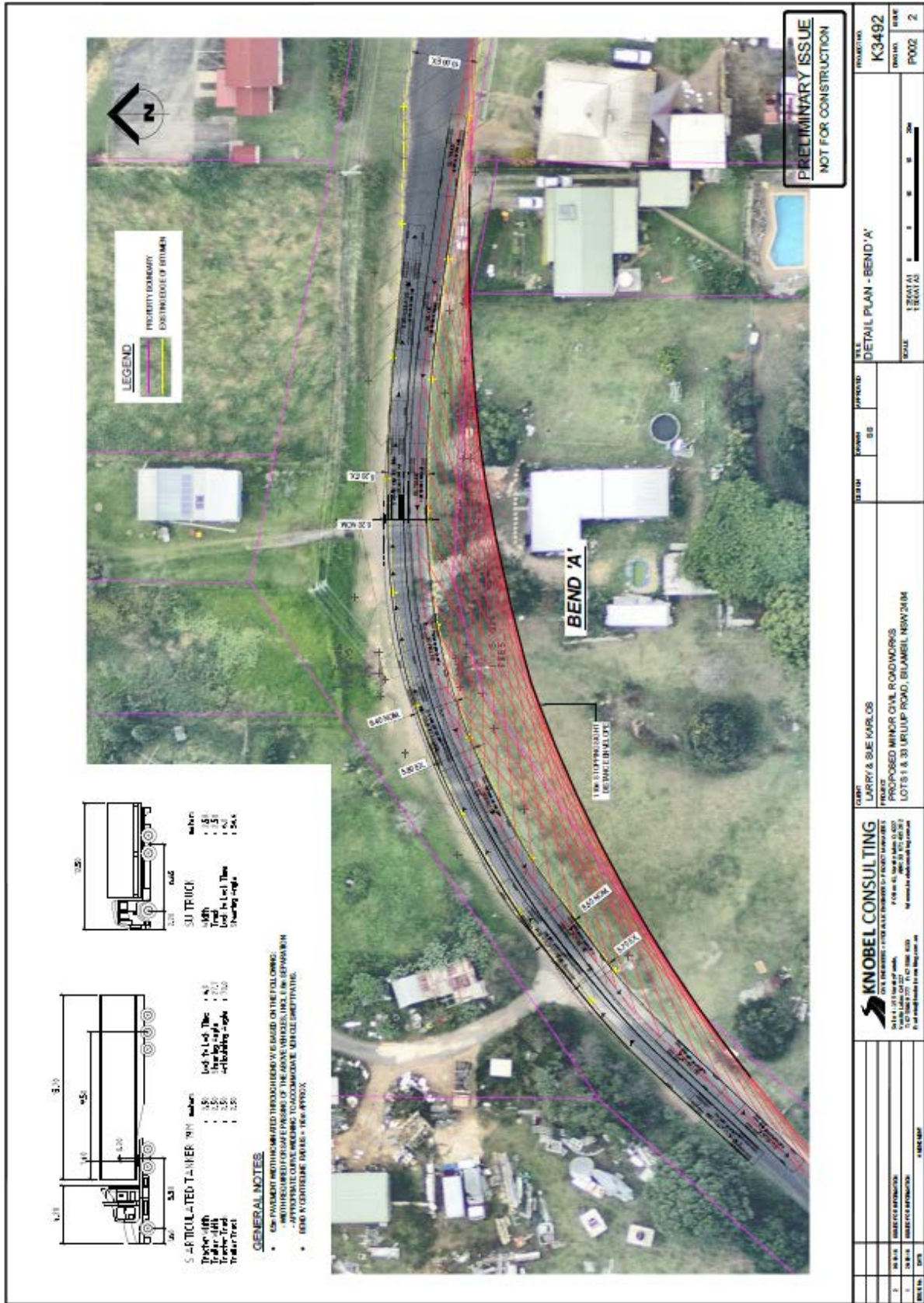


DEVELOPMENT PLANS:

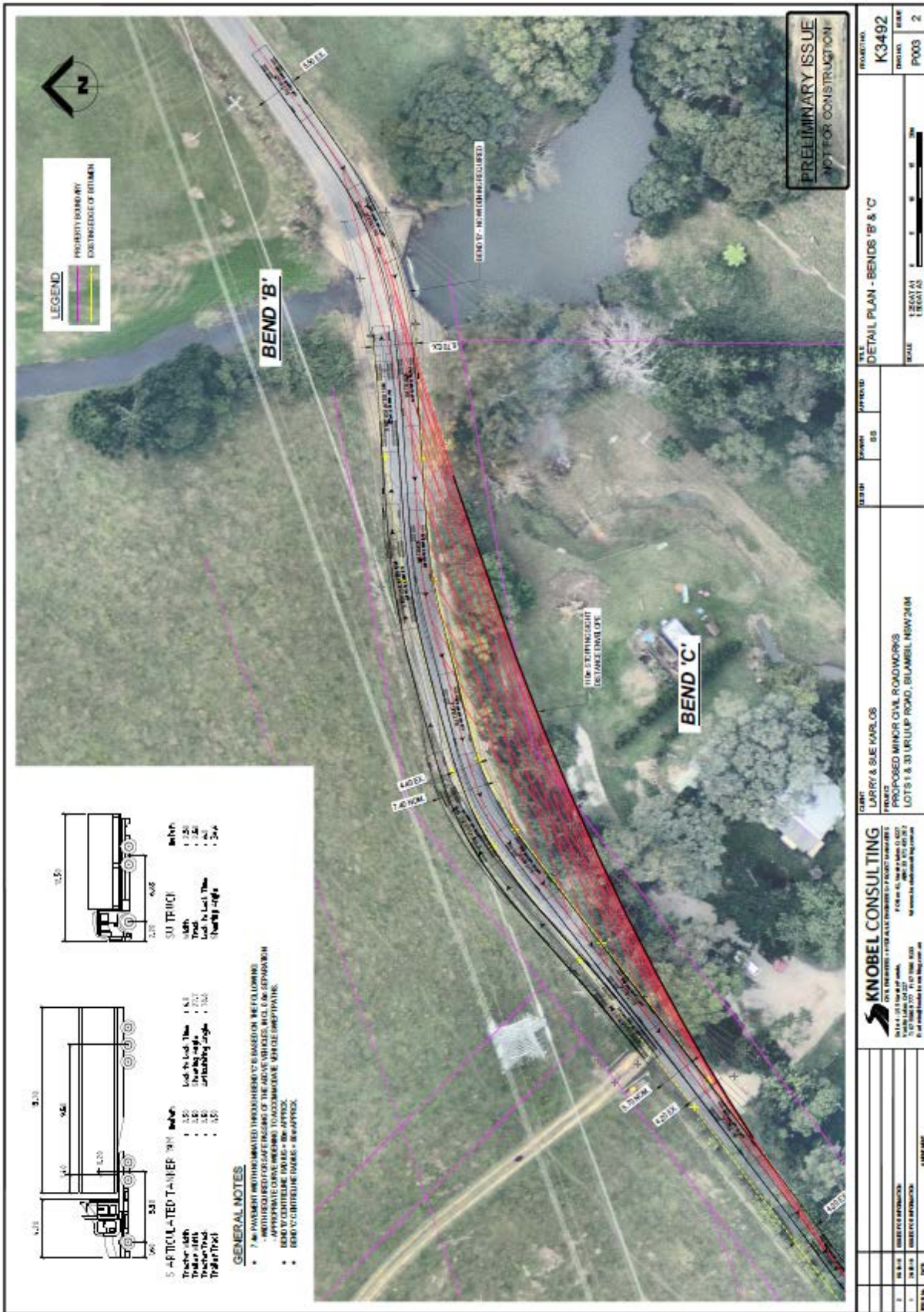


<b>KNOBEL CONSULTING</b> CIVIL ENGINEERING & SURVEILLANCE ENGINEERING SERVICES 1/110 LINDSEY DRIVE, WARRIMOO NSW 2580 TEL: 02 6882 2222 FAX: 02 6882 2222 www.knobelconsulting.com.au		<b>CLIENT</b> LARRY & SUE KARLOS <b>PROJECT</b> PROPOSED MINOR CIVIL ROADWORKS LOTS 1 & 30 URLUP ROAD, BILAMBIL NSW 2484	<b>PROJECT NO.</b> K3492 <b>DATE</b> P001 2
<b>DATE</b> 08/05/17 <b>PROJECT NO.</b> K3492 <b>DATE</b> 08/05/17	<b>DATE</b> 08/05/17 <b>PROJECT NO.</b> K3492 <b>DATE</b> 08/05/17	<b>DATE</b> 08/05/17 <b>PROJECT NO.</b> K3492 <b>DATE</b> 08/05/17	<b>DATE</b> 08/05/17 <b>PROJECT NO.</b> K3492 <b>DATE</b> 08/05/17

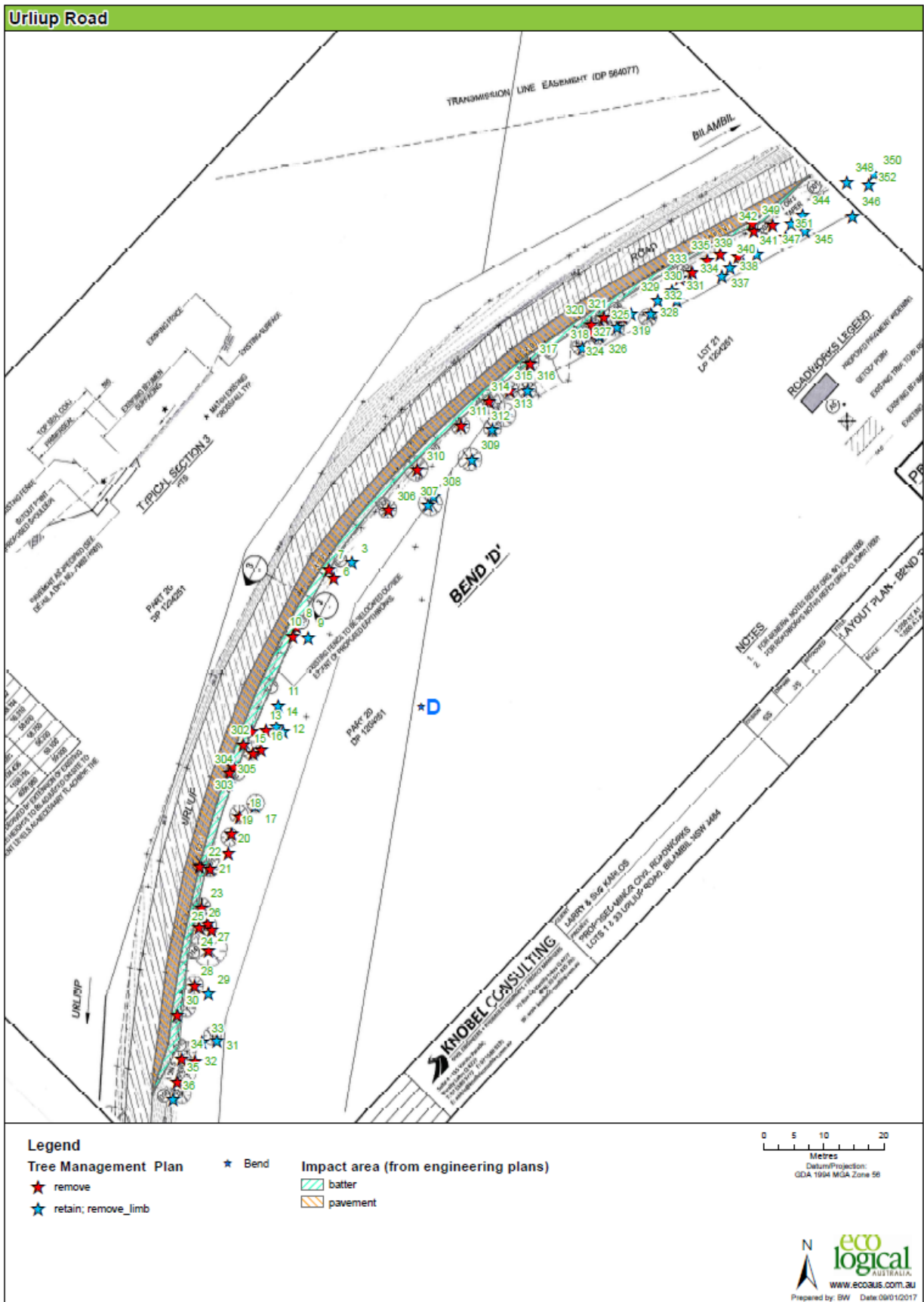


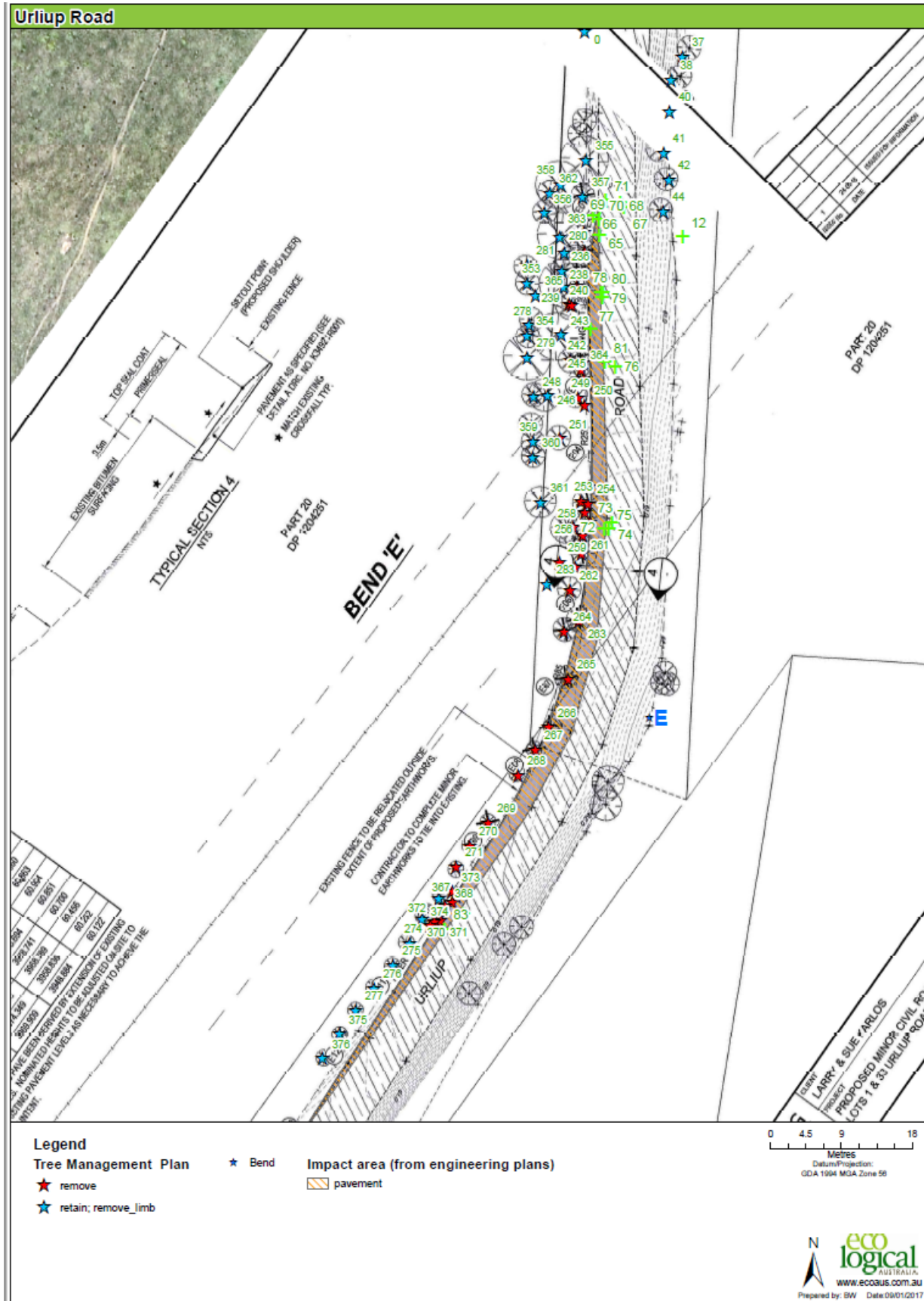








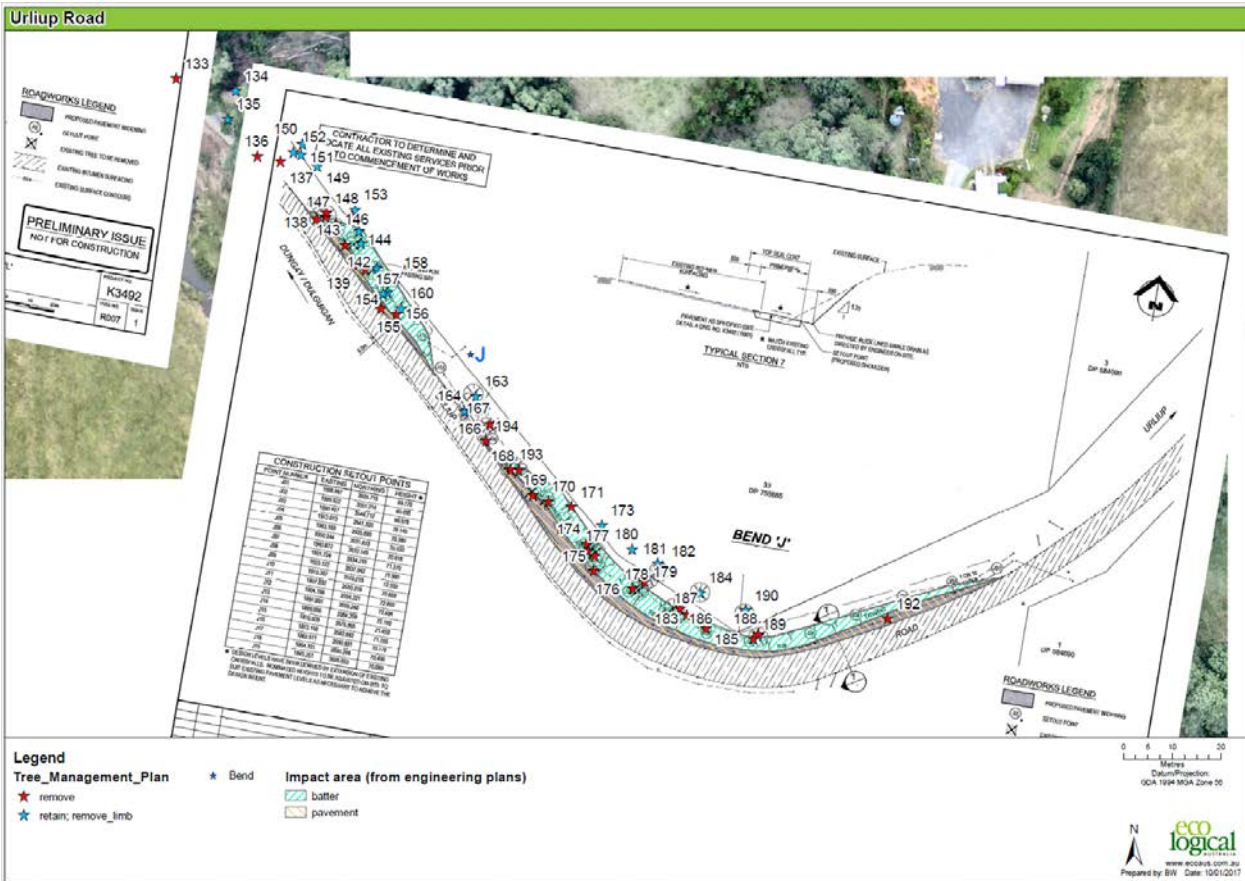
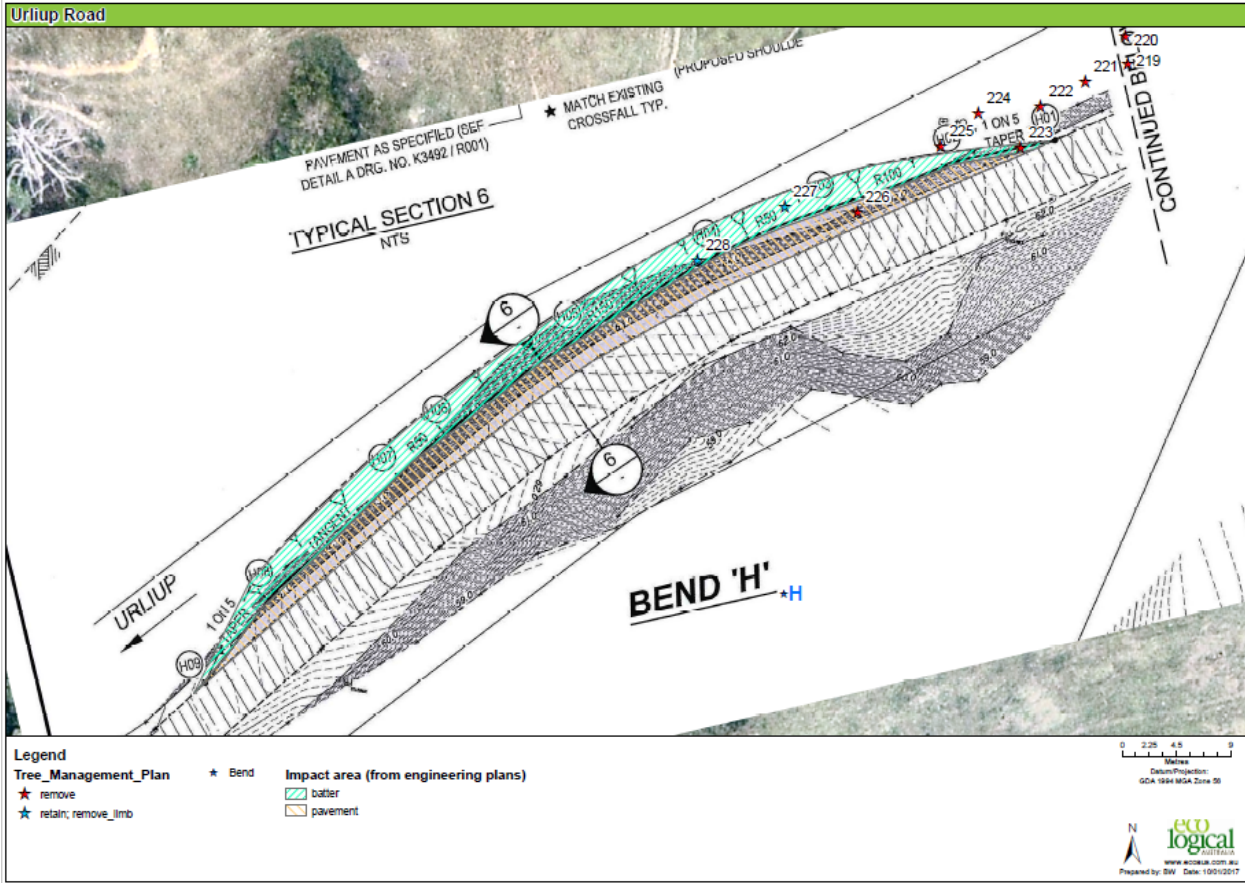




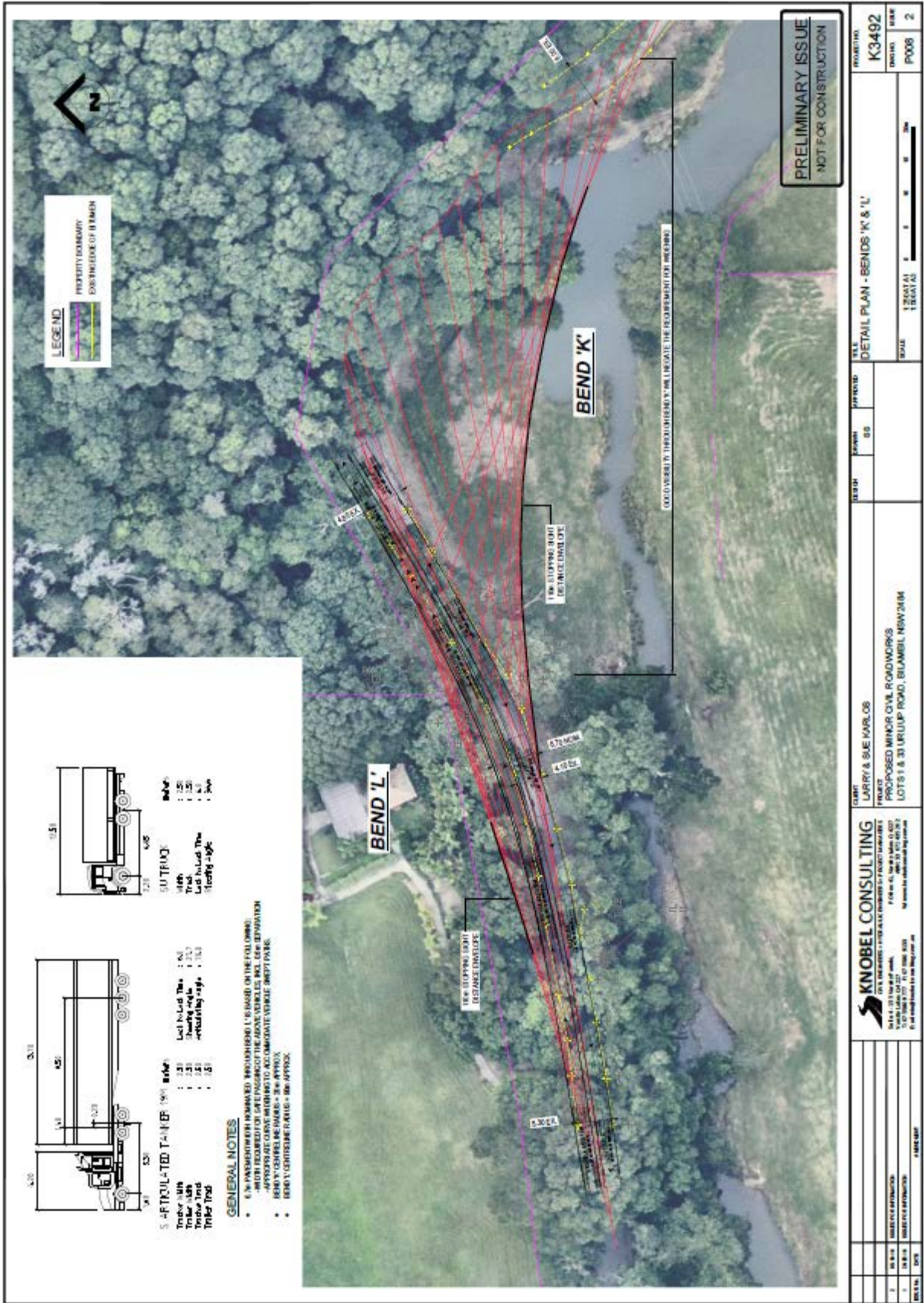






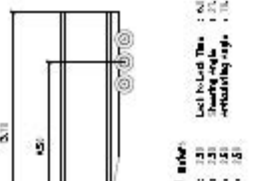
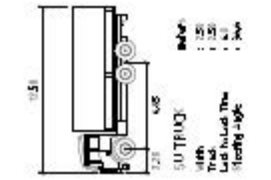






**LEGEND**

PROPERTY BOUNDARY  
EXISTING ROAD



Vehicle Type	Wheelbase (m)	Length (m)	Height (m)
Tractor Unit	4.05	12.21	2.21
Tractor Trailer	3.11	10.51	2.21
Tractor Trailer	3.11	10.51	2.21
Tractor Trailer	3.11	10.51	2.21

**GENERAL NOTES**

- 1. CURVE RADIUS (R) IS BASED ON THE FOLLOWING:
- 2. APPROXIMATE CURVE RADIUS (R) IS BASED ON THE FOLLOWING:
- 3. APPROXIMATE CURVE RADIUS (R) IS BASED ON THE FOLLOWING:
- 4. APPROXIMATE CURVE RADIUS (R) IS BASED ON THE FOLLOWING:

**PRELIMINARY ISSUE**  
**NOT FOR CONSTRUCTION**

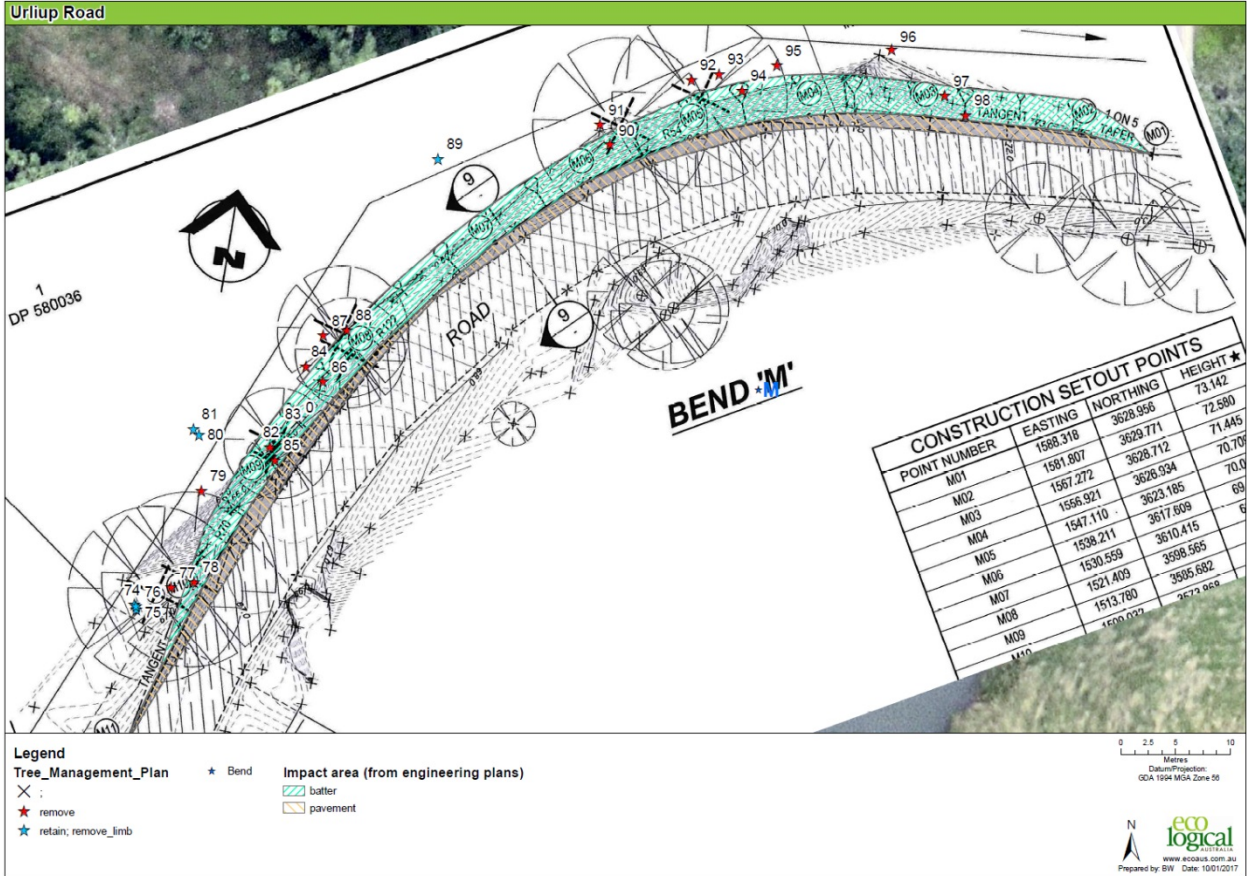
<b>CLIENT</b> LARRY & SUE KARLOS		<b>FILE</b> DETAIL PLAN - BENDS 'K' & 'L'	
<b>PROJECT</b> PROPOSED MINOR CIVIL ROADWORKS LOTS 1 & 33 URLUUP ROAD, BULAMBIL NSW 2484		<b>PROJECT NO</b> K3492	<b>DATE</b> PODS 2
<b>SCALE</b> 1:2500 (A1) 1:5000 (A2)	<b>DATE</b> PODS 2		

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www.knobelconsulting.com.au









**Considerations under Section 79C of the Environmental Planning and Assessment Act 1979:**

**(a) (i) The provisions of any environmental planning instrument**

**Tweed Local Environmental Plan 2014**

**Clause 1.2 – Aims of the Plan**

This Plan aims to make local environmental planning provisions for land in Tweed City Centre in accordance with the relevant standard environmental planning instrument under section 33A of the Act.

*The particular aims of this Plan are as follows:*

- (a) To give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,*
- (b) To encourage a sustainable local economy and small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed,*
- (c) To promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, built environment, and cultural heritage,*
- (d) To promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,*
- (e) To promote building design which considers food security, water conservation, energy efficiency and waste reduction,*
- (f) To promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,*
- (g) To conserve or enhance the biological diversity, scenic quality and geological and ecological integrity of Tweed,*
- (h) To promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,*
- (i) To conserve or enhance areas of defined high ecological value,*

- (j) *To provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.*

The proposed development relates to road works and tree removal works within the road reserve on land zoned RU2. The proposed development could potentially satisfy these objectives through appropriate vegetation offsetting conditions however, as submitted the application is considered to be short of the required information to align the requested engineering standards with the Ecological Assessment.

#### Clause 1.4 – Definitions

Under this clause the proposed development would be defined as a road as follows:

**road** means a public road or a private road within the meaning of the Roads Act 1993, and includes a classified road.

A road is permissible with consent in the subject zone.

#### Clause 2.3 – Zone objectives and Land use table

The subject development site is zoned RU2 Rural Landscape under the provisions of this clause. The zone objectives are as follows:

#### **Zone RU2 Rural Landscape**

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To maintain the rural landscape character of the land.
- To provide for a range of compatible land uses, including extensive agriculture.
- To provide for a range of tourist and visitor accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is link to an environmental, agricultural or rural industry use of the land.

The proposed development involves tree removal in the road reserve to improve sight lines for the vehicles proposed. The proposal would change the visual character of the road reserve, however, as the tree removal would be required to undertake road improvement works within the road reserve there is an argument that provided the trees were appropriately offset subject to conditions of consent then the zone objectives could be satisfied.

#### Clause 4.1 to 4.2A - Principal Development Standards (Subdivision)

The development as proposed does not include any subdivision works. If the application were to be approved appropriate conditions would need to be imposed to ensure that all works occurred wholly within the road reserve and that no private land was being utilised.

### Clause 5.9 – Preservation of Trees or Vegetation

The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.

Council's Natural Resource Management Unit has reviewed the application and consider that the DCP A16 does not apply, given that native vegetation is regulated under the Native Vegetation Act 2003 (NV Act), and due to the land-use zoning of the Uriup Road Reserve being RU2. For those species not regulated under the NV Act and greater than 800mm girth as measured at 1.4m above ground, the DCP A16 applies. Those trees that meet the 'prescribed vegetation' criteria may be addressed through offsetting.

### Clause 5.10 - Heritage Conservation

The objectives of this clause are as follows:

- (a) to conserve the environmental heritage of Tweed,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

The Uriup Road reserve area is not identified within any Aboriginal Cultural Heritage Mapping Areas as either a known site or a predictive site. Were the application to be approved appropriate conditions of consent would be imposed to ensure that if any artefacts were discovered during works all works would cease and the appropriate agencies contacted.

### Clause 5.11 - Bush fire hazard reduction

Parts of Uriup Road are mapped as bushfire prone land, any works undertaken in accordance with an approval for roadworks would result in reduced bushfire hazards.

### Clause 7.1 – Acid Sulfate Soils

The Uriup Road reserve area is mapped as being affected by Class 5 Acid Sulfate Soils. Appropriate conditions of consent could be applied should the development be approved to manage acid sulfate soils.

### Clause 7.2 - Earthworks

In association and ancillary to the roadworks the application would include earthworks to the edges of the road improvement areas for new batter slopes, retaining walls and backfilled sections of road reserve. The application does not include sufficient information in regards to these ancillary areas to enable Council officers to recommend approval of the application being proposed.

Clause 7.3 – Flood Planning

Urliup Road is subject to localised flooding. The recent 2017 Flood Event saw parts of Urliup Road washed away by localised flooding and drainage issues. Any works undertaken in this area would need to be undertaken having regard to local conditions to ensure the maintenance obligations for Council into the future are minimised.

Clause 7.6 - Stormwater Management

Part of the further information that Council staff requested related to the drainage regime beyond the top of the retaining walls. However the application does not contain this level of information. Should Council want to approve the application conditions of consent could be imposed to manage stormwater issues.

Clause 7.10 - Essential Services

This clause states that development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

(a) *the supply of water,*

The proposed roadworks do not require water connection.

(b) *the supply of electricity,*

Whilst electricity services are currently provided to the area, the proposed roadworks do not require specific electrical connection.

(c) *the disposal and management of sewage,*

The proposed roadworks do not require sewer connection.

(d) *stormwater drainage or on-site conservation,*

Part of the further information that Council staff requested related to the drainage regime beyond the top of the retaining walls. However the application does not contain this level of information. Should Council want to approve the application conditions of consent could be imposed to manage stormwater issues.

(e) *suitable road access.*

The entire assessment of this Development Application relates to this Clause and whether Urliup Road (and the works being proposed to Urliup Road) provides suitable road access between the Bilambil Village and 477 Urliup Road to accommodate the proposed 19m trucks.

Based on the information submitted in the DA, Council Officers are not convinced that the works being proposed are to an adequate standard to enable a recommendation for approval.

Therefore one of the reasons for refusal is that Clause 7.10 (e) "Suitable Road Access" has not been adequately satisfied.

Clause 7.15 – Water bottling facilities in Zone RU2 Rural Landscape

This Clause is not specifically relevant to the proposed road works, as the roadworks are for the purpose of an already approved water bottling facility. Although it should be noted that Water bottling facilities are a permissible land use in the subject zone.

**State Environmental Planning Policies**

SEPP No. 55 - Remediation of Land

The objectives of SEPP No. 55 is to provide a State wide planning approach to the remediation of contaminated land and to require that remediation works meet certain standards and conditions.

SEPP No. 55 requires a consent authority to consider whether land is contaminated and if contaminated, that it would be satisfied that the land is suitable, in its contaminated state (or will be suitable after remediation). Further, it advises that if the land is contaminated and requires remediation, that the consent authority is satisfied that the land will be remediated before the land is used for that purpose. In particular it is noted that this SEPP states that a consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

The subject application has been reviewed by Council's Environmental Health Unit who has provided the following advice with respect to contamination:

*Council's GIS does not indicate a cattle dip site to exist within that portion of Urliup Road which is proposed to be modified. Standard conditions of consent would apply to the development if it were to be approved.*

Having regard to the advice provided, the subject proposal is considered to be acceptable with respect to contaminated land.



SEPP No 71 – Coastal Protection

Only the first 1km of Uriup Road is within the mapped Coastal Protection Area. The proposed roadworks do not compromise the objectives of SEPP 71.

**(a) (ii) The Provisions of any Draft Environmental Planning Instruments**

There are various Draft SEPP's currently under review including the Draft Coastal Management SEPP, Draft Infrastructure SEPP and the Draft Amendment to the Koala Habitat Protection SEPP. Each of these documents have been reviewed in the context of the proposed roadworks however, they have no specific bearing on the assessment. Whilst the application is recommended for refusal, should Council want to approve the application there is nothing in these documents that would prevent the Council approving the application.

**(a) (iii) Development Control Plan (DCP)**

A11-Public Notification of Development Proposals

The proposed S96 application was advertised in accordance with this section of the Development Control Plan. Submissions have been received and considered in relation to the proposed amendment. These submissions are addressed in this report.

A16-Preservation of Trees or Vegetation

The objectives of this DCP are:

- a) *To ensure the preservation of locally indigenous trees and vegetation which contribute to the biodiversity, social and amenity value of the Tweed Shire;*
- b) *To recognise and conserve very large trees (locally indigenous or otherwise) of amenity, heritage or habitat value;*
- c) *To provide a process for identifying, listing and preserving trees of ecological, heritage, aesthetic and cultural significance through a Significant Vegetation Register;*
- d) *To minimize, and avoid where possible, unnecessary clearing of native trees and vegetation;*
- e) *To provide advice to applicants regarding how to proceed with an application to clear vegetation to which this DCP applies;*
- f) *To provide a process for the submission, assessment and determination of an application to clear vegetation to which this DCP applies; and*
- g) *To specify types of vegetation clearing that is exempt from this DCP.*

This DCP goes on to further state that it applies to the following trees or vegetation (of relevance in this instance):

- c) *Trees (locally indigenous or otherwise) that have a trunk diameter of greater than or equal to 0.8 metres measured at 1.4 metres above the natural ground;*

DCP A16 does not apply, given that native vegetation is regulated under the Native Vegetation Act 2003 due to the land-use zoning of the Urliup Road Reserve being RU2. For those species not regulated under the NV Act and greater than 800mm girth as measured at 1.4m above ground the DCP A16 applies. Those trees that meet the 'prescribed vegetation' criteria may be addressed through offsetting.

Further assessment is however undertaken under Flora/Fauna considerations elsewhere in this report.

**(a) (iv) Any Matters Prescribed by the Regulations**

Clause 92(1)(a)(ii) Government Coastal Policy

Only the first 1km of Urliup Road is affected by the Government Coastal Policy applies. The proposed roadworks would be consistent with the aims and objectives of this Policy.

**(a) (v) Any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),**

**Tweed Shire Coastline Management Plan 2005**

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The subject site is not located on the coastal foreshore and is not affected by coastal hazards.

**Coastal Zone Management Plan for the Tweed Coast Estuaries 2013**

The proposed development is not within Cudgen, Cudgera or Mooball Creeks. This Plan is therefore not relevant to the application.

**Coastal Zone Management Plan for Cobaki and Terranora Broadwater (adopted by Council at the 15 February 2011 meeting)**

The subject site is not located within the Cobaki or Terranora Broadwater (within the Tweed Estuary), with this Plan therefore not relevant to the proposed development.

**(b) The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality**

Access, Transport and Traffic

Outstanding Engineering Issues

1. Road Standards

It is acknowledged that Uriup Road is a low-volume rural road, which does not comply with Council's contemporary road standard (Development Design Specification D1 – Road Design) in the subject area. It is not feasible (or arguably reasonable) for the proposed upgrade works to retrofit the road to this standard to achieve full seal widths, shoulder widths and clear zone widths to accommodate the increased truck movements from the water extraction development.

The upgrade standard to be adopted for the purpose of any approval issued for the subject DA will be a compromise of Council contemporary rural standards, and carries with it liability risks. However given the age of the current road infrastructure, the significant slope, alignment and ecological constraints along the road corridor, the low volumes of traffic pre and post development, and the benefits that other landholders can receive by virtue of the developer's works, this approach is considered reasonable.

However in determining the necessary standard for the upgrade works, it is appropriate to insist that adequate design, certification, risk assessment and mitigation is undertaken by the developer to protect the public interest.

2. Batter slopes

Of the 13 road curves assessed, 6 require significant cut earthworks on the upslope batter (bends G, H, J, L, M and N) to allow for road widening and increased sight distance to accommodate the increased truck movements. The cut batter slope varies from 1:1 to 1:2, in general accordance with existing landform. Council's concerns with the proposed cut earthworks are as follows:

- a) The submitted plans only show one typical cross section, which may not be at the critical location. Generally cross sections at 10m spacings would be required to properly assess such works, including adjacent property boundaries.
- b) No geotechnical investigation of the existing batters has been undertaken, and the consultant engineers have stated that no geotechnical certification will be provided on the new works. This poses significant risk for Council.
- c) The works include removal of large amounts of vegetation and mature trees, which help to stabilise the existing batters, and increases the risk to Council of slips occurring in the new works.

- d) The proposal does not specify any batter slope treatment or revegetation measures to avoid erosion, scour or slippage of the new works. Bare earth batters are not acceptable to Council from an environmental and maintenance perspective.
- e) It is Council's assessment that retaining walls are required in certain critical locations, due to poor quality material in the batters, proximity to property boundaries and services, or to preserve significant vegetation. The assessment to date has not considered any retaining walls. This poses significant risk for Council.
- f) No catch drains are proposed at the top of any of the cut batters. This is particularly important along batters that have rising terrain behind to minimise erosion of the batter face. Catch drains need to discharge into roadside drainage in a manner that does not cause erosion or scour in the drains.
- g) The addition of retaining structures (e) and catch drains (f) increases the footprint of the proposed works, and will likely encroach on private land and fence lines and increase impacts on vegetation.

### 3. Road Widening

Road widening on bends L and M requires the extension of existing stormwater culverts and headwalls. There is no detail provided for these works with respect to the distance from the pavement edge (clear zone) and augmentation of erosion prevention works upstream or downstream of the works. This could impact on the extent of works and vegetation removal.

### 4. Pavement Design

There has been no investigation of the adequacy of the existing pavement to accommodate the additional truck movements, or to determine the appropriate pavement design where widening occurs. While it may be unreasonable for the applicant to upgrade an existing pavement that was already inadequate, there is no way to determine the impact of the additional truck movements on the road pavement and may result in accelerated damage to Uriup Road. This is a risk to Council should the application be approved.

### 5. Land Acquisitions

Works at Bend J show the batter slope encroaching slightly into private land. However as discussed above, this design does not include any consideration of retaining structures, catch drains, or clear zones between the top of the batter and the allotment boundary. Typically Council would require acquisition of private land to resolve the encroachment and provide sufficient buffer to protect private land and public infrastructure. Realignment of the bend to avoid this land conflict does not appear feasible without significant additional works and vegetation removal. Compulsory acquisition of private land by Council should not be used to facilitate private development.



Therefore without the information detailed above Council Officers are recommending refusal of the application.

#### Additional Traffic Engineering Comment on Road Capacity Impact

Road pavements are susceptible to increased loading from vehicles. This is not a linear relationship – larger vehicles do exponentially more damage than smaller vehicles. This information is important when designing road pavements for repairs and upgrades. While the proposal does not increase the number of trips on Urliup Road (average 273 vehicles per day in 2013), it does increase the loading on the pavement as the proposed 19m trucks have a significantly larger payload than the approved 6m trucks. No pavement testing has been undertaken by Council or the developer's consultants, so the true impacts of the 19m trucks in terms of reducing pavement life can be estimated. However on a preliminary assessment the impacts in terms of increased equivalent standard axles (ESAs) on Urliup Road are likely to be significant. Based on traffic volumes and vehicle classes recorded in 2013, the Bilambil end of Urliup Road is subject to  $5.4 \times 10^4$  ESAs. With the introduction of 19m trucks, the ESAs could increase to  $1.5 \times 10^5$  ESAs (178%). It is likely that this will reduce pavement life on Urliup Road, but the degree of accelerated wear cannot be determined without pavement testing.

#### Flora and Fauna & Visual Impact

##### Outstanding Ecological Issues

Council's engineers expressed concerns about the lack of sufficient cross sectional detail at regular intervals of each bend (particularly those zones with existing steep embankments adjacent to the road pavement) to enable assessment of the suitability of batter grades. Without confirmation from the Council's engineers that the batter grades are acceptable on the basis of slope stability, it is difficult to accurately and confidently ascertain the extent of vegetation removal.

Furthermore, concerns have been raised that the removal of existing mature vegetation from steep embankments to achieve the proposed embankment profiles may lead to future bank failure. Re-profiled batters vary from 1:1 to 1:2 slopes whilst no retaining structures and/or catch/cut-off drains or bank stabilisation treatment have been proposed. Where confidence in the structural integrity of the re-profiled banks cannot be provided potential risk of environmental impacts becomes elevated. These issues relate not just to the removal of vegetation to facilitate works but the risk of significant erosion and sedimentation events affecting the water quality of Bilambil Creek.

#### **Table 1 Current Evaluation of the Proposal**

The current set of engineering plans and ecological assessment information fails to satisfactorily address matters of environmental impact, road safety, design standards and ongoing maintenance. Outstanding issues are summarised below (Column 2) and the respective information considered necessary to comprehensively evaluate the proposal has been summarised in Column 3.

Reference to expanded formal information request items as detailed in Table 2 have been identified in Column 4.

Report Component	Issue	Information Request
Ecological Assessment Report General	<ul style="list-style-type: none"> <li>• Uncertainty with respect to the engineering design of batter slopes. As a result tree removal as reported in the EA report may have been underestimated.</li> <li>• The EA acknowledges loss of landscape amenity value trees and hollow bearing trees yet fails to provide commitment to compensate for the loss.</li> <li>• The area to be impacted should consider the canopy projection of those trees to be removed when calculating offset areas and undertaking the 7-part test of significance.</li> </ul>	<ul style="list-style-type: none"> <li>• Undertake re-evaluation of the engineering plans.</li> <li>• The applicant should detail what long term protection mechanism shall be established over the offset area.</li> <li>• Detailed plans at a suitable scale (comparative with the engineering plans for each bend) should be provided showing the area that has been identified to be impacted and used to calculate offsets.</li> </ul>
Engineering Plans – General	<ul style="list-style-type: none"> <li>• Lack of sufficient cross sectional detail at regular intervals of each bend (particularly those zones with existing steep embankments adjacent to the road pavement) to enable assessment of the suitability of batter grades.</li> <li>• Without confirmation from the Council's engineers that the batter grades are acceptable on the basis of slope stability, it is difficult to accurately and confidently ascertain the extent of vegetation removal.</li> <li>• Not all threatened species stems trees have been identified on the engineering plans.</li> </ul>	<ul style="list-style-type: none"> <li>• Undertake re-evaluation of the EA report and engineering plans to address concerns.</li> </ul>
Engineering Plans - Bend E	<ul style="list-style-type: none"> <li>• Uncertainty with respect to the engineering design of batter slopes. As a result tree removal may have been underestimated.</li> </ul>	<ul style="list-style-type: none"> <li>• Undertake re-evaluation of the ecological assessment and engineering plans to address concerns</li> </ul>
Engineering Plans - Bend H	<ul style="list-style-type: none"> <li>• Uncertainty with respect to the engineering design of batter slopes. Without confirmation from the Council's engineers that the batter grades are acceptable on the basis of slope stability, it is difficult to accurately and confidently ascertain the extent of vegetation removal. It is anticipated that extensive removal of Lowland Rainforest EEC would be required at this bend in the absence of retaining structures</li> </ul>	<ul style="list-style-type: none"> <li>• Engineering design should take into consideration the ecological impacts and include design alternatives to minimise disturbance</li> </ul>
Engineering Plans - Bend J	<ul style="list-style-type: none"> <li>• Uncertainty with respect to the engineering design of batter slopes</li> <li>• Without confirmation from the Council's engineers that the batter grades are acceptable on the basis of slope stability, it is difficult to accurately and confidently ascertain the extent of vegetation removal.</li> <li>• Removal of existing mature vegetation from steep embankments to achieve the proposed embankment profiles may lead to future bank failure.</li> </ul>	<ul style="list-style-type: none"> <li>• The applicant is requested to amend the ecological assessment report and associated arboricultural report to evaluate the impact at this bend based on any revised engineering plans</li> <li>• Engineering design should take into consideration the ecological impacts and</li> </ul>

Report Component	Issue	Information Request
	<ul style="list-style-type: none"> <li>Re-profiled batters vary from 5:5 to 5:2 slopes whilst no retaining structures and/or catch/cut-off drains or bank stabilisation treatment have been proposed</li> <li>Issues relate not just to the removal of vegetation to facilitate works but the risk of significant erosion and sedimentation events affecting the water quality of Bilambil Creek.</li> </ul>	include design alternatives to minimise disturbance
Engineering Plans - Bend L	<ul style="list-style-type: none"> <li>Impact on a suite of significant trees including a mature <i>Syzygium moorei</i></li> <li>Avoidance strategies and alternative road designs do not appear to have been considered. All efforts should be made to avoid impact on threatened species.</li> </ul>	<ul style="list-style-type: none"> <li>Provide options for alternative road design to avoid impact on Lowland Rainforest EEC and loss of 2 x <i>Syzygium moorei</i></li> <li>Identify the additional stem of <i>Syzygium moorei</i> on the engineering plans</li> </ul>
Engineering Plans - Bend M	<ul style="list-style-type: none"> <li>Vegetation at Bend M is representative of a Lowland Rainforest EEC, this is contrary to the EA report that classifies the unit as 'Scattered rainforest Trees'</li> </ul>	<ul style="list-style-type: none"> <li>Re-evaluate the EEC classification with the entire set of criteria under the relevant determination</li> </ul>

**Table 2 Information Request Items**

Information Request Specifics
<p>The following concerns are raised by Council with respect to engineering design and subsequent clearing extent necessary to facilitate earthworks:</p> <ul style="list-style-type: none"> <li>Lack of sufficient cross sectional detail at regular intervals of each bend (particularly those zones with existing steep embankments adjacent to the road pavement) to enable assessment of the suitability of batter grades. Without confirmation that the batter grades are acceptable on the basis of slope stability, it is difficult to accurately and confidently ascertain the extent of vegetation removal.</li> <li>The removal of existing mature vegetation from steep embankments to achieve the proposed embankment profiles may lead to future bank failure. Re-profiled batters vary from 5:5 to 5:2 slopes whilst no retaining structures and/or catch/cut-off drains or bank stabilisation treatment have been proposed. Where confidence in the structural integrity of the re-profiled banks cannot be provided potential risk of environmental impacts becomes elevated. These issues relate not just to the removal of vegetation to facilitate works but the risk of significant erosion and sedimentation events affecting the water quality of Bilambil Creek.</li> </ul> <p>The applicant is requested to address matters relating to engineering as raised by Council's engineers and subsequently evaluate the ecological effects of any change to the engineering design plans.</p> <p>The applicant is requested to review comments provided by Council below and address within an amended <i>Ecological Assessment (EA) – Urliup Road Widening dated 02 April 2017 prepared by Ecological Australia</i>. It is noted that all items detailed below should influence and take into consideration any modification to the engineering design.</p> <ol style="list-style-type: none"> <li><u>Impact on endangered vegetation communities</u> Upon analysis of the vegetation removal calculations in the EA report the area of Lowland Rainforest EEC to be disturbed has been underestimated. The area does not include the total canopy impact area. Council are of the opinion that the area captured under the canopy of the vegetation to be impacted should be taken into consideration (excluding that</li> </ol>

### Information Request Specifics

area of the canopy overhanging the existing pavement), as the disturbance of the canopy will introduce new conditions to the mid and understorey effectively resulting in indirect disturbance. As such all impact assessment calculations made in the EA report are considered inaccurate and an underestimate of the extent of Lowland Rainforest EEC to be adversely affected.

Furthermore it is noted that:

- Vegetation at Bend M is representative of a Lowland Rainforest EEC, this is contrary to the EA report that classifies the unit as 'Scattered rainforest Trees'
- The areal extent of the local occurrence of the Lowland Rainforest EEC appears to have been overestimated

Given that the areal extent calculations form the basis of the 7-part test, it is considered that certain elements of the test should be reevaluated in order to determine whether the proposal would have a significant effect on the local extent.

Similarly, the offset area figures should be recalculated using the revised area of impact extent.

It is further noted that the offset calculations relied on in the EA have classified the vegetation communities to be affected on site incorrectly under the Plant Community Type classification code. Therefore the offsetting calculations are not an accurate reflection of potential offsets required.

#### 2. Impact on threatened species – flora

- a) A significantly sized semi-mature threatened *Syzygium moorei* (Durobby) (listed under both the TSC Act and EPBC Act) occurs on the existing embankment at Bend L. Removal of the Durobby would be necessary to facilitate the road upgrade works under the current design plans. The applicant proposes to offset the loss of the tree through compensatory planting on the water extraction site (Lot 5 DP735658).

This specimen is currently in a healthy condition showing no clear signs of structural deformity/deficiency. The tree may be considered a keystone species for the local population and associated localised unit of lowland rainforest habitat due to the tree's level of maturity - at a reproductive age, providing blossom/fruit and refuge for fauna.

It is therefore considered that the 7-part test conducted by the applicant may not have been performed with sufficient rigour in that certain elements of the test have been overlooked and/or miscalculated (as a function of the inaccurate stem counts) such as:

- The local population size – the report identifies 8 individuals in the 'immediate area', only 4 including the specimens to be removed have been identified on the plans equating to a loss of 50% of the population within the 'immediate area';
- Likely age and maturity of individuals in the local population;
- The genetic importance of those more significant reproductive individuals; and
- The duration and timing of adverse effects.

Therefore concern remains that the loss of this specimen may likely have a significant effect on the local population.

With regard to the applicant's recommendations to undertake compensatory planting it is considered that this approach to mitigation should only be contemplated where avoidance strategies have been sufficiently investigated. This is consistent with fundamental threatened species management and Office of Environment & Heritage (OEH) biodiversity offset principles.

The significance and value of the specimen and concerns regarding the assessment of significance were raised during a recent onsite meeting. Subsequently, the



### Information Request Specifics

applicant advised that investigations would be undertaken to consider the feasibility of an alternative road alignment should Council reaffirm their position on the matter.

As such the applicant is requested to:

- (i) Provide options for alternative road design to avoid impact on EEC Lowland Rainforest and loss of 2 x *Syzygium moorei* at Bend L
- (ii) Identify the additional stem of *Syzygium moorei* on the engineering plans and re-evaluate as part of the ecological assessment

Similarly the latest ecological assessment included a revised 7-part test for a number of other threatened species within the area to be impacted. The proportion of loss within the study area of each individual species is as follows:

- Red Bopple Nut (*Hicksbeachia pinnatifolia*) – 33% of the population within the study area to be removed;
- Fine-leaved Tuckeroo (*Lepiderema pulchella*) – 61 % of the population within the study area to be removed; and
- Rough-shelled Nut (*Macadamia tetraphylla*) – 30% of the population within the study area to be removed.

As such Council consider that the 7-part test for these species has not been performed with sufficient rigour, having regard for those population dynamics matters described above and that the 7-part test be re-evaluated.

#### 3. Offset Area

The proposed offset area has been poorly conceived in terms of location (adjacent to Urlup Road and dissected by the water truck access road) given that more appropriate and better connected strategically available land can be found elsewhere Lot 1 DP 735658. The area calculation has not been shown on the offset plan and no reference to a security mechanism has been implied. The applicant is therefore requested to reconfigure the offset area plan to:

- a) Show the offset area principally configured on private land within a strategic location on site to allow for high conservation outcomes to be achieved in the long term
- b) Be modified to account for recalculated impact areas using offset ratios currently adopted in the EA report for Lowland Rainforest EEC and Brushbox Open Forest (at Bend J); and
- c) Detail what long term protection mechanism shall be established over the offset area.

#### 4. Threatened Species Management

Given the likely impacts on threatened flora species, commitment should be provided to prepare a threatened species management plan and implementation of measures such as (but not limited to):

- a) The collection of propagation a material and consideration of plant translocation (where practical) for those flora species not considered likely to have a significant effect on the population as a result of the proposal; and
- b) Construction phase protection requirements.

#### 5. Non EEC remnant vegetation

The issues relating to canopy calculations and offset requirements with respect to Lowland Rainforest EEC detailed above also apply to the Brushbox Open Forest unit at Bend J.

#### 6. Non-remnant vegetation

To facilitate the road upgrade approximately 103 non-remnant planted or exotic trees (i.e.

### Information Request Specifics

those that do not form part of a vegetation community) are proposed to be removed. The applicant has not proposed any compensation for the loss of these trees.

A high number of the trees are local native species (*Araucaria cunninghamiana*, *Eucalyptus grandis*, *E. microcorys*, *E. robusta*) yet are considered to have a lower ecological value (due to their origins) Notwithstanding, several of these trees have reached maturity providing habitat value for local fauna species (blossom, fruit and hollows) and contribute to the local rural landscape aesthetic.

Further consideration should be given to compensating for the loss of rural landscape amenity trees with a plan to undertake revegetation areas within the road reserve in strategic locations that would not compromise road safety. The following offset calculations at a ratio of 1:2 (Loss:Replace) should be adopted for non-threatened species outside a remnant unit:

- a) Local native species greater than five (5) metres height; and
- b) Non-local native species or exotic species greater than 800 mm diameter measured at 1.4 metres from natural ground.
- c) Loss of hollow bearing trees

An active hollow was identified at Bend D. As such the applicant is requested to provide commitment to install and monitor nest boxes at a ratio of 5:2 to offset the loss of the hollow or any other hollows recorded during tree felling.

Therefore, without the information detailed, it is considered that Council should refuse the application.

### (c) Suitability of the site for the development

Urliup Road and the works proposed to Urliup Road are not considered suitable to support a 19m truck as proposed in conjunction with DA03/0445.03.

### (d) Any submissions made in accordance with the Act or Regulations

The subject applications (DA03/0445.03 and DA15/0664) have generated a great deal of public interest. The first round of public notification attracted 25 objection letters, while the second round of public notification attracted 65 objection letters and 34 letters of support.

The letters of objection focus on matters such as:

- Road safety (crash history)
- Road suitability (e.g. heavy vehicles across causeways that are not strong enough)
- Road conflict issues between people walking/cycling, horse riding and driving
- The loss of trees in such a visually attractive rural landscape
- The impact on flora and fauna

- Generally opposed to water extraction
- Additional damage to road shoulders
- No submitted traffic assessment
- The applicants history of non-compliance (speeding truck drivers, out of hours, larger truck sizes)
- The general area of the amenity will be compromised
- The current 6m truck is too big for safe travel
- The weekends should at least be truck free
- Bigger trucks will be noisier
- The application does not meet the S96 test, should be a new DA

Many of these objections are concurred with and accordingly the application is recommended for refusal. A copy of all the objections have been provided to the Councillors separate to this report.

The letters of support were noted, however, they do not change the safety concerns expressed in this report.

**(e) Public interest**

As submitted the application is not considered to be in the public interest as the roadworks being proposed do not meet the level of service deemed to be necessary to accommodate the development being proposed under DA03/0445.03.

**OPTIONS:**

1. Refuse the Application as recommended.
2. Defer the application to provide additional time for the applicant to submit more detailed technical information in respect of Council's current concerns; or
3. Give in-principle approval to the application, and the officers bring back a report to the June Planning Committee Meeting providing recommended conditions of approval.

Option 1 is recommended.

In terms of Option 2, it is noted that Council has previously resolved not to further defer this application to seek additional technical information, and the applicants have stated that are not prepared to submit any further information.

In respect of Option 3, a confidential legal opinion has been provided by Council's solicitors (Attachment 1 to this report), which provides guidance on the extent of risk that is posed by this action.

**CONCLUSION:**

The application to undertake roadworks on a public road to benefit a commercial operation in principal could be supported. However, the roadworks being proposed are not considered to be of sufficient a standard to enable a recommendation for approval.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

Yes, legal advice has been received.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*(Confidential)* Attachment 1. Legal advice provided by Maddocks Solicitors dated 15 April 2017 (ECM 4496134)

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**3 [PR-PC] Development Application DA17/0073 for Alterations and Additions to Existing Brewery at Lot 207 DP 1122768 No. 35-37 Kite Crescent, South Murwillumbah**

**SUBMITTED BY: Development Assessment and Compliance**

Validms



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.2 Improve decision making by engaging stakeholders and taking into account community input
- 1.2.1 Council will be underpinned by good governance and transparency in its decision making process

### SUMMARY OF REPORT:

Consent is sought for additions and alterations to the existing Stone and Wood Brewery at Lot 207 DP 1122768, 35-37 Kite Crescent, South Murwillumbah.

Stone & Wood brewery is experiencing significant product demand growth. The subject application for additions is essential to enable the brewery to expand its current operations (over the next five (5) years) and compete in the Australian market.

The development comprises the following:

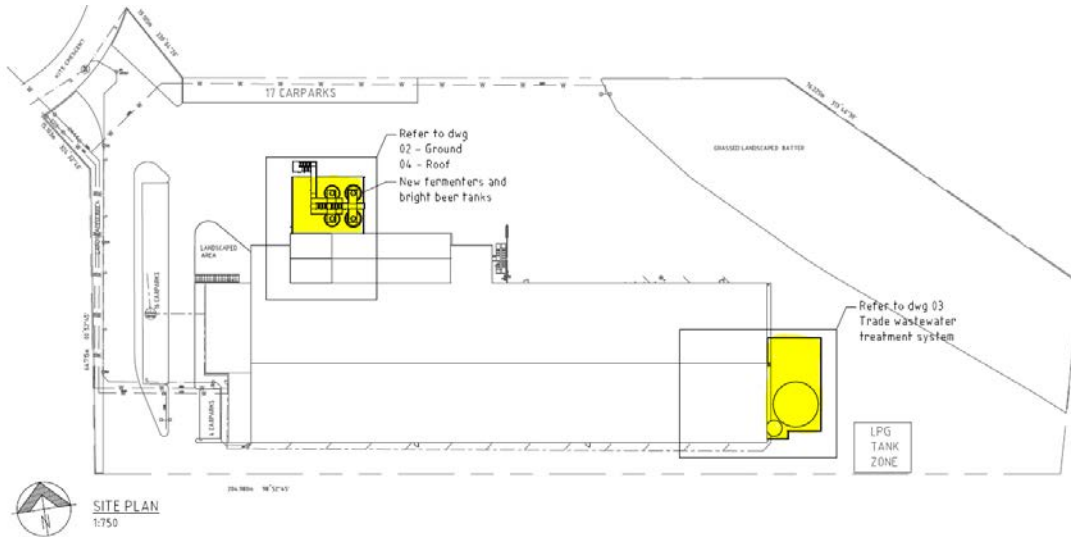
1. Installation of four (4) new 400HL fermentation tanks to the west of the existing cellar. The western shed wall will be removed and new walls constructed to fully enclose the new tanks;
2. Installation of two (2) new 400HL bright beer tanks, two (2) new 800HL fermentation tanks on a new concrete slab to the north of the cellar;
3. Installation of Clean In Place (CIP) tanks adjacent to the new 400HL and 800HL fermenters in the new roofed section. The roof will continue at same height surrounding the proposed fermenter tanks, subsequently allowing a covered area surrounding the tanks;
4. Upgrade the existing wastewater treatment system for increase capacity.

Two of the proposed external fermenters are partially external and will have a total height of 16m. These tanks are located on the northern side of the existing cellar. The mapped height limit for the subject site is 10.0m. Accordingly, the proposed height of these tanks would exceed the 10.0m height limit by 6m, requiring the application to be reported to Council for determination.

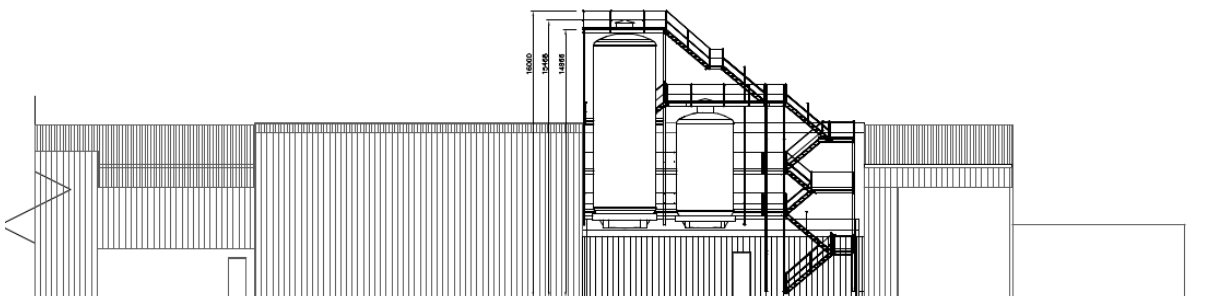
The subject site is shown below.



Location of works is shown below.



The northern elevation (partial) of the building is shown below.



NORTH ELEVATION (CONTINUED)

The application was notified for a period of 14 days from Monday 6 March 2017 to Monday 20 March 2017.

During this period no submissions were received.

The subject application is being reported to Council for determination as the application seeks a greater than 10% variation to the 10.0m maximum height limit as under Clause 4.3 of the Tweed Local Environmental Plan 2014.

The officers' recommendation is for conditional approval.

## **RECOMMENDATION:**

**That:**

- A. Clause 4.6 Variation to the Tweed Local Environmental Plan 2014 in regards to the Height of Buildings Map regarding the 6m height variation be supported and the concurrence of the Director-General of the Department of Planning be assumed.**
- B. Development Application DA17/0073 for alterations and additions to existing brewery at Lot 207 DP 1122768 No. 35-37 Kite Crescent, South Murwillumbah be approved subject to the following conditions:**

### **GENERAL**

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Drawing Nos 170125-07, plans 1-7, Issue B prepared by Greg Alderson and Associates and dated 31/01/2017, except where varied by the conditions of this consent.**  
[GEN0005]
- 2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**  
[GEN0115]
- 3. Any business or premises proposing to discharge wastewater containing pollutants differing from domestic sewage must submit a Liquid Trade Waste Application Form to Council. The application is to be approved by the General Manager or his delegate prior to any discharge to the sewerage system. A Liquid Trade Waste Application fee will be applicable in accordance with Council's adopted Fees and Charges.**  
[GEN0190]
- 4. The building is required to be upgraded to satisfy the requirements of the NCC-BCA to achieve a satisfactory level of fire safety and the option is available to submit a fire engineering report containing alternative solutions addressing the Performance Requirements contained in Volume 1 of the Building Code of Australia relating to the requirements listed below. This report is to be submitted to the nominated PCA for assessment and determination prior to issue of the Construction Certificate.**

**The Building is to be provided through with a sprinkler system complying with Specification E1.5 and part C2.3 Large Isolated Buildings of Volume 1 of the NCC- BCA.**

[GENNS01]

5. This development consent shall be read in conjunction with that issued in association with DA13/0346 and DA14/0869.02 which granted consent for the current brewery operations and additions and alterations respectively. The applicant is responsible for payment of contribution charges levied against both applications as represented in the respective development consents.

[GENNS01]

6. Sewage discharge to Council's sewer is limited to no more than 5 L/s and total discharge limited to no more than 30 kL/d.
7. The Liquid Trade Waste discharged from this premises to Council's sewerage system must at all times comply with a current Liquid Trade Waste Agreement as issued by Tweed Shire Council.

#### **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

#### **8. Section 94 Contributions**

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

**A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT.**

These charges include indexation provided for in the S94 Plan and will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

A copy of the Section 94 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

- (a) Extensions to Council Administration Offices  
& Technical Support Facilities  
0.130212 ET @ \$1909.57 per ET  
(\$1,759.90 base rate + \$149.67 indexation)  
S94 Plan No. 18

\$248.65

[PCC0215]

9. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.



Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless the Certifying Authority has sighted Council's "Certificate of Compliance" signed by an authorised officer of Council or a written agreement has been entered into by the applicant with Council for deferred payments in accordance with Council's Business Investment Policy.

[PCC0265]

10. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

#### **PRIOR TO COMMENCEMENT OF WORK**

11. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
  - (b) the person having the benefit of the development consent has:
    - (i) appointed a principal certifying authority for the building work, and
    - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
  - (c) the principal certifying authority has, no later than 2 days before the building work commences:
    - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
    - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
  - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
    - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and

- (ii) notified the principal certifying authority of any such appointment, and
- (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

12. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.

[PCW0225]

13. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

14. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design.

[PCW0665]

## **DURING CONSTRUCTION**

15. All proposed works are to be carried out in accordance with the conditions of development consent, approved management plans, approved trade waste agreement, approved construction certificate, drawings and specifications.
16. All proposed works are to be carried out in accordance with the conditions of development consent, approved management plans, approved trade waste agreement, approved construction certificate, drawings and specifications.

[DUR0005]

17. The provision of thirty-seven (37) off street car parking spaces including parking for the disabled where applicable. The layout and construction standards to be in accordance with Tweed Shire Council Development Control Plan, Part A2 - Site Access and Parking Code. [DUR0085]
18. Construction and/or demolition site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council:
- Monday to Saturday from 7.00am to 6.00pm  
No work to be carried out on Sundays or Public Holidays
- The proponent is responsible to instruct and control subcontractors regarding hours of work. [DUR0205]
19. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building. [DUR0245]
20. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made). [DUR0375]
21. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council. [DUR0395]
22. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979. [DUR0405]
23. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:
- Noise, water or air pollution.
  - Dust during filling operations and also from construction vehicles.
  - Material removed from the site by wind.
- [DUR1005]
24. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development

**Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.**

[DUR1875]

25. **The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blown from the site.**

[DUR2185]

26. **A garbage storage area shall be provided in accordance with Council's "Development Control Plan Section A15 - Waste Minimisation and Management".**

[DUR2195]

### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

27. **A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).**

[POC0205]

28. **The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.**

[POC0225]

29. **A final occupation certificate must be applied for and obtained within 6 months of any Interim Occupation Certificate being issued, and all conditions of this consent must be satisfied at the time of issue of a final occupation certificate (unless otherwise specified herein).**

[POC0355]

30. **On completion of work a certificate signed by a practising structural engineer is to be submitted to the Principal Certifying Authority to certify the structural adequacy of the structure.**

[POC0805]

### **USE**

31. **The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.**

[USE0125]

32. **Hours of operation of the business are restricted to the following hours:**

- \* **24 hours per day, seven days per week, excluding deliveries and pickups and packaging**
- \* **All deliveries and pickups relating to the business are to occur between 7:00 am and 7:00 pm**
- \* **All packaging of the product is to occur between 7:00 am and 7:00 pm.**



[USE0185]

- 33. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.**

[USE0225]

- 34. Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction of the General Manager or his delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's authorised officer.**

[USE0245]

- 35. Any premises used for the storage, preparation or sale of food are to comply with the *Food Act* 2003, Food Standards Code, AS 4674-2004 Design, Construction and Fit-out of Food Premises and other requirements of the NSW Food Authority.**

[USE0835]

**REPORT:**

**Applicant:** Stone & Wood Brewing Company Pty Ltd  
**Owner:** Sonwol Nominees Pty Ltd & Michisa Pty Ltd  
**Location:** Lot 207 DP 1122768; No. 35-37 Kite Crescent SOUTH MURWILLUMBAH  
**Zoning:** IN1 - General Industrial  
**Cost:** \$1900000.00

**Background:**

The existing Stone & Wood brewery originally obtained development consent for the change of use to a brewery, under DA13/0346 on 18 October 2013.

A subsequent application; DA14/0869 for alterations to an existing brewery was later granted consent on 5 February 2015.

Section 96 modification DA14/0869.01 for minor alterations to the cellar expansion was granted consent 21 April 2015.

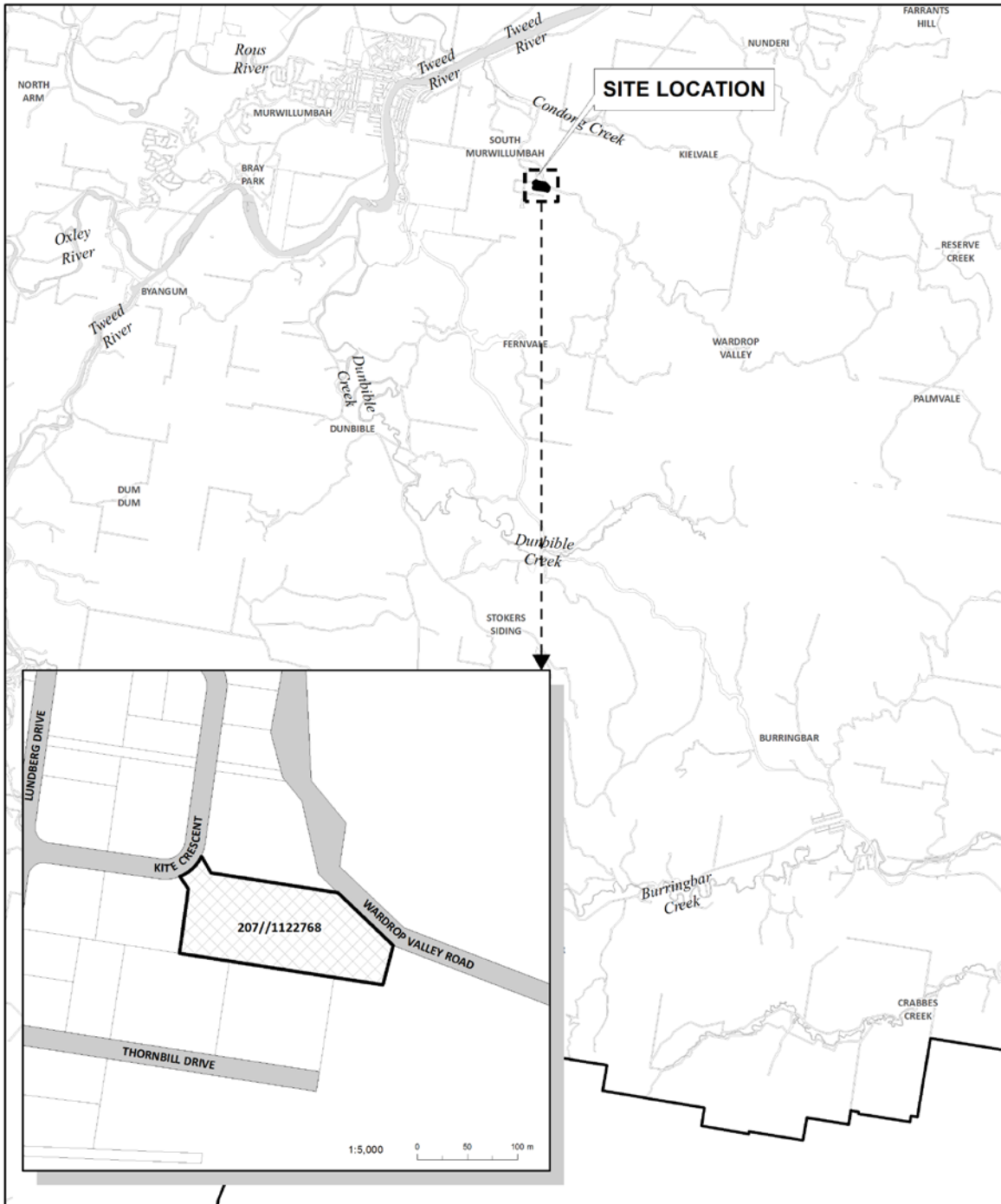
Section 96 modification DA14/0869.02 to increase the water consumption allowance was granted consent by Council 25 January 2017.

The Statement of Environmental Effects advises that the Stone & Wood brewery is experiencing significant product demand growth and plans to expand its brewing operations over the next five (5) years.

Accordingly, the following additions and alterations are proposed.

1. Installation of four (4) new 400HL fermentation tanks to the west of the existing cellar. The western shed wall will be removed new walls constructed to fully enclose the new tanks;
2. Installation of two (2) new 400HL bright beer tanks, two (2) new 800HL fermentation tanks on a new concrete slab to the north of the cellar;
3. Installation of Clean In Place (CIP) tanks adjacent to the new 400HL and 800HL fermenters in the new roofed section. The roof will continue at same height surrounding the proposed fermenter tanks, subsequently allowing a covered bunded area;
4. Upgrading the existing wastewater treatment system for increased capacity. Wastewater facilities will be implemented in stages to meet the increased water load. Including the treatment and recycling of wastewater onsite.

**SITE DIAGRAM:**



**LOCALITY PLAN**

Lot 207 DP 1122768  
No. 35-37 Kite Crescent, South Murwillumbah

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Coordinate System - MGA Zone 56  
Datum - GDA 94

Cadastre: 30 June, 2010  
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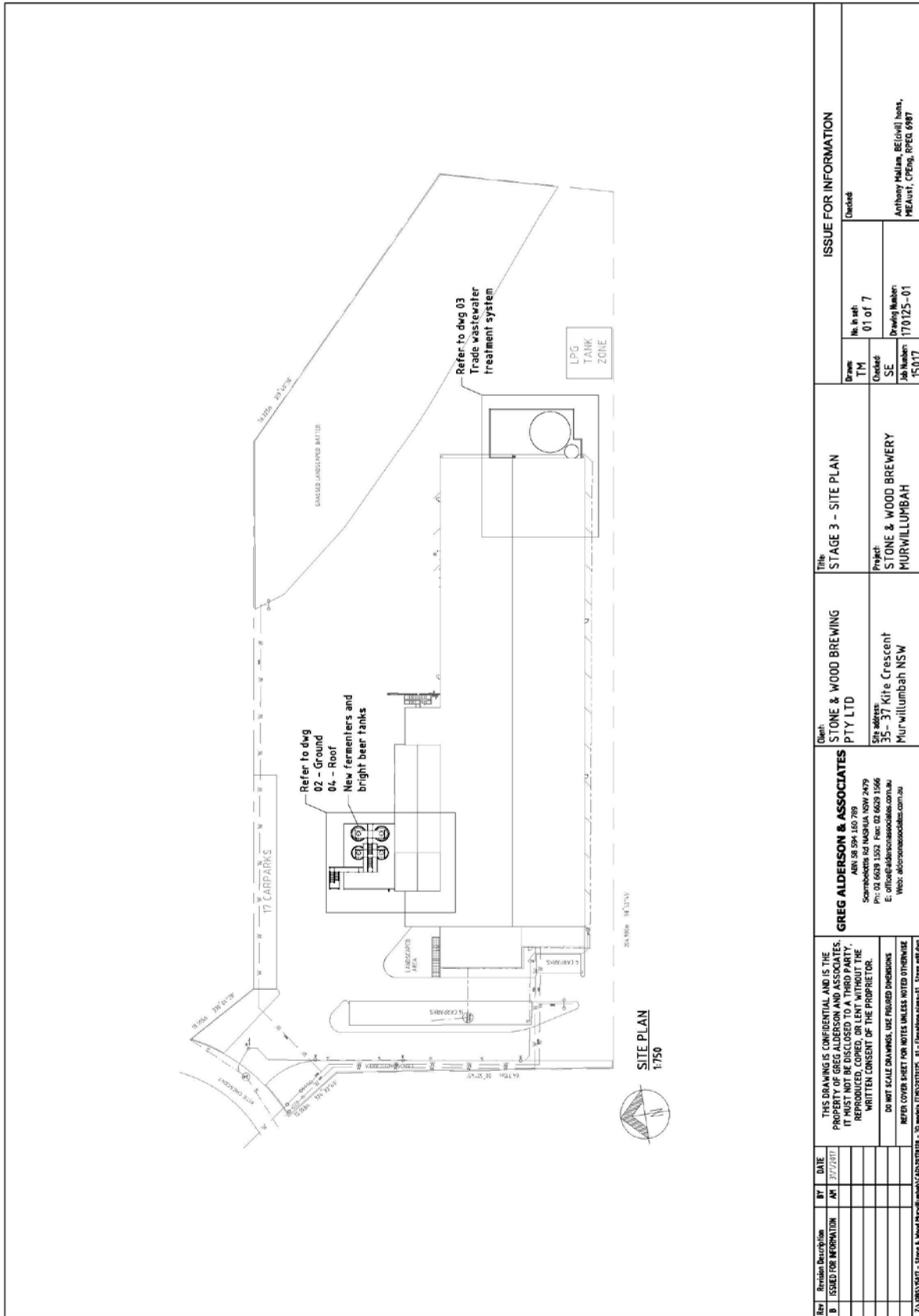
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Civic and Cultural Centre  
3 Tumbulgum Road  
Murwillumbah NSW 2484  
PO Box 816  
Murwillumbah NSW 2484  
T: (02) 6670 2400 / 1300 292 872  
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W: www.tweed.nsw.gov.au  
E: planningreforms@tweed.nsw.gov.au



**TWEED**  
SHIRE COUNCIL

DEVELOPMENT/ELEVATION PLANS:

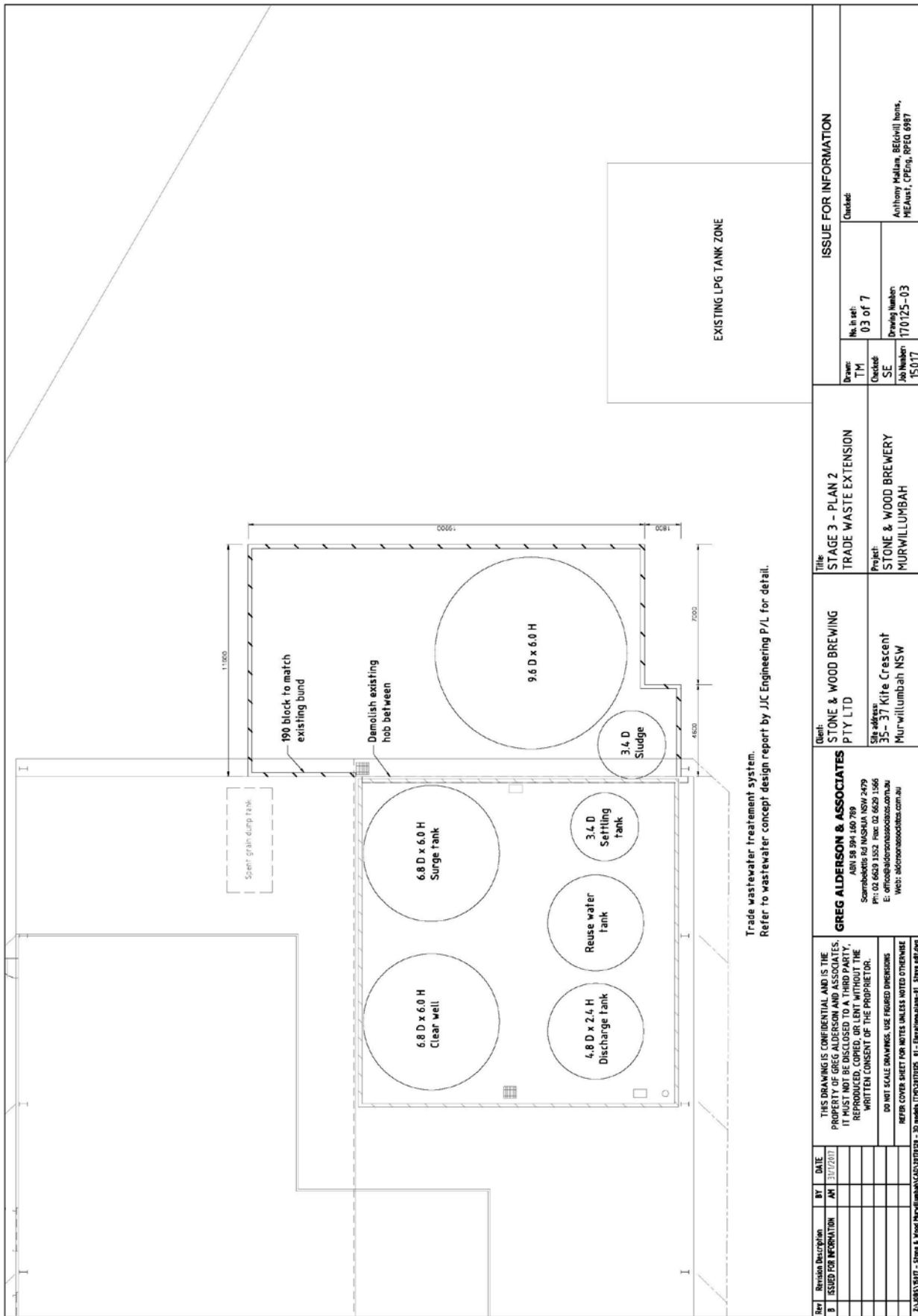


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<p>Z:\038515817 - Stone &amp; Wood Brewery\Task\CAD\201702 - 3D model\TRUSTMTR2_01 - Development plan - L1_Plan.dwg</p>			

<b>GREG ALDERSON &amp; ASSOCIATES</b> AN: 58 594 460 788 Somersby Rd MASHUA NSW 2429 Ph: 02 6628 1522 Fax: 02 6628 1566 E: office@aldersonassociates.com.au Web: aldersonassociates.com.au		Client: <b>STONE &amp; WOOD BREWING PTY LTD</b> Site address: 35 - 37 Kife Crescent Murwillumbah NSW	Title: <b>STAGE 3 - SITE PLAN</b> Project: <b>STONE &amp; WOOD BREWERY MURWILLUMBAH</b>	Drawn: TM Checked: SE Job Number: 170725-01 15/017	ISSUE FOR INFORMATION Checked: Anthony Mallam, BE (Civil) hon, ME Aust, CP Eng, RPEQ 6987
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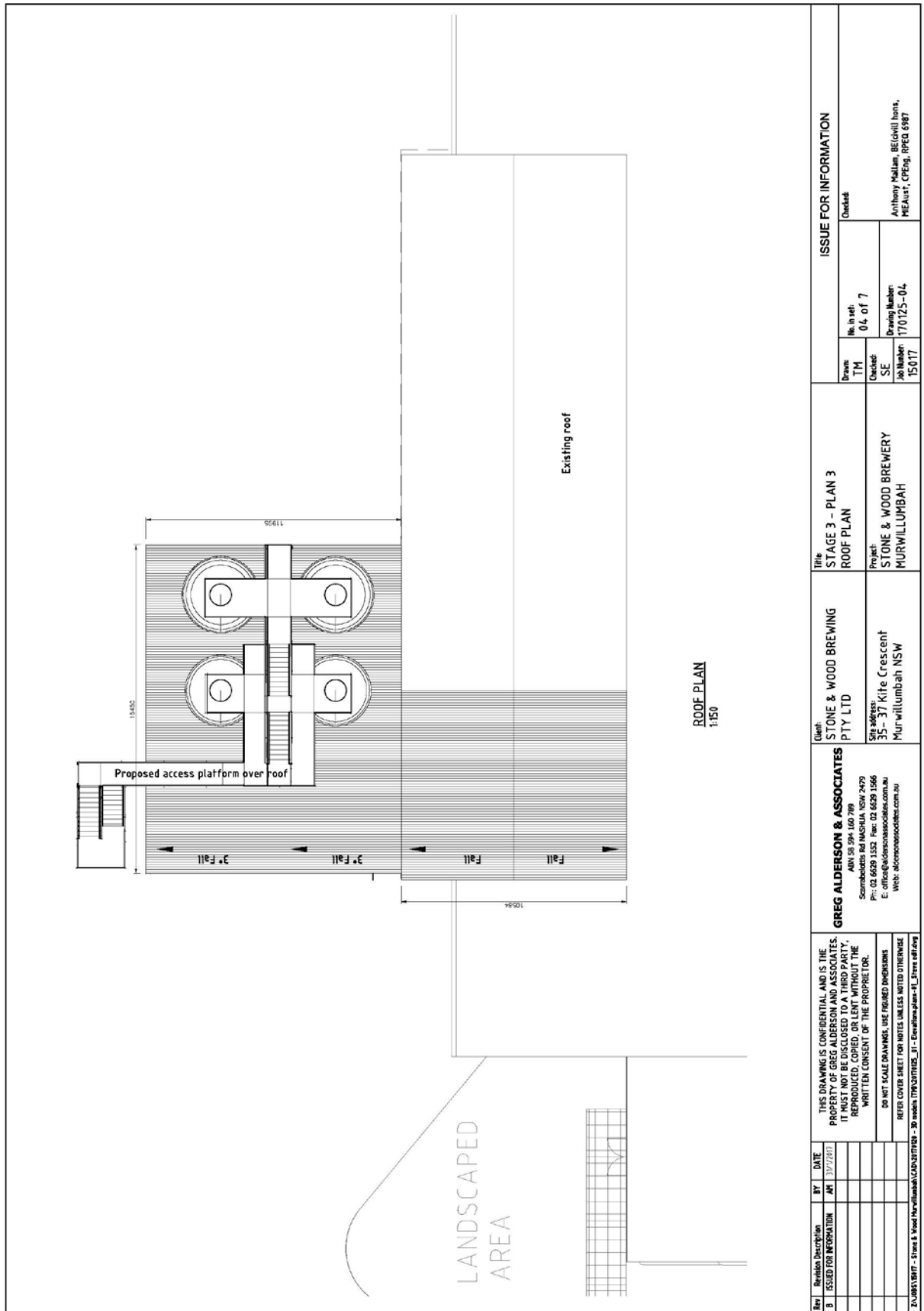






Trade wastewater treatment system.  
Refer to wastewater concept design report by JJC Engineering P/L for detail.

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				REFER COVER SHEET FOR NOTES UNLESS NOTED OTHERWISE		Checked: SE	Drawing Number: 170125-03
				REF: 200815017 - Stone & Wood Murwillumbah CAD/3/17/13 - 2D model (TP/03/17/13)_BT - Drawings phase 1 - Stone ref.dwg		Job Number: 15017	Checked: Anthony Mallan, BE(Sivil) Eng., ME Aust., CP Eng., RP Eng. 6987
				Client:	STONE & WOOD BREWING PTY LTD	Title:	
				Site address:	35-37 Kite Crescent Murwillumbah NSW	Project:	
				ABN: 59 394 160 789		STAGE 3 - PLAN 2 TRADE WASTE EXTENSION	
				Scarabodette RD MURWILLUMBAH NSW 2479			
				P: 04 6693 1532 Fax: 04 6629 1586			
				E: info@gregalderson.com.au			
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B	ISSUED FOR INFORMATION	AM	3/7/2017		<p>Drawn: TMH</p> <p>Checked: SE</p> <p>Job Number: 170125-04</p> <p>Issue Number: 150177</p>	<p>No. in set: 04 of 7</p> <p>Drawing Number: 170125-04</p>

**SOUTH ELEVATION**  
1:200

**SOUTH ELEVATION (CONTINUED)**  
1:200

Rev	Revision Description	BY	DATE
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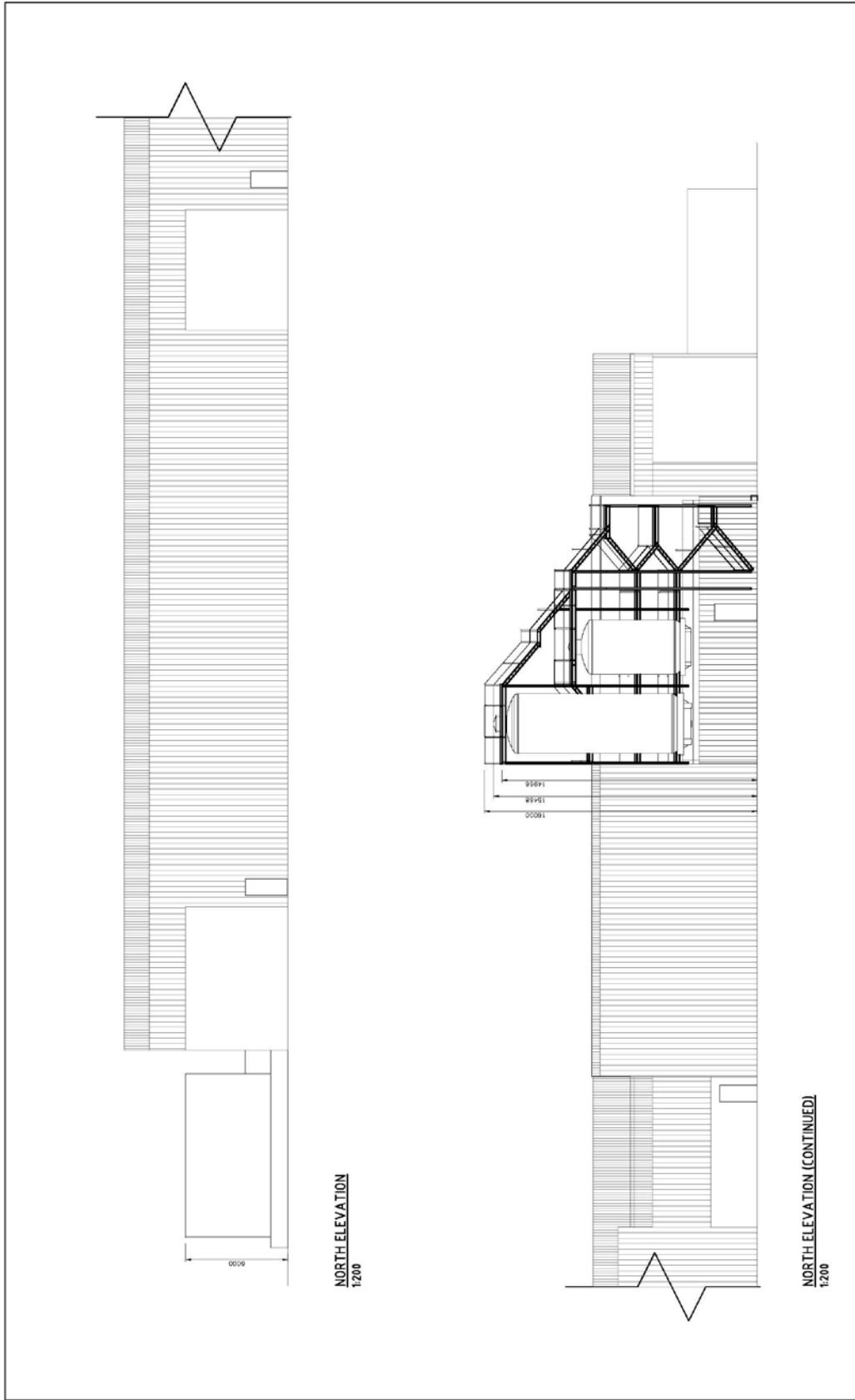
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Rev	Revision Description	BY	DATE	ISSUE FOR INFORMATION	
B	ISSUED FOR INFORMATION	AM	30/5/2017	Drawn: TM	No. of sets: 06 of 7
				Checked: SE	Drawing Number: 170125-06
				Job Number: 15017	Checked: Anthony Mallam, BE (civil) honrs, MEEAust, CPEng, RPEQ 6987
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**EAST ELEVATION**  
1:4-00

**WEST ELEVATION**  
1:4-00

Rev	Revision Description	BY	DATE	ISSUE FOR INFORMATION									
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Drawn TH	No. in set: 07 of 7	Checked:											
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Job Number: 15017													
<p><b>Client:</b> STONE &amp; WOOD BREWERY PTY LTD  <b>Site address:</b> 35- 37 Kite Crescent Murwillumbah NSW</p> <p><b>GREG ALDERSON &amp; ASSOCIATES</b>                  ABN 58 594 160 789                  30amabobbs rd MUSGRA NSW 2479                  Ph: 02 6623 1532 Fax: 02 6629 1566                  E: office@aldersonassociates.com.au                  Web: aldersonassociates.com.au</p>				<p><b>Title:</b> ELEVATIONS SHEET 3  <b>Project:</b> STONE &amp; WOOD BREWERY MURWILLUMBAH</p>									
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**Considerations under Section 79C of the Environmental Planning and Assessment Act 1979:**

**(a) (i) The provisions of any environmental planning instrument**

**Tweed Local Environmental Plan 2014**

**Clause 1.2 – Aims of the Plan**

This plan aims to make local environmental provisions for land within the Tweed Heads area in accordance with the relevant standard environmental planning instrument under Section 33A of the Act.

The particular aims of this plan are as follows:

- (a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,*
- (b) to encourage a sustainable local economy and small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed,*
- (c) to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, built environment, and cultural heritage,*
- (d) to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,*
- (e) to promote building design which considers food security, water conservation, energy efficiency and waste reduction,*
- (f) to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,*
- (g) to conserve or enhance the biological diversity, scenic quality and geological and ecological integrity of Tweed,*
- (h) to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,*
- (i) to conserve or enhance areas of defined high ecological value,*
- (j) to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.*

The proposed development is considered to be generally in accordance with the aims of this plan having regard to its nature, and the fact that the land use is permissible in the subject zone.

### Clause 2.3 – Zone objectives and Land use table

The objectives of the IN1 General Industrial zone are:

- *To provide a wide range of industrial and warehouse land uses.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of industry on other land uses.*
- *To support and protect industrial land for industrial uses.*
- *To enable land uses that provide facilities or services to meet the day to day needs of workers in the area.*

The proposed development is an extension of an existing industrial use that encourages employment opportunities and is considered to meet the objectives on the zone.

### Clause 4.3 - Height of Buildings

The objectives of this clause are as follows:

- (a) *to establish the maximum height for which a building can be designed,*
- (b) *to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity,*
- (c) *to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities,*
- (d) *to encourage greater population density in less car-dependant urban areas,*
- (e) *to enable a transition in building heights between urban areas comprised of different characteristics,*
- (f) *to limit the impact of the height of a building on the existing natural and built environment,*
- (g) *to prevent gross overshadowing impacts on the natural and built environment.*

This clause goes on further to advise that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The proposed development includes a two fermentation tanks with a height of 16m.

The site is mapped on the *Height of Buildings Map* associated with Clause 4.3 as having a maximum height limit of 10.0m. Accordingly, the proposed development seeks a variation of 6.0m.

The proposed height of the building is considered in keeping with the objectives of clause 4.3 for the following reasons:

- The development is not considered to have impacts on the amenity of the adjoining sites (currently vacant);
- The subject site is located within an established industrial zone; and
- The development and will not cause any overshadowing on the adjoining properties.

The proposed height variation is discussed further within this report under the heading *Clause 4.6 – exception to development standards*.

Clause 4.4 – Floor Space Ratio

Not Applicable for an industrial zone.

Clause 4.6 - Exception to development standards

The objectives of this clause are as follows:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6 advises that development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.

In accordance with the provisions of Clause 4.6(3) development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Clause 4.6 also advised that development consent must not be granted for development that contravenes a development standard unless:

- (a) *the consent authority is satisfied that:*
  - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

The subject application contravenes the mapped height limit of 10.0m under Clause 4.3 of the Tweed Local Environmental Plan 2014.

In accordance with this clause the applicant provided the following written advice to Council.

*"The proposed standard to be varied is Clause 4.3 – Height of Buildings, which specifies a maximum building height of 10 metres for the site. The building height is defined in the TLEP 2014 as:*

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

*The proposed development includes the installation of 2 new 800HL fermenter tanks which have a total height of 16 metres. An important feature of these tanks is the steep angled cone at the base. This cone requires an angle of 60 – 75 degrees to allow the yeast to settle in the base of the tank at the completion of primary fermentation, leaving the beer comparatively free of yeast.*

*This allows maturing and conditioning to take place in the same vessel, without the need to centrifuge the beer in a second vessel for maturation (Briggs et al. 2004). These tanks have specific dimensions to enable the correct function which dictates the overall height, therefore, it is not possible to utilise smaller tanks.*

*The addition of these tanks to the existing brewery will allow Stone & Wood improve the quality of the beer product as part of continual quality improvement processes. In addition to the above, Stone and Wood require the installation of these larger tanks to stay competitive in the market. The larger brewing companies in Australia being Coopers and Little Creatures have grown with demand, and as such, there is a need for the smaller brewers to increase the production of beer also.*

*In Wehbe v Pittwater Council (2007) NSW LEC 827, Judge Preston sets 5 potential ways, of which any can be used for objection to a development standard can be supported. The first of these is:*

*The objectives of the standard are achieved notwithstanding non-compliance with the standard.*

*In this circumstance compliance with the objectives of both the land use zone and building height clauses in the TLEP 2014 are achieved despite the proposed variation, as demonstrated below:*

<b>Objectives of IN1 Zone</b>	<b>Comment</b>
<i>To provide a wide range of industrial and warehouse land uses.</i>	The existing brewery is an industrial use of the land and the proposed additions will further support this use.
<i>To encourage employment opportunities.</i>	The proposed development will continue to provide direct and indirect employment opportunities within the regional area.
<i>To minimise any adverse effect of industry on other land uses.</i>	The proposed additions are not expected to create any land use conflicts on surrounding sites as they are only an expansion to the existing brewery.
<i>To support and protect industrial land for industrial uses.</i>	The development will make sure that the industrial land use is protected by ensuring the brewery remains a viable and competitive business within the industry.
<i>To enable land uses that provide facilities or services to meet the day to day needs of workers in the area.</i>	Not Applicable



<b>Building Height Objectives</b>	<b>Comment</b>
<i>To establish the maximum height for which a building can be designed</i>	Noted
<i>To ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity,</i>	The site is located within an industrial area that already contains buildings of a large bulk and scale. Consequently, the proposed additions are considered compatible with the character and amenity of the area and is considered to be consistent with the site and surrounding urban character.
<i>To ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities</i>	The majority of the proposed development is below the maximum building height and the variation requested is for a small percentage of the overall site.  The site is located in an industrial area that is serviced by appropriate facilities and services.
<i>To encourage greater population density in less car-dependant urban areas</i>	The proposed development does not involve any residential use and will not result in an increase in population density.
<i>To enable a transition in building heights between urban areas comprised of different characteristics</i>	The proposal is not within an urban area, and is not in the proximity of any urban areas
<i>To limit the impact of the height of a building on the existing natural and built environment</i>	Due to the site's location and natural topography, the proposed tanks will have minimal impacts on the natural and built environment.  An existing vegetated embankment is located on the eastern boundary of the site and provides a screen from Wardrop Valley Road.  Whilst the tanks will be visible from Kite Crescent, this is not considered to be a sensitive viewing location as it is within an industrial estate and therefore no significant views will be affected.  3D representation is provided in Appendix A which presents the proposed tanks in relation to the existing buildings and locality
<i>To prevent gross overshadowing impacts on the natural and built environment.</i>	The proposed tanks have been strategically located with regard to the landform and adjoining land uses.  The proposed tanks are to be in the middle of the site which runs east to west. As such, the shadows will fall predominantly onto the existing building and will not result in any overshadowing impacts onto neighbouring sites.  Shadow diagrams are provided in Appendix A

*It is considered that the above assessment demonstrates that strict compliance with the maximum building height specified in clause 4.3 of the TLEP 2014 is unreasonable and unnecessary in this case as the site is within an industrial area with minimal visual access to the site and therefore the justification is well founded.*

*The variation will allow for better planning outcomes by encouraging an economic use of the land, and there are no demonstrable adverse impacts*

*to any sensitive land uses. Furthermore, non-compliance with the standard will not undermine the public interest.*

Planning Officer Assessment:

In accordance with the provisions of Clause 4.6; consent must not be granted to the proposed height variation unless the following it is considered satisfied:

- *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- *that there are sufficient environmental planning grounds to justify contravening the development standard; and*
- *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

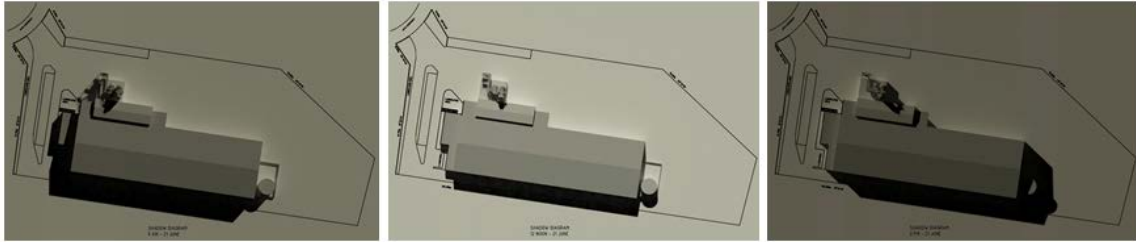
The area is mapped as having a 10.0m height limit. The proposed development includes the installation of 2 new 800HL fermenter tanks which have a total height of 16 metres (see figure 1 below).



**Figure 1: 3D representation (Kite Crescent)**

The site is located within an existing industrial area, which contains buildings of a large bulk and scale. Accordingly, the development is considered to have minimal impact on the natural and built environment.

The tanks subject to the variation of the mapped height do not obscure or negatively impact any significant view corridors, or overshadow any adjoining properties (see figure 2, below). It particular it should also be noted that the development does not impact on any views of Mount Warning from the area.



**Figure 2: Shadow Diagrams 21 June**

The objectives of the IN1 General Industrial zone are:

- *To provide a wide range of industrial and warehouse land uses.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of industry on other land uses.*
- *To support and protect industrial land for industrial uses.*
- *To enable land uses that provide facilities or services to meet the day to day needs of workers in the area.*

The proposed development is considered to satisfy the objectives of the IN1 Industrial zone for the following reasons:

- The proposed development is for extensions to an existing industrial use, accordingly encourages further employment opportunities.
- The development is within a developed industrial site, the development is not considered to negatively impact the industry or any surrounding land uses.
- The proposed tanks require a steep angled cone at the base for production, essentially requiring the height of the tanks to increase. The addition of these tanks will enable the existing brewery to stay competitive in the market
- expansion essentially ensures the viability of the business, by the existing brewery to install specialised tanks

Considering the above, the mapped 10m height limit is deemed to be unreasonable or unnecessary in the circumstances of this case. There are sufficient environmental planning grounds to justify the variation, and the development is considered to be in the interest of the public. Accordingly, the proposed exception to the 10.0m height limit (Clause 4.3, TLEP 2014) is supported.

Clause 5.4 - Controls relating to miscellaneous permissible uses

Not applicable to the subject application.

Clause 5.5 – Development within the Coastal Zone

Not applicable - the proposed development is not located within the Coastal Zone. It is considered that there will be no impact upon the zone.

Clause 5.9 – Preservation of Trees or Vegetation

The subject site is not subject to a TPO and comprises limited vegetation. It is considered that the proposal raises no major implications in respect of this clause.

Clause 5.10 - Heritage Conservation

The subject site is not mapped as being within a Heritage Conservation area.

Clause 5.11 - Bush fire hazard reduction

The subject site is not mapped as being bushfire prone land.

Clause 7.1 – Acid Sulfate Soils

Class 5 Acid Sulfate Soils are identified on the subject site.

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

Council's Environmental Health Officer has reviewed this aspect of the proposed development and has not returned any objections on this basis. As such, the proposed development is considered to be acceptable having regard to Acid Sulfate Soils.

Clause 7.2 - Earthworks

No earthworks are proposed as part of this application.

Clause 7.3 – Flood Planning

The subject site is not mapped as flood prone land.

Clause 7.4 - Floodplain risk management

The development does not require a floodplain risk management plan. This clause is considered not applicable.

Clause 7.5 - Coastal risk planning

The subject land is not identified as being subject to coastal risk.

Clause 7.6 - Stormwater Management

Clause 7.6 applies to all residential, commercial and industrial land and aims to minimise the impacts of urban stormwater on land within those zones.

Stormwater resulting from the expansion will be directed to existing infrastructure associated with the industrial building which is consistent with the objectives within this clause.

Clause 7.8 – Airspace operations

The development will not impact on airspace operations.

Clause 7.9 - Development in areas subject to aircraft noise

The development is not located in an area subject to aircraft noise.

Clause 7.10 - Essential Services

All essential services are made available to the subject site.

Other Specific Clauses

There are no other clauses specific to this application.

**State Environmental Planning Policies**

**SEPP (North Coast Regional Environmental Plan) 1988**

In accordance with Clause 1.9 Application of SEPPs of the Tweed Local Environmental Plan 2014 the North Coast Regional Environmental Plan does not apply to the subject site.

Clause 1.9 Application of SEPPs (TLEP 2014)

- (1) This Plan is subject to the provisions of any State environmental planning policy that prevails over this Plan as provided by section 36 of the Act.
- (2) The following State environmental planning policies (or provisions) do not apply to the land to which this Plan applies:
  - *State Environmental Planning Policy No 1—Development Standards*
  - *State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development* (clause 6 and Parts 3 and 4)
  - *State Environmental Planning Policy No 60—Exempt and Complying Development*
  - *North Coast Regional Environmental Plan*

**SEPP 55 – Remediation of Land**

Clause 7 of SEPP 55 states that the consent authority must not consent to the carrying out of any development on land unless it has considered, among other things, whether the land is contaminated, based on a preliminary investigation of the land carried out in accordance with the Contaminated Land Planning Guidelines (Department of Urban Affairs and Planning, Environment Protection Authority, 1998).

In addition, Council has adopted a Contaminated Land Policy, which contains details of the information required to be submitted with applications for development.



The applicant has provided the following table:

Question	Response
Specify all land uses to which the site has been put, including the current use	<p>It is understood that prior to construction of the industrial subdivision the site was agricultural grazing land. Tweed Shire Council subsequently approved an industrial subdivision of which the subject site is a part of.</p> <p>The site was approved as a Bunnings Trade Centre, delivering bulk timber and building supply products to the Building and Construction industry. The majority of the site has been developed with an impervious concrete surface.</p> <p>The current use of the site as a brewery is conducted within the enclosed portion of the building. The 'wet industry' component is carried out within a wet sealed concrete slab with bund where all trade waste is collected for treatment.</p> <p>The tradewaste treatment plant is contained within a bund in case of a spill. It is understood there have been no incidents which have required the bund since commencement of the brewery.</p>
Is the proponent aware of the uses to which properties adjoining the site have been put? If so please specify.	<p>The adjoining sites are also recently subdivided industrial land. The site to the north remains undeveloped.</p> <p>The site to the west contains a small 'sales office' and it is not believed that any manufacturing activities occur on this site. The sales office is greater than 40m from the boundary of the subject site.</p>
Do any of the uses correlate with potentially contaminating activities?	No
If yes, has there been any testing or assessment of the site and, if so, what were the results?	Not applicable.
Is the proponent aware of any contamination on the site?	No
What remediation work, if any has been taken in respect to contamination which is or may have been present on the site? (Work carried out voluntarily or ordered by a government agency.)	Not applicable.

Based on the information provided it is expected that there will be no contamination located on site. It is therefore considered that the development has complied with the provisions of the SEPP.

#### SEPP (Infrastructure) 2007

Clause 104 of SEPP (Infrastructure) 2007 has been considered to determine if the Roads and Maritime Services are required to assess the Development Application.

Under Clause 104 (Traffic Generating Development), a submission to RMS is required by the consent authority, prior to the determination of the application if 'relevant size or capacity' of a new premises in relation to development on a site that has direct vehicular or pedestrian access to any road.

It is considered that the proposed development would be 'Industry' category within Table 1 of Column 2 of Schedule 3 of the SEPP, which requires referral if the site is greater than 20,000m<sup>2</sup>.

As the site area does not exceed 20,000m<sup>2</sup> the development application does not require referral by the consent authority to the RMS.

**(a) (ii) The Provisions of any Draft Environmental Planning Instruments**

There is no draft Environmental Planning Instruments applicable to the subject application.

**(a) (iii) Development Control Plan (DCP)**

Tweed Development Control Plan

A2-Site Access and Parking Code

*The original Bunnings Warehouse Development (DA08/0604) involved construction of the industrial building with a Gross Floor Area of 3726m<sup>2</sup>. Based on the requirement for staff parking at 1 / 100m<sup>2</sup> GFA, a total of 37 car parking spaces were provided.*

*As there was no increase in GFA for the change of use to a brewery (DA13/0346), it was considered that the 37 car spaces were adequate for the proposed use.*

*The current extension proposal involves an increase in GFA of approximately 260m<sup>2</sup> to accommodate the new tanks.*

*Accordingly, the development requires an additional 2.1 (2) car spaces under DCP Section A2 – Site Access and Parking Code (see extract below), resulting in a total of 39 required onsite parking spaces.*

Item	Development	Comment	Public Transport, Bus Stop Seating	Bicycle parking Rate (class)	Delivery/ Service Vehicle parking	Resident Parking	Staff parking	Customer car parking
D4	General industries	If located in commerce and trade zone increase to 1/50m <sup>2</sup> GFA		1/5 staff (2)	1 HRV		1/120m <sup>2</sup> GFA	

*The applicant states in the SEE that the existing 37 parking spaces are surplus to operational requirements for the following reasons:*

- *There is never any more than 30 employees onsite at any given time (20 permanent and 10 casual)*
- *There is no commercial component to the development there will not be demand on the parking spaces from the general public.*
- *The existing 37 spaces are surplus to the site's needs.*

*Council's traffic engineer has reviewed the request and considers existing parking arrangements to be satisfactory to cater for the proposed extension and maximum six additional employees.*

*Accordingly, there are no additional car parking spaces required in association with this proposal.*

#### A11-Public Notification of Development Proposals

*The subject application was notified for a period of 14 days from Monday 6 March 2017 to Monday 20 March. During this period no submissions were received.*

#### A17 - Business, Enterprise Corridor and General Industrial Zone

The proposal does not include retail or non-industrial land uses and is consistent with the objectives of this DCP as outlined below:

#### **2.4. General Industrial Zone (IN1)**

The General Industrial zone accommodates a range of industrial and warehouse uses and seeks to encourage employment opportunities. Like the B5 zone, development within the IN1 zone typically includes buildings with large floor areas and greater needs for on-site vehicle servicing. Accordingly larger minimum lot sizes apply and additional consideration of how development integrates within the wider landscape may be required.

Whilst the development form may be similar to the B5 zone, the General Industrial zone is not a suitable location for retail development and other non-industrial land uses outside of land uses that serve the day to day needs of workers in the area. Such land uses may include neighbourhood shops, take away food and drink and child care centres. Given the potential impacts of industrial development and the sensitivities of ancillary and facilitating land uses, a strategic approach to subdivision and building design is required to limit interface impacts and enable the seamless evolution of land uses within a General Industrial precinct over time.

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#### **(a) (iv) Any Matters Prescribed by the Regulations**

##### Clause 92(1)(a)(ii) Government Coastal Policy

The proposed site is not located within the area covered by the Government Coastal Policy.

##### Clause 92(1)(b) Applications for demolition

There is no demolition proposed.

##### Clause 93 Fire Safety Considerations

The application is not for a change of use.

##### Clause 94 Buildings to be upgraded

The proposed application includes additions and alterations to an existing building. Clause 94 has been addressed by Councils Building Department and conditions have been applied accordingly.

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- (a) (v) **Any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),**

The site is not located under any coastal zone management plans.

**Tweed Shire Coastline Management Plan 2005**

The subject site is not located within an area that is affect by the Tweed Shire Coastline Management Plan 2005.

**Tweed Coast Estuaries Management Plan 2004**

The subject site is not located within an area that is affect by Tweed Coast Estuaries Management Plan 2004.

**Coastal Zone Management Plan for Cobaki and Terranora Broadwater (adopted by Council at the 15 February 2011 meeting)**

The subject site is not located within an area that is affected by the Coastal Zone Management Plan for Cobaki and Terranora Broadwater.

- (b) **The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality**

**Context and Setting**

The subject site is located within an Industrial estate and the development is an industrial use. The use will continue within an existing, and extended, industrial warehouse. The use is considered consistent with future development and uses of the area.

**Access, Transport and Traffic**

The proposed use is an approved industrial use within an existing approved industrial warehouse. There is an increase of 260m<sup>2</sup> in Gross Floor Area proposed which will not impact upon existing access arrangements and as such, it is considered that there will be no impacts as a result of traffic in the area.

**Wastewater/Trade Waste**

The Statement of Environmental Effects advises that Stone & Wood is experiencing significant product demand growth and plans to expand its brewing operations over the next five (5) years. Included as part of the proposed additions is the requirement for expansion of the onsite waste water treatment facility.

The application proposes to treat and recycle wastewater onsite resulting from increased production. Accordingly, the existing trade waste treatment plant is required to be upgraded to cater for future growth.

The proposed wastewater concept design for Stone & Wood brewery is as follows:

- Wastewater will be treated onsite in a Sequencing Batch Reactor (SBR), with biotreated water further polished using membrane treatment and reused in the brewery, with residual treated wastewater discharged to sewer, or pumped or trucked to offsite reuse.
- Biosolids thickened, dewatered and trucked offsite.

The wastewater facilities will be implemented in stages to meet increases in wastewater load. Increase in load is indicated by the ability of the SBR aeration system to meet the oxygen demand, and the SBR residence time to achieve oxidation of the incoming COD load.

The following equipment is proposed:

- Upgrades to Sumps & Pumps in Brewery
- New Receiving Pump, for unloading tankers containing wastewater from Byron Bay.
- New Screen & Settling Tank
- New Surge Tank (200kL)
- New larger Sequencing Batch Reactor (400kL), with provision for an additional SBR
- capacity of 200kL, with 60 kW fine bubble aeration.
- Redeploy Stage 1 SBR as Clear Well (200 kL)
- New Microfiltration/Reverse Osmosis Plant.
- New Reuse Water Tank (45 kL)
- Retain existing Clear Well to provide Discharge Tank (45 kL).
- New Sludge Tank (40kL), facilitating disposal of thick liquid biosolids.
- New Sludge Dewatering Plant, facilitating disposal of biosolids cake.
- Bunding and access.
- Fully automatic operation.

Undertaking the required upgrading works will result in the following:

- Cleaner Production in brewery.
- Screening & Settling of large solids.
- Surge storage.
- Aerobic biotreatment.
- Membrane treatment and reuse of high quality recycled water.
- Discharge of treated water to sewer.
- Discharge of biosolids.
- Environmental protection.

The application was referred to Councils Water and Waste Water Engineering Unit, who raised no concerns and applied conditions accordingly.



**(c) Suitability of the site for the development**

Surrounding Landuses/Development

The site is located within an existing industrial area, which contains buildings of a large bulk and scale. The proposed additions and alterations to the existing brewery are considered to be in keeping with the surrounding industrial land uses.

**(d) Any submissions made in accordance with the Act or Regulations**

Nil submissions were received.

**(e) Public interest**

The proposal has been investigated and is considered to be suitable to the site; unlikely to cause any significant long term negative impacts to the surrounding built and natural environment and meets all of Council's applicable requirements within the TLEP and relevant DCPs. The application has been assessed by Council's technical officers; with no objections being raised subject to the attached conditions of development consent. The extension / intensification of the proposed brewery is therefore considered to warrant approval.

**OPTIONS:**

That Council:

1. Approves the application in accordance with the recommended conditions; or
2. Refuses the application for specified reasons.

**CONCLUSION:**

Council officers recommend Option 1.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**4 [PR-PC] Development Application DA10/0020.06 for an Amendment to Development Consent DA10/0020 for the Establishment of a Brothel at Lot 2 SP 84405 No. 2/36 Enterprise Avenue, Tweed Heads South**

**SUBMITTED BY: Development Assessment and Compliance**

Validms



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.2 Improve decision making by engaging stakeholders and taking into account community input
- 1.2.1 Council will be underpinned by good governance and transparency in its decision making process

### SUMMARY OF REPORT:

Council is in receipt of an application to modify the consent for DA10/0020 for the establishment of a brothel which was approved by the NSW Land and Environment Court on 22 November 2010. Prior to this, Tweed Shire Council, at its meeting of 18 May 2010, resolved to refuse the application.

The modification currently before Council proposes to remove a time limit to the hours of operation in order to allow 24 hours per day, seven days per week operation of the brothel.

The modification is requested in order to enable the business to operate consistent with the industry practice and the other brothels within Tweed Shire as well as fulfilling a stated demand for services.

Presently, the hours of operation for the brothel are from 6.00pm to 6.00am seven days per week, although it is noted that approval to operate on a 24 hour basis for a one year trial period was approved by Tweed Shire Council in July 2014. This trial period was provided in order to enable monitoring of the operation of the brothel with respect to compliance with development consent conditions, including the Plan of Management, and substantial complaints received by NSW Police.

The proposed modification was placed on public exhibition for a period of 14 days. During this time one submission was received, objecting to the proposal. The application has been referred to the Planning Committee for determination given the Council's and the community's interest in the original application.

**RECOMMENDATION:**

**That Development Application DA10/0020.06 for an amendment to Development Consent DA10/0020 for the establishment of a brothel at Lot 2 SP 84405 No. 2/36 Enterprise Avenue, Tweed Heads South be approved and the consent be amended as follows:**

- 1. Condition No. 43B is to be DELETED and REPLACED with Condition No. 43C which reads as follows:**

**43C. The hours of operation of the brothel premises are 24 hours per day, seven days per week.**

**REPORT:**

**Applicant:** Huxham Superannuation Fund  
**Owner:** Mr Michael J Huxham & Mrs Beverley A Huxham  
**Location:** Lot 2 SP 84405 No. 2/36 Enterprise Avenue, Tweed Heads South  
**Zoning:** IN1 General industrial

**Background:**

This application is to modify the consent for DA10/0020 which relates to the establishment of a brothel which was approved by the Land and Environment Court of New South Wales on 22 November 2010. Previously, at the full Council Meeting of 18 May 2010, Council had determined the application by way of refusal, against the officer recommendation.

The subject site has an area of 2008m<sup>2</sup>, with frontage to Enterprise Avenue, Tweed Heads South. The site incorporates a three unit factory development and associated car parking.

Specifically, the development is located in Unit 2 on this site and covers two levels, with a gross floor area of 432m<sup>2</sup>. The development as approved includes the following:

- Lower floor: Foyer; reception; waiting area; office; staff room; laundry; Executive room; and two work rooms.
- Mezzanine floor: Four work rooms.

The proposal incorporates 15 car parking spaces on site which are shared with two other businesses.

The application as originally submitted proposed to operate 24 hours per day, however this was amended during the Court proceedings by the applicant and the eventual Court approval limited the hours of operation to between 6pm and 6am, for a period of one year. The hours of operation condition (No. 43) approved by the Court stated the following:

43. *The hours of operation of the brothel premises are from 6.00 pm to 6.00 am seven (7) days a week for a one (1) year trial period commencing on the operation of this consent.*

*The brothel premises is not to be used or occupied by sex workers, employees, cleaners etc prior to 5 pm or after 7 am.*

*A further application may be lodged to continue the hours of the use outlined above before the end of the trial period. Council's consideration of the continuance of the operating hours will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions, including the Plan of Management, any substantial complaints received and any views expressed by the Police.*

The one year period outlined above expired and the proponent submitted a Section 96 modification application to remove the one year period. This was considered by Council officers in light of the stipulations of the above condition as well as the statutory assessment requirements and the modification was approved on 18 December 2013 with the following condition 43A replacing the above condition:

43A. *The hours of operation of the brothel being restricted to 6.00 pm to 6.00 am seven (7) days per week, with no public services provided between 6.00 am to 6.00 pm. The brothel premises is not be used or occupied by sex workers, employees, cleaners etc. prior to 5 pm or after 7 am.*

Subsequent to this, the consent was further modified by Tweed Shire Council in July 2014, to enable 24 hour operation of the brothel for a trial period of one year. The hours of operation condition was amended as per the below:

43B. *The hours of operation of the brothel premises are 24 hours per day, seven days per week for a one year trial period commencing on the date of this modified consent.*

*A further application may be lodged to continue the hours of the use outlined above before the end of the trial period. Council's consideration of the continuance of the operating hours will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions, including the Plan of Management, any substantial complaints received and any views expressed by the Police.*

*At the end of the one year trial period, unless otherwise amended as outlined above, the hours of operation of the brothel are to revert to being restricted to 6.00pm to 6.00am seven days per week, with no public services provided between 6.00am to 6.00pm. The brothel premises is not be used or occupied by sex workers, employees, cleaners etc. prior to 5:00pm or after 7:00am.*

### **Proposed Amendment**

Council is now in receipt of an application to further modify the hours of operation of the proposal to allow 24 hours per day operation on a seven day per week basis, without a trial period restriction.

### **Assessment of Proposed Amendment**

It is unclear as to whether the brothel operated on a 24 hour basis for the entirety of the trial period between July 2014 and July 2015. The applicant was requested to provide additional information in this regard, however the applicant is the site owner and was not the operator during this time. With respect to the hours of operation it was advised that *'I can only confirm that anytime I drove past the building after hours usually Saturday & Sunday there were cars parked outside, door exterior was open and occasionally people were visible outside the building. Ads in the paper and social media would suggest that the place was operational 24/7.'*

In any event, it is considered appropriate to consider this request relevant to previous NSW Land and Environment Court advice. In the matter of Mavrik Pty Ltd v Tweed Shire Council the NSW Land and Environment Court provided the following with regard to limiting the hours of operation of a brothel:

*"The limiting of operating hours to preclude those times when a significant portion of business is likely to occur may have a detrimental impact on the economic viability of*



*the business. By comparison the viability of the brothel in terms of operating hours is not dissimilar to many fast food outlets, service stations and restaurants, which are generally permitted to operate beyond the stated hours of operation and within the same 4(a) Industrial zone. Whilst these land uses activities may not attract the same intensity of moral objection they do nonetheless provide similar impacts to that likely to occur as a result of the proposal.*

*Therefore I consider the proposed 24-hour operation of the brothel is satisfactory and consistent with the zone objectives”.*

It is considered that the proposed location of the premise is relatively discreet and is not largely exposed to the general public. Based on the above, the principle of 24 hour operation of a brothel in the IN1 General Industrial zone is considered to be appropriate.

It is noted that there are no recent complaints relating to the operation of the brothel in Council records. The application was also forwarded to NSW Police for comment with respect to the proposed modification. The Tweed/Byron Local Area Command have not provided written advice with respect to this application, however it was advised verbally that NSW Police did not have any issues with the operation of the brothel at this location which would warrant the current restriction of hours of operation to remain in place.

A statutory assessment of the proposed modification is outlined in detail elsewhere in this report with is being considered that a 24 hour operation of the premises on the site would be acceptable.

**SITE DIAGRAM:**



**Locality Plan**

Lot 2 SP 84405  
No. 2/36 Enterprise Avenue, Tweed Heads South

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Cadastral 30/04/2014  
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Boundaries shown should be considered approximate only.

0 0.5 1 Km  
1:50,000 @ A4 Portrait  
SHEET SCALE  
COPY ONLY - NOT CERTIFIED

Map Projection: Universal Transverse Mercator  
Horizontal Datum: Geoidetic Datum of Australia 1984  
Grid: Map Grid of Australia, Zone 56

**Civic and Cultural Centre**  
3 Tumbulgan Road  
Murwillumbah NSW 2484  
PO Box 816  
Murwillumbah NSW 2484  
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W | www.tweed.nsw.gov.au  
E | planning@tweed.nsw.gov.au



**Considerations under Section 79C of the Environmental Planning and Assessment Act 1979:**

**(a) (i) The provisions of any environmental planning instrument**

**Tweed Local Environmental Plan 2014**

The original development application was assessed by Council Officers against the provisions of the Draft Tweed LEP 2010 under the original assessment of this application. This assessment noted that the subject site is zoned IN1 – General Industrial. The proposed development would be defined as a “Sex Services premises”. A sex services premises is permissible with consent within the IN1 General Industrial zone.

The Draft Tweed LEP 2010 was superseded by the Draft Tweed LEP 2012 which itself was subsequently gazetted (as amended) on 4 April 2014 as the Tweed Local Environmental Plan 2014.

The IN1 General Industrial zoning has been maintained on the site as well as the permissibility of a “Sex Services Premises” within this zone as outlined below.

**Clause 1.2 – Aims of the Plan**

The proposed development is considered to be generally in accordance with the aims of this plan having regard to its nature, permissible in the subject zone.

**Clause 2.3 Zone objectives and Land Use Table**

The subject site is zoned IN1 General Industrial under the provisions of the LEP. The objectives of this zone are:

- *To provide a wide range of industrial and warehouse land uses.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of industry on other land uses.*
- *To support and protect industrial land for industrial uses.*
- *To enable land uses that provide facilities or services to meet the day to day needs of workers in the area.*

The proposed development is defined as a ‘sex services premises’ under the provisions of the LEP, which is permissible with consent and is considered to be consistent with the objectives of the zone as the proposal facilitates economic activity and employment as well as being a non-industrial development which is not considered appropriate in another zone. The proposed modification is not considered to contravene this clause.

**Clause 7.14 – Location of sex services premises**

The objective of this clause is to minimise land use conflicts and adverse amenity impacts by providing a reasonable level of separation between sex services premises, specified land uses and places regularly frequented by children.

This clause goes on to further state that in deciding whether to grant development consent to development for the purposes of sex services premises, Council must consider the following:

- (a) *whether the premises will be located on land that adjoins, is directly opposite or is separated only by a local road from land:*
  - (i) *in Zone R1 General Residential, Zone R2 Low Density Residential, Zone R3 Medium Density Residential or Zone RE1 Public Recreation, or*
  - (ii) *used for the purposes of a child care centre, a community facility, a school or a place of public worship,*
- (b) *the impact of the development and its hours of operation on any place likely to be regularly frequented by children:*
  - (i) *that adjoins the development, or*
  - (ii) *that can be viewed from the development, or*
  - (iii) *from which a person can view the development.*

In this regard, it is noted that the subject application relates to the hours of operation of a previously approved brothel. In any event, the property at 36 Enterprise Avenue does not adjoin, nor is directly opposite or is separated only by a local road from any residential or public recreation zoned land or land used as a child care centre, community facility, school or place of public worship..

Further to this, it is not considered that the brothel's hours of operation would impact upon places frequented by children which, adjoins, can be viewed from, or from which a person could view the development given any such nearby land uses are mainly commercial/industrial in nature, and do not cater specifically for or are likely to be regularly frequented by children.

Having regard to this, the proposed development is considered to be generally acceptable having regard to the requirements of this clause.

**(a) (iii) Development Control Plan (DCP)**

Tweed Development Control Plan

Section A2-Site Access and Parking Code

At present the subject site provides 15 car parking spaces in accordance with the parking layout established through the Court approval for the brothel on-site. As the current approval for the brothel relates to operating between the hours of 6pm and 6am it is considered that cross utilisation of these car spaces have been allowed given the factory uses would be expected to be between 6am and 6pm.

However as the application now proposes to operate 24 hours per day it is considered necessary to calculate car parking requirements for all uses on the site concurrently.

This is outlined in the table below:

<b>Use</b>	<b>Parking Rate</b>	<b>Spaces Required</b>
<b>Unit 1 – Industrial Factory (300m<sup>2</sup>)*</b>	1 space / 120m <sup>2</sup>	2.5
<b>Unit 2 – Sex services premises (432m<sup>2</sup>)</b>	1 space / 50m <sup>2</sup>	8.64
<b>Unit 3 – Industrial Factory – (400m<sup>2</sup>)*</b>	1 space / 120m <sup>2</sup>	3.33
<b>Total Spaces Required</b>		<b>14.47 (15)</b>
<b>Total Spaces Provided</b>		<b>15</b>

\* This car parking rate applies to Light, General and Heavy Industry uses under DCP Section A2.

The table above indicates that the proposed development complies with the required parking provisions of DCP A2. It is considered cumulatively the required parking spaces for all development uses on the site can be accommodated within the 15 spaces provided. The proposal is considered to be acceptable having regard to the provisions of this policy.

### Section A8-Brothels Policy

Tweed Shire Council adopted the above DCP policy at Council Meeting on 19 April 2011, with the DCP effective from 4 May 2011. The original application, presented to Council for determination in 2010 was assessed under the provisions of a Brothels Policy.

The aims of the section are as follows:

- To enable the development of a brothel in the local government area of Tweed Shire Council; and,
- To ensure that a development for a brothel does not adversely or unnecessarily impact on any resident community; and,
- To ensure that the existing and future character and amenity of the locality is not significantly impacted by any aspect of or associated with a brothel; and,
- To ensure that a brothel is located away from other land-uses that would, or visitors to that land-use would, likely be adversely impacted by a brothel; and,
- To limit the exposure of the Tweed community to a brothel; and,
- To limit the cumulative impact of brothels in any single locality or localities; and,
- To ensure the safety and security of employees and visitors to a brothel.
- To promote a safe and healthy environment for sex workers, other employees, clients and visitors.

The submitted application is not considered to contravene any of the above aims, which has been located on land where such a use is permissible, away from a residential area. It is noted that the application now lodged with Council relates to a modification of a condition of consent of a previously approved brothel which has been assessed as having generally operated in an appropriate manner.

## **Part B- Initial Limits on Development Consents**

This DCP outlines that *'Development consents granted to brothel applications may be initially limited to a period of twelve (12) months. At the completion of this period, Council will re-evaluate the proposal in terms of any complaints received regarding the approval operations, and compliance with any conditions of development consent.'*

The Court Approval for this brothel was limited to a one year operation period, which was subsequently amended to allow operation between the hours of 6pm and 6am in perpetuity.

The application currently before Council proposes to allow the brothel to operate 24 hours a day, seven days per week in perpetuity.

## **Part C- Granting Consent**

This DCP outlines that the Council may grant consent to a brothel only if it is satisfied that the development is consistent with the aims of this section, and the following:

- i. There is no likelihood of there being a significant or adverse impact on the operation of other land-use in the locality; and,*

The brothel has operated from this site previously and based on comments from Tweed/ Byron Local Area Command (NSW Police) and a review of Council records it is considered that there has not been a significant or adverse impact on other land uses in the locality which would warrant refusal of this application.

- ii. There is unlikely to be any adverse impact on any adjoining, neighbouring or nearby residential community; and,*

It is considered unlikely that there would be any adverse impact on any adjoining, neighbouring or nearby residential community. Whilst the nearest residential area to the site is located approximately 350m from the brothel, however the closest any residential area is to the brothel by public road is in excess of 500m. This spatial separation is considered to ensure that it is unlikely that there would be any adverse impacts on surrounding residential properties.

- iii. The development as proposed will not have an adverse or significant impact on the existing and future character of the area; and,*

The subject application relates to a previously approved brothel which is currently operational on this site. In this regard, it is considered that the modification would not impact on the existing or future character of the area.

- iv. If doing so, is not contrary to the public interest.*

The submitted application is not considered to be contrary to the public interest, given that the brothel has been previously approved by the Land and



Environment Court, and has been assessed as having operated in a generally appropriate manner subsequent to the approval.

#### **Part D- Planning Controls**

This part of the DCP outlines that there are specific planning controls with mandatory requirements with respect to streetscape and character, building setback, building design and layout, car parking, signage, location, operational safety and security, disability access, hours of operation, health and waste.

Of relevance to this application is the control relating to Hours of Operation (11.0) which states that *'A brothels' hours of operation is 6pm to 6am, with no public services provided between 6am to 6pm.'*

The objective for this control states that the reason for this control is *'To ensure the operation of a brothel is compatible with adjoining and neighbouring land-uses.'*

It is noted that the proposed modification relates to extending the hours of operation to 24 hour per day, seven days per week which contravenes the above control. Part B (4.0) of this DCP outlines details with respect to varying planning controls and states the following:

*Planning controls (PCs) have been provided to assist in the attainment of the aims of this section with the purpose of ensuring that the public interest is protected from inappropriate development.*

*Development control plans are not statutory however; the PCs are nonetheless binding in effect where a variation to one or more does not satisfactorily demonstrate the attainment of the aims of this section. Tweed Council does not take lightly to the variation of PCs developed to protect the public interest.*

*A variation to any PC in this section will be considered on its merit, and must be made in a statement that clearly identifies the PC being varied, the reason for the variation, and how the aims of this section will be attained notwithstanding the variation.*

*A variation to any PC under this section requires the approval of Tweed Council.*

The following information has been provided by the applicant with respect to the objective of control 11.0:

- *The premises is part of a complex containing three (3) units in a U-shaped configuration. Unit 2 is the middle unit and the subject of this application. Units 1 & 3 are occupied by South Tweed Fencing, Timber & Aluminium (Unit 1) and Tweed Powder Coating (Unit 3). Those uses have not in any way been adversely impacted by the operations of the brothel to date and no issue of conflict or incompatibility is likely to arise as a consequence of this proposal. It is noted that both businesses have previously provided*

*letters of support for the extended operating hours (refer Section 96 Application DA10/0020.05). Furthermore it is understood that neither had a problem with the operating hours during the trial period years (pers. Comm. Michael Huxham 23.1.17);*

- *It is understood that the business has operated to date (including during the extended hours trial period) in a satisfactory manner and has not been the subject of any verified complaints;*
- *The current restriction on daytime operation is discriminatory, especially in that other approved brothels within the Tweed Shire operate with unrestricted hours. More generally there is a legitimate client demand and expectation for daytime operating hours; and*
- *In this case the restriction of hours does not serve any necessary planning purpose and moreover it is a commercially unreasonable constraint on the business.*

**Council Officer Comment:**

In respect of the above it is considered that to adequately assess the appropriateness of the proposed variation, consideration must be given to: the Tweed Local Environmental Plan 2014 - zone objectives; and the Land and Environment Court Judgement - Mavrik Pty Ltd v Tweed Shire Council.

In terms of the IN1 General Industrial zone objectives, the proposal is considered to be consistent with the objectives of the zone as the proposal facilitates economic activity and employment as well as being a non-industrial development which is not considered appropriate in another zone. However, to achieve a level of viability and sustainability the operating environment must, as with any other business activity, be tailored to the proposed development. In this regard the variation sought in respect of the hours of operation is not considered contrary to the objectives of the zone for the following reasons:

- extending operating times will have no effect on the land-use zoning in facilitating further economic activity;
- extending the operating times will assist in securing the sustainability and viability of the business, which in turn secures employment positions; and
- extending the operating times of the proposed development is not likely to have an impact on the employment generation capability of other businesses in the locality or on the land-use zoning.

Council has determined, via the adoption of prohibitive exclusion in other zones as provided by TLEP 2014, that brothels are only suited to the IN1 General Industrial zoned land.

In light of the above, it is concluded that the variation being sought to the operating hours of the proposed development is not contrary to the stated objectives of the Tweed LEP 2014. In this regard it must be noted that unnecessarily restricting the operating hours would act as a further prohibition to the development and which may undermine the zoning objectives.

There has previously been consideration, under a different application, in the NSW Land and Environment Court of hours of operation which is considered relevant to this proposal. In the matter of Mavrik Pty Ltd v Tweed Shire Council the NSW Land and Environment Court provided the following with regard to limiting the hours of operation from 6pm to 6am:

*“The limiting of operating hours to preclude those times when a significant portion of business is likely to occur may have a detrimental impact on the economic viability of the business. By comparison the viability of the brothel in terms of operating hours is not dissimilar to many fast food outlets, service stations and restaurants, which are generally permitted to operate beyond the stated hours of operation and within the same 4(a) Industrial zone. Whilst these land uses activities may not attract the same intensity of moral objection they do nonetheless provide similar impacts to that likely to occur as a result of the proposal.*

*Therefore I consider the proposed 24-hour operation of the brothel is satisfactory and consistent with the zone objectives”.*

It is considered that the proposed location of the premise is relatively discreet and is not largely exposed to the general public. Based on the information held in previous Council's records, there exists no significant evidence to suggest that unruly or detrimental activities will occur as a result of extending operating hours to include ordinary business hours.

Having considered the applicant's justification for the proposed variation and having considered the merits of the case it is concluded that the hours of operation provided in the DCP are both unnecessary and unreasonable in this instance. In this regard it is proposed that the hours of operation be extended to include the hours between 6.00am and 6.00pm as requested by the applicant.

The proposed modification is considered to be generally in accordance with this DCP and the proposed modification is supported.

#### Section A13-Socio-Economic Impact Assessment

DCP Section A13 identifies a brothel as a land use which requires a Socio-Economic Impact Assessment. In this regard it is noted that the subject application relates to a modification of an existing Court approved brothel rather than the establishment of a new brothel. A socio-impact assessment was prepared for the proposed brothel under the original application which concluded that there was justification for the proposed development on social and economic grounds.

It is not considered that a Socio-Economic Impact Assessment is required for the proposed modification given that it relates to an existing brothel which was approved by the Land and Environment Court for which the social/economic impacts were previously assessed as being acceptable. Proposal is considered to be acceptable having regard to this policy.

Section B3-Banora Point West- Tweed Heads South

The subject site is located with Precinct 4 – Commerce & Trade / Industrial. The DCP provides guidelines for new development, but has no specific requirements for the use of those buildings. The DCP requires development to be in accordance with Council's car parking (DCP Section A2) and signage (DCP Section A4) provisions. The DCP also requires Council to be satisfied that the proposed development does not result in noise impact. Council's Environmental Health Unit has previously raised no concerns with regard to noise impact. The proposal is considered to be consistent with the provisions of DCP B3.

**(a) (iv) Any Matters Prescribed by the Regulations**

Clause 92(a) Government Coastal Policy

The subject site is located within the Coastal Zone and as such the provisions of the Coastal Policy apply to the site. The subject modification application relates solely to an amendment of hours of operation on the site and does not include physical development works. The proposed development is consistent with the objectives of the Coastal Policy.

**(a) (v) Any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),**

It is considered that the proposed modification does not impact upon any of the coastal zone management plans applicable within Tweed Shire given the site spatial separation from areas covered by these plans and the fact that this application solely relates to the modification of a condition of consent and does not propose any physical works.

**(c) Suitability of the site for the development**

The subject site has been determined as being suitable for a brothel use under the Court approval for the original application. The application has been previously assessed against the planning principles outlined in the Land & Environment Court of New South Wales for the location of brothels, the proposed brothel is considered to be suitable for the subject site. As this application relates to a modification of hours of operation only it is not considered that the proposal would impact of the suitability of the site for the proposed development, being located on appropriately zoned land.

**Assessment under Section 96AA of the Environmental Planning and Assessment Act**

This Section of the Environmental Planning and Assessment Act states that a consent authority may, modify a consent granted by the Court if the below criteria are satisfied (*in italics*):

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

The proposed modification is essentially the same development as originally approved, with the proposed amendment not considered likely to result in any significant changes to the originally approved development as it relates solely to a condition of consent regarding hours of operation.

- (b) *it has notified the application in accordance with:*
  - (i) *the regulations, if the regulations so require, and*
  - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*

The proposed modification was notified to surrounding properties and persons who have previously made submissions on the original application for a period of 14 days from Wednesday 1 March 2017 to Wednesday 15 March 2017. This is considered to satisfy the provisions requiring the S96 application to be exhibited in accordance with the DCP Section A11 provisions and the members of the public who have previously made submissions.

- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

The proposed modification was placed on public exhibition for a period of 14 days as outlined above. During this time one submission was received, objecting to the proposal. The details of this submission and Council officer assessment of same is outlined below:

<b>Submission Received</b>	<b>Council Officer Assessment</b>
<p><i>'The original approval was granted on appeal to NSW Land and Environment Court. Tweed Shire Council (TSC) refused the original application. Yet now they approve extended hours for a trial period and may permanently allow such? Originally TSC allow nothing, now they allow everything? Note that this is a new TSC Council and the old one was voted out, perhaps due to such irrationality and uneven application of the approvals process.'</i></p>	<p>The development history of this use on site has been outlined elsewhere in this report. Through this, it is noted that although Tweed Shire Council originally refused the development of a brothel at this location, the development was subsequently approved in the NSW Land and Environment Court.</p> <p>Subsequent applications to modify conditions of consent have been received by Council and assessed on their own individual merits and against the applicable planning controls in place at that time.</p>

Submission Received	Council Officer Assessment
	<p>This portion of the submission does not raise any merit objection to the proposal and is therefore not considered to be a valid planning reason which would warrant refusal of the application.</p>
<p>The applicant <i>'assert that the amendment is required to give the owner economic certainty. That is not a valid planning reason. Besides, the original operating hours had certainty. This new approval is nothing but an attempt to impinge into the fabric of an operating industrial area populated by women in other businesses and at times children with a local sports venue close by.'</i></p> <p>The submission then outlines that persons walking by the site being mistaken for workers and patrons of the brothel, as well as outlining that such a development is often associated with anti-social elements.</p>	<p>In any event it is noted that the brothel has been approved at this location and this application solely relates to hours of operation.</p> <p>Furthermore, communication with NSW Police and research of Council's electronic records do not indicate any verified use issues with the development at this location.</p> <p>The relevant Environmental Planning Instrument (Tweed LEP 2014) permits brothels in Industrial zones. No other zoning can be considered for this type of development. The proposal is considered to be consistent with requirements for the location of brothels.</p> <p>The proposal does not warrant refusal based on the issues.</p>
<p><i>'The current operating hours are not discriminatory, contrary to the (applicant) assertion, for which no proof is offered, just a bland all-encompassing statement.'</i></p>	<p>The officer assessment provides advice in relation to the appropriateness of 24 hour operation elsewhere in this report.</p> <p>Of relevance is the advice provided by the NSW Land and Environment Court advice in another similar development which considered 24-hour operation of the brothel as satisfactory and consistent with the zone objectives.</p> <p>It is noted however, that the current hours of operation are not considered to be in any way discriminatory as put forward by the proponent.</p>
<p><i>'The business has been for sale. So the demand is not there.'</i></p>	<p>This is not considered to be a valid planning reason which would warrant refusal of the application.</p>
<p>The applicant <i>'ascertain that the consent is substantially the same development. This is ridiculous. Operating hours double and it is the same? And they are proposed to be in daylight, normal business hours? Note that for Coles or</i></p>	<p>The proposed modification is considered to result in substantially the same development as outlined under Section 96 of the Environmental Planning and Assessment Act. In this regard it is noted that the proposal is for a change in hours</p>



Submission Received	Council Officer Assessment
<i>Woolworths to change hours creates a massive furore and input from various State regulation bodies and (applicant) want to sidestep the NSW Courts and just sneak in the local government back door.'</i>	of operation of a brothel, however the approved use of the premises as a brothel or the layout of same is not proposed to be amended beyond this. Therefore, is is considered appropriate to determine the development as being substantially the same as previously approved.
<i>'Letters from 2 neighbours does not community consent make.</i>	This is considered to refer to two letters from other unit operators at this address which were submitted with a previous S96 application, which outlined that they did not have issue with the development on site.  These letters have not been assessed as a determining factor, nor taken to represent community consent in either this or the previous S96 application.

Having regard to the comments received through the public exhibition process, it is not considered that refusal of this Section 96 application is warranted based on the issues raised in these submissions.

### Conclusion

The Section 96AA application has been assessed having regard to the matters for consideration under Section 79C and Section 96AA of the Environmental Planning and Assessment Act, 1979. The proposed amendment is recommended for approval as detailed below.

### (e) Public interest

The proposed modification to Development Consent DA10/0020 is considered to be acceptable in terms of public interest.

### Recommendation

The request to vary Condition 43B as outlined by the applicant is supported. Therefore the following amendment to Notice No. DA10/0020 is recommended. Condition No. 43B is to be DELETED and REPLACED with Condition No. 43C which reads as follows:

43C. The hours of operation of the brothel premises are 24 hours per day, seven days per week.

### OPTIONS:

1. Approve the amendment of the development consent as outlined above; or
2. Refuse the application for stated reasons.

Council officers recommend Option 1.

**CONCLUSION:**

It is considered that the development is compatible with the existing industrial development and local environment. The assessment has had regard for the issues raised by the public submissions, as well as advice from NSW Police. As a result, the proposed modification to the trading hours of the brothel is considered to be acceptable.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

If the applicant is dissatisfied with Council's determination an appeal may be lodged with the NSW Land & Environment Court. Council would incur legal fees in defending any such appeal.

**c. Legal:**

If the applicant is dissatisfied with Council's determination an appeal may be lodged with the NSW Land & Environment Court. Council would incur legal fees in defending any such appeal.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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5 [PR-PC] Holiday Letting - 6 Beason Court, Casuarina

SUBMITTED BY: Development Assessment and Compliance

Validms



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- |       |  |
|-------|--|
| 1     | Civic Leadership   |
| 1.2   | Improve decision making by engaging stakeholders and taking into account community input       |
| 1.2.1 | Council will be underpinned by good governance and transparency in its decision making process |

### SUMMARY OF REPORT:

Short term rental accommodation has accelerated rapidly in recent times as a result of the internet providing a cheap and effective means of promoting this form of accommodation, both on a local and international scale. Holiday letting agencies such as Airbnb, Stayz and Trivago have expanded exponentially, and are commonly utilised for accommodation bookings within the Tweed Shire.

As part of the consideration of submission from the public exhibition of a draft Planning Proposal seeking to introduce new planning controls for short term rental accommodation in the Tweed Shire, Council resolved at its meeting on 7 April 2016:

*“That:*

1. *Planning Proposal PP15/0005 and the publicly exhibited draft Short-term Rental Policy be deferred until the NSW Government Parliamentary Inquiry is completed; and*
2. *Following release of the Inquiry's findings and recommendations a further report to Council is to be submitted that addresses the Inquiry's report and the options for proceeding with a new regulation.”*

Within the report to the above meeting, it was also stated that:

**“CONCLUSION:**

***Council commenced a planning proposal process seeking changes to the Tweed LEP 2014 to regulate use of dwellings for short-term rental accommodation. Parallel to this process, the NSW Government announced a parliamentary inquiry into the adequacy of regulations for short-term rental accommodation in New South Wales. Whilst the timeframes for completing the inquiry are not yet known, Council officers recommend deferring the planning proposal process until the outcomes of the State-wide inquiry process are released to the public.***

***During this period it is also recommended that Council only take compliance action for instances of prohibited use, or otherwise require development consent where a use is permitted.”***

In reaching their resolved position, there was clear direction from the Councillors at the meeting that, until the State Government’s policy position was known, enforcement action should only be limited to those instances of illegal use which were creating significant impacts for surrounding residents.

Since that resolution, there have only been a limited number of complaints in respect of unauthorised holiday let uses in the Tweed Shire.

However, more recently, Council has received three complaints regarding the use of the premises at 6 Beason Court Casuarina. Concurrent complaints were received from two neighbours on 13 February 2017 triggered by an event/guests allegedly staying on the weekend of 5 February 2017. It was alleged:

- there was a pool party involving “40 people with bottles everywhere”
- the street packed full of cars
- being used as a Party House
- not safe for our children to play on the street
- drunk strangers out on the street with drinks and smoking

A further complaint was lodged on 15 March 2017 alleging:

- “the following weekend (11-12 February), there was another gathering of multiple groups of people who were entertaining – although the party was not as crazy”
- on the “weekend of 5-6 March the house alarm continued to go off
- on 18 March 2017 there was allegedly “an engagement party”

The property has offered short term rental accommodation for over 4 years without any complaint being registered with Council until 13 February 2017.

Council officers have investigated this matter, seeking an explanation and improved performance from the owners and letting agents of the premises. The complainants have been informed of these actions, and were advised that a report on this matter would be submitted to Council for consideration on whether any enforcement action should be taken.

In the interim, on 19 April 2017, the NSW State Government handed down their response to the Inquiry into the Adequacy of Regulation for Short-Term Holiday Letting, largely supporting the recommendations.

However, a decision was made to release an options paper next month to further consult with the public and industry on how services like Airbnb should be regulated, which means that there is currently no clear policy decision on any new planning controls affecting uses already in operation.

It is therefore recommended that, in light of Council’s previous resolution on this matter, as well as the latest announcement by the NSW State Government, that no further enforcement action be taken in respect of unauthorised short term rental uses until a firmer policy position is introduced by the NSW State Government.

Similar to the actions taken in respect of Council's previous resolution, the officers will continue to monitor the impacts of any unauthorised short term rental accommodation such as the activity at No. 6 Beason Court, Casuarina, but will not take enforcement action (fines or legal action) against the owners of properties containing these uses, unless they were creating unreasonable amenity impacts for adjoining or surrounding residents. In these instances, a report will be submitted to Council to determine appropriate action.

**RECOMMENDATION:**

**That:**

- 1. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
  - (a) personnel matters concerning particular individuals (other than councillors)*
  
- 2. Council endorses the following actions in terms of short term holiday letting in the Tweed Shire:**
  - a. Receives and notes this report;**
  
  - b. A further report be submitted to Council on any emerging significant policy decisions made by the NSW State Government in respect of the implementation of the findings of the parliamentary enquiry into the "Adequacy of the regulation of short-term holiday letting in New South Wales";**
  
  - c. In terms of ongoing compliance action, officers will continue to monitor the impacts of any unauthorised short term rental accommodation, but will not take enforcement action (fines or legal action) against the owners of properties containing these uses, unless they were creating unreasonable amenity impacts for adjoining or surrounding residents. In these instances, a report will be submitted to Council to determine appropriate action; and**
  
  - d. The owners and letting agents of the alleged unauthorised letting at No. 6 Beason Court, Casuarina be requested to demonstrate an improved management of the amenity impacts of this use, or otherwise face enforcement action by Council.**

## REPORT:

### Background:

Short term rental accommodation has accelerated rapidly in recent times as a result of the internet providing a cheap and effective means of promoting this form of accommodation, both on a local and international scale. Holiday letting agencies such as Airbnb, Stayz and Trivago have expanded exponentially, and are commonly utilised for accommodation bookings within the Tweed Shire.

As part of the consideration of submission from the public exhibition of a draft Planning Proposal seeking to introduce new planning controls for short term rental accommodation in the Tweed Shire, Council resolved at its meeting on 7 April 2016:

*“That:*

- 1. Planning Proposal PP15/0005 and the publicly exhibited draft Short-term Rental Policy be deferred until the NSW Government Parliamentary Inquiry is completed; and*
- 2. Following release of the Inquiry's findings and recommendations a further report to Council is to be submitted that addresses the Inquiry's report and the options for proceeding with a new regulation.”*

Within the report to the above meeting, it was also stated that:

### **“CONCLUSION:**

***Council commenced a planning proposal process seeking changes to the Tweed LEP 2014 to regulate use of dwellings for short-term rental accommodation. Parallel to this process, the NSW Government announced a parliamentary inquiry into the adequacy of regulations for short-term rental accommodation in New South Wales. Whilst the timeframes for completing the inquiry are not yet known, Council officers recommend deferring the planning proposal process until the outcomes of the State-wide inquiry process are released to the public.***

***During this period it is also recommended that Council only take compliance action for instances of prohibited use, or otherwise require development consent where a use is permitted.”***

In reaching their resolved position, there was clear direction from the Councillors at the meeting that, until the State Government's policy position was known, enforcement action should only be limited to those instances of illegal use which were creating significant impacts for surrounding residents.

Since that resolution, there have only been a limited number of complaints in respect of unauthorised holiday let uses in the Tweed Shire.

### **Current Complaint in Respect of No. 6 Beason Court Casuarina:**

Council has received two complaints regarding the use of the premises at 6 Beason Court, Casuarina. Concurrent complaints were received from two neighbours on 13 February 2017

---



triggered by an event/guests allegedly staying on the weekend of 5 February 2017. It was alleged:

- there was a pool party involving “40 people with bottles everywhere”
- the street packed full of cars
- being used as a Party House
- not safe for our children to play on the street
- drunk strangers out on the street with drinks and smoking

A further complaint was lodged on 15 March 2017 alleging:

- “the following weekend (11-12 February), there was another gathering of multiple groups of people who were entertaining – although the party was not as crazy”
- on the “weekend of 5-6 March the house alarm continued to go off
- on 18 March 2017 there was allegedly “an engagement party”

The owners have responded by stating there was no guest booking for 12 March 2017, although there was a small gathering for a birthday party which concluded at 5pm. The alarm was turned on accidentally, but then deactivated for the remainder of the stay. They are not aware of any engagement party allegedly on 18 March.

No police reports have been lodged.

The Confidential Attachment to this report provides a compilation of communications between Council and the owners of the subject premises about this matter.

### **Assessment:**

It should be noted that there are more than 30 homes which are currently used for short term rental accommodation within Casuarina, apart from a few authorised properties the remainder are all classified as unlawful land uses.

The short term rental accommodation of the subject premises has allegedly been occurring for approximately 4 years with no complaints having been registered with Council until 13 February 2017. Apart from the 3 complaints, there has been no continued pattern of significant impact for local residents which can be substantiated. It is therefore recommended that weight be given to the findings of the NSW Parliamentary investigation before any particular Penalty Infringement Notice, which carries a fine of \$3000 or other enforcement action for individuals, is considered for the owners of 6 Beason Court.

### **Update on NSW State Government Policy Review and Recommended Compliance Actions**

In the interim, on 19 April 2017, the NSW State Government handed down their response to the Inquiry into the Adequacy of Regulation for Short-Term Holiday Letting, largely supporting the recommendations.

However, a decision was made to release an options paper next month to further consult with the public and industry on how services like Airbnb should be regulated, which means that there is currently no clear policy decision on any new planning controls affecting uses already in operation.

It is therefore recommended that, in light of Council's previous resolution on this matter, as well as the latest announcement by the NSW State Government, that no further enforcement action be taken in respect of unauthorised short term rental uses until a firmer policy position is introduced by the NSW State Government.

Similar to the actions taken in respect of Council's previous resolution, the officers will continue to monitor the impacts of any unauthorised short term rental accommodation, but will not take enforcement action (fines or legal action) against the owners of properties containing these uses, unless they were creating unreasonable amenity impacts for adjoining or surrounding residents. In these instances, a report will be submitted to Council to determine appropriate action.

**OPTIONS:**

**Option 1**

Council endorses the following actions in terms of short term holiday letting in the Tweed Shire:

- a. Receives and notes this report;
- b. A further report be submitted to Council on any emerging significant policy decisions made by the NSW State Government in respect of the implementation of the findings of the parliamentary enquiry into the "Adequacy of the regulation of short-term holiday letting in New South Wales";
- c. In terms of ongoing compliance action, officers will continue to monitor the impacts of any unauthorised short term rental accommodation, but will not take enforcement action (fines or legal action) against the owners of properties containing these uses, unless they were creating unreasonable amenity impacts for adjoining or surrounding residents. In these instances, a report will be submitted to Council to determine appropriate action; and
- d. The owners and letting agents of the alleged unauthorised letting at No. 6 Beason Court, Casuarina be requested to demonstrate an improved management of the amenity impacts of this use, or otherwise face enforcement action by Council.

**Option 2**

Enforcement action be taken to cease the holiday letting use in relation to the unlawful land use.

Option 1 is recommended.

**CONCLUSION:**

There are a number short term rental accommodation premises throughout the R2 residential zone which operate, such as the activity at No. 6 Beason Court, Casuarina. Apart from the three complaints registered about incidents on 5 and 11-12 February 2017,

there has been no **continued pattern of significant impact** from local residents which can be substantiated.

It is therefore recommended that weight be given to the findings of the NSW Parliamentary investigation before any particular Penalty Infringement Notice, which carries a fine of \$3000 or other enforcement action, is considered for the owners of 6 Beason Court.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Financial resources will be required to initiate any legal advice.

**c. Legal:**

Legal advice may be required.

**d. Communication/Engagement:**

We will keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*(Confidential)* Attachment 1. Email from owner dated 17 February 2017 (ECM 4498435)

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**6 [PR-PC] Planning Proposal PP16/0004 The Palms Shopping Village, Dry Dock Road Tweed Heads South**

**SUBMITTED BY: Strategic Planning and Urban Design**

**FILE REFERENCE: PP16/0004**

Validms



## **Civic Leadership**

### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 1 Civic Leadership
  - 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
  - 1.5.2 Land use plans and development controls will be applied and regulated rigorously and consistently and consider the requirements of development proponents, the natural environment and those in the community affected by the proposed development
- 

### **SUMMARY OF REPORT:**

Council has received a request to prepare a planning proposal for Lot 1 DP 777875 Dry Dock Road, Tweed Heads South. It seeks a change of zoning from R2 Low Density Residential to RE2 Private Recreation to enable integration with to the existing and adjoining Palms Village Caravan Park, and development ancillary to the park.

Rezoning will facilitate rationalisation of the existing caravan park and result in the constitution of a community hall, pool, bowling green and car parking.

The site currently lies within the 30-35 ANEF 2031 contours with residential development unacceptable under Australian Standard 2021-2015. To limit development to those types listed above, and prevent the potential for construction of cabins, manufactured homes, and caravans permissible within the proposed RE2 zone, a planning agreement under section 93F of the *Environmental Planning and Assessment Act 1979* has been agreed by the proponent.

Gold Coast Airport Pty Ltd has advised that once the Gold Coast Airport Master Plan 2017 is approved by the Federal Minister for Infrastructure and Transport, currently assumed to be before mid-2017, new ANEF contours projected to 2047 will replace the current 2031 contours. The impact of this will be to change the ANEF zone from 30-35, to 25-30. Residential development is still unacceptable in this zone.

The site has been filled with material of unknown origin without consent and is situated just metres from a lagoon which joins to Terranora Creek. It is proposed that Council endorse an investigation into this alleged unauthorised fill activity prior to a further report being submitted to Council on whether or not to submit the Planning Proposal to the Department of Planning and Environment for a Gateway determination.

**RECOMMENDATION:**

**That in terms of Planning Proposal PP16/0004 Palms Shopping Village, the matter of alleged unlawful fill of land be referred to Council's Compliance Unit for appropriate investigation and action. On completion of this investigation, a further report will be submitted to Council to further consider the referral of the Planning Proposal to the Department of Planning and Environment for a Gateway determination.**

## **REPORT:**

On 4 August May 2016 a request was received for Council to prepare a planning proposal for Lot 1 DP 777875 Dry Dock Road, Tweed Heads South (see Figures 1 and 2).

### **The request**

The request seeks to rezone Lot 1 DP 777875 from R2 Low Density Residential to RE2 Private Recreation for the purpose of development ancillary to the operation of the caravan park on the adjoining land (See Figure 3).

It is proposed that the site will be integrated with the existing Palms Village Caravan Park and be developed for the purpose of:

- Community hall;
- Swimming pool;
- Bowling green, and
- Car parking.

### **Implications of the request**

1. Caravan parks are prohibited in the R2 Low Density Residential zone, but permissible with consent in the RE2 Private Recreation zone.
2. It is proposed that the existing pool and community hall will be relocated to this site from their current locations within the caravan park.
3. The site lies within the 30 – 35 ANEF 2031 (Aircraft noise) contours surrounding Gold Coast Airport and as such residential development is unacceptable.
4. To prevent the site from being utilised for residential purposes such as caravans, cabins, manufactured homes or tents, it is agreed by the proponent that a planning agreement be utilised to secure perpetual restrictions on the types of development possible on the site.
5. The site has been extensively filled with material of unknown origin without any approval. This matter should be resolved prior to submission of this proposal to the Department of Planning and Environment for a Gateway determination.
6. Relocation of facilities from the existing park to this site will enable the park to provide an additional 17 sites which is within its existing development approval.

Discussion of the implications of this request is presented in the remainder of this report.

### **The site and surrounding environment**

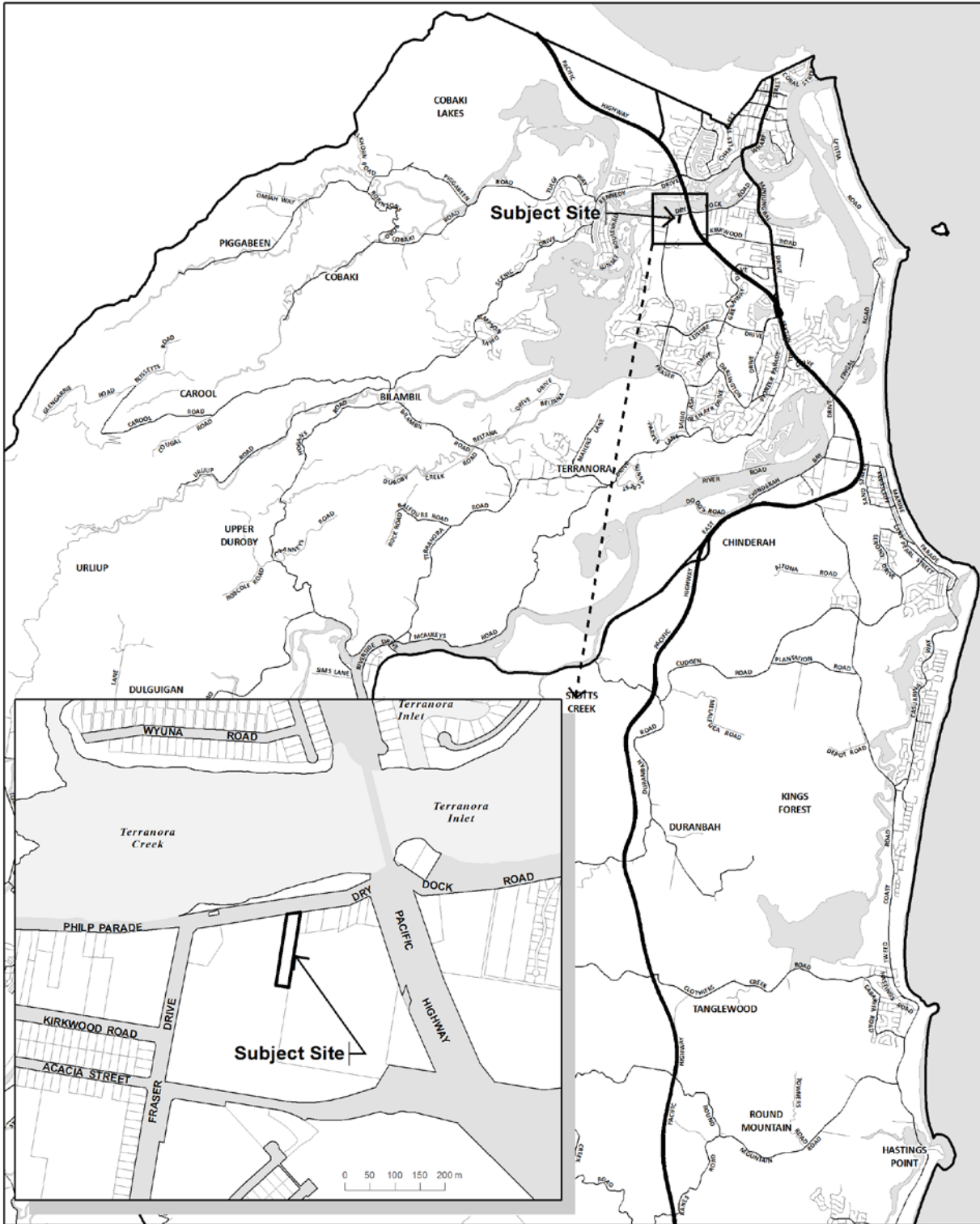
The site lies immediately west of the Pacific Highway overpass on Dry Dock Road in direct alignment with Gold Coast Airport Runway 32.

The site covers an area of approximately 3876 square metres (0.38 hectares), adjoins the existing Palms Village Caravan Park to the east and a narrow strip of land bordering the



lagoon being part of the former aquatic centre to the west. The lagoon enters Terranora Creek on the opposite side of Dry Dock Road.

Figure 1: Locality Plan



Affected Property

Cadastre: 14 February, 2017  
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 Boundaries shown should be considered approximate only.

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 0 0.5 1 1.5 2 Km  
 DO NOT SCALE  
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 Map Projection: Universal Transverse Mercator  
 Horizontal Datum: Geoidetic Datum of Australia 1994  
 Grid: Map Grid of Australia, Zone 56

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 E | plan@tweed.nsw.gov.au

**Locality Plan**

Rezoning  
**Affected Property:**  
 Lot 1 DP 777875  
 132-134 Dry Dock Road, Tweed Heads

Council File | PP16/0004  
 Revised | 14/02/2017

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 Filepath: Z:\ERF\PRJ\POLICES & STRATEGIC\PLANNING\PROPOSAL\PP16-0004 The Palm Shopping Village\LocalityPlan.mxd Author: J.Batchelor - Strategic Planning & Urban Design Unit Date Printed: 14 February, 2017

Figure 2: 2015 aerial photograph of the site



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 Map Projection: Universal Transverse Mercator  
 Horizontal Datum: Geocentric Datum of Australia 1994  
 Grid: Map Grid of Australia, Zone 56

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 E | planning@tweed.nsw.gov.au

**Aerial Photo**  
 Source: Aerial Imagery was captured April 2015  
 © AAM Pty Ltd and NSW LPI.  
**Rezoning**  
**Affected Property:**  
 Lot 1 DP 777875  
 132-134 Dry Dock Road, Tweed Heads

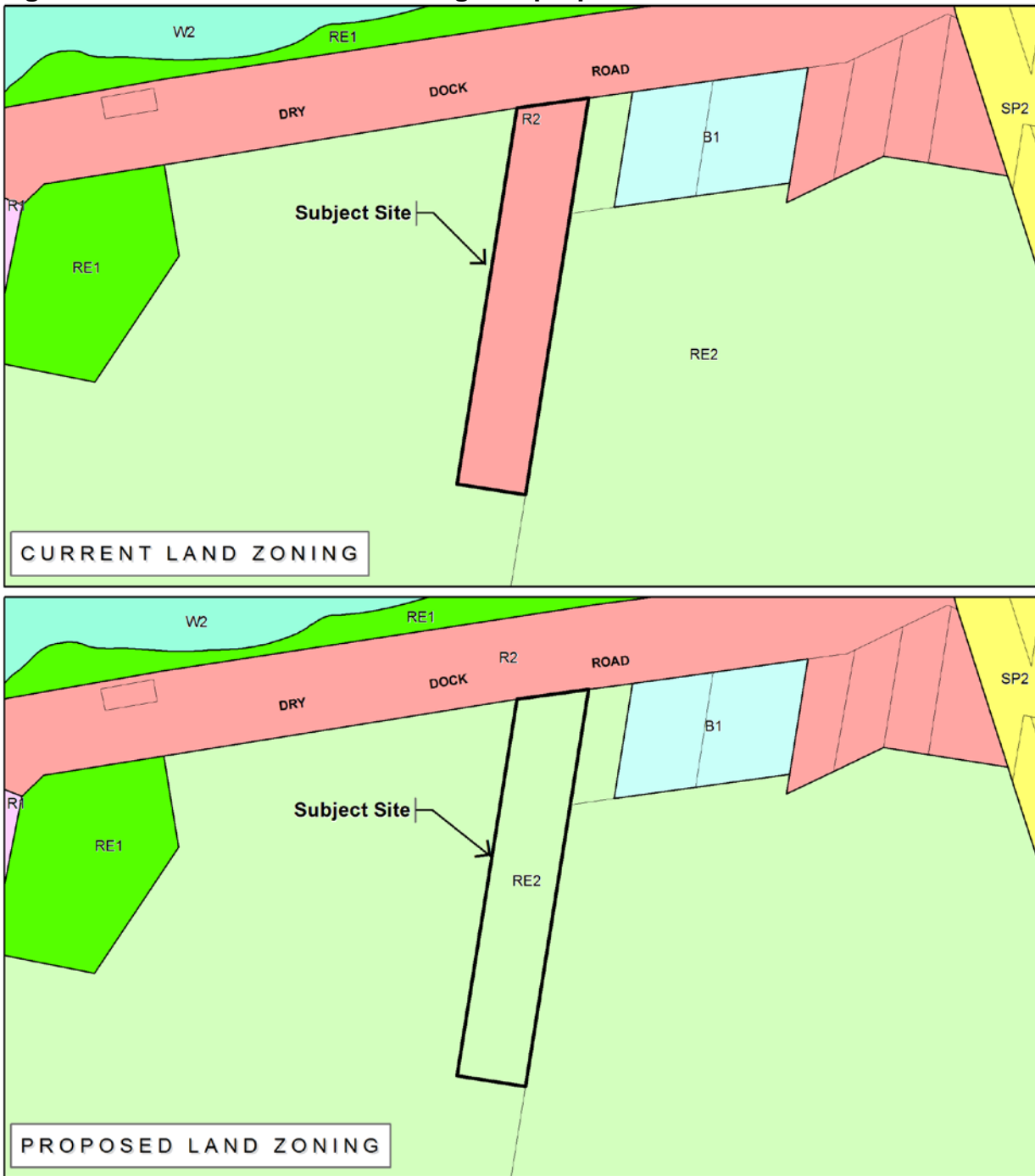
Council File | PP16/0004  
 revised | 14/02/2017

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Figure 3: Tweed LEP 2014 – Existing and proposed zones



**Tweed Local Environmental Plan 2014**

**Land Zoning**

<b>B1</b> Neighbourhood Centre	<b>E1</b> National Parks & Nature Reserves	<b>R5</b> Large Lot Residential	<b>SP1</b> Special Activities	<b>DM</b> Deferred Matter
<b>B2</b> Local Centre	<b>IN1</b> General Industrial	<b>RE1</b> Public Recreation	<b>SP2</b> Infrastructure	<b>MD</b> SEPP (Major Development) 2005
<b>B3</b> Commercial Core	<b>IN4</b> Working Waterfront	<b>RE2</b> Private Recreation	<b>SP3</b> Tourist	<b>TCC</b> Tweed City Centre LEP 2012
<b>B4</b> Mixed Use	<b>R1</b> General Residential	<b>RU1</b> Primary Production	<b>W1</b> Natural Waterways	
<b>B5</b> Business Development	<b>R2</b> Low Density Residential	<b>RU2</b> Rural Landscape	<b>W2</b> Recreational Waterways	
<b>B7</b> Business Park	<b>R3</b> Medium Density Residential	<b>RU3</b> Village	<b>W3</b> Working Waterways	

**Cadastral: 14 February, 2017**  
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**Tweed Local Environmental Plan 2014**  
**DRAFT Planning Proposal**

**Rezoning**  
**Affected Property:**  
 Lot 1 DP 777875  
 132-134 Dry Dock Road, Tweed Heads

Council File | PP16/0004  
 Revised | 14/02/2017

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## The issues

A preliminary assessment has determined that at least the following issues require further consideration prior to the proposal being placed on public exhibition:

1. Aircraft noise;
2. Status of illegal fill;
3. Contamination;
4. Geotechnical matters, and
5. Restricting development types.

## Aircraft Noise

The site lies directly in alignment with Gold Coast Airport's Runway 32, and is significantly impacted by restrictions imposed for development within the current 2031 30 – 35 ANEF contours.

Draft Preliminary Gold Coast Airport Master Plan 2017 has recently been on public exhibition and shows how the ANEF contours are projected to vary over the period to 2047, as seen in Figure 4.

Gold Coast Airport Pty Ltd has advised that once the Gold Coast Airport Master Plan 2017 is approved by the Federal Minister for Infrastructure and Transport, currently assumed to be before mid-2017, new ANEF contours projected to 2047 will replace the current 2031 contours.

As Figure 4 illustrates, the 30 ANEF contour will shorten placing the site within the 25 – 30 ANEF zone. Notwithstanding this change, residential development remains undesirable on this site.

While it is assumed that a community hall could be attenuated sufficiently to comply with the requirements of Tweed LEP 2014 clause 7.9 Development in areas subject to aircraft noise, and *AS 2021-2015 Australian Standard Acoustics – Aircraft noise intrusion – Building siting and construction*, it will be the responsibility of the landowner to ensure that development complies with these standards.

Should Council resolve to proceed with this planning proposal, it is proposed that the proponent be advised that compliance with all legislation and standards associated with aircraft noise impact and attenuation will be required prior to issue of any development consent.

## Status of fill, contamination and geotechnical matters

Early in the development of the adjoining caravan park, the land was filled to a level approximately one metre above the natural ground level and separated from this site by a retaining wall along the common boundary of the allotments.

Subsequent to this, as seen in Figures 5 and 6, the site subject of this request was filled to an equivalent level, burying the retaining wall in some sections. The landowner has not been able to provide any evidence of consent to fill, or any information regarding the origin

of the material deposited; however, building materials are evident in the exposed batters facing the lagoon.



Figure 4: Existing 2031 and draft 2047 ANEF contours

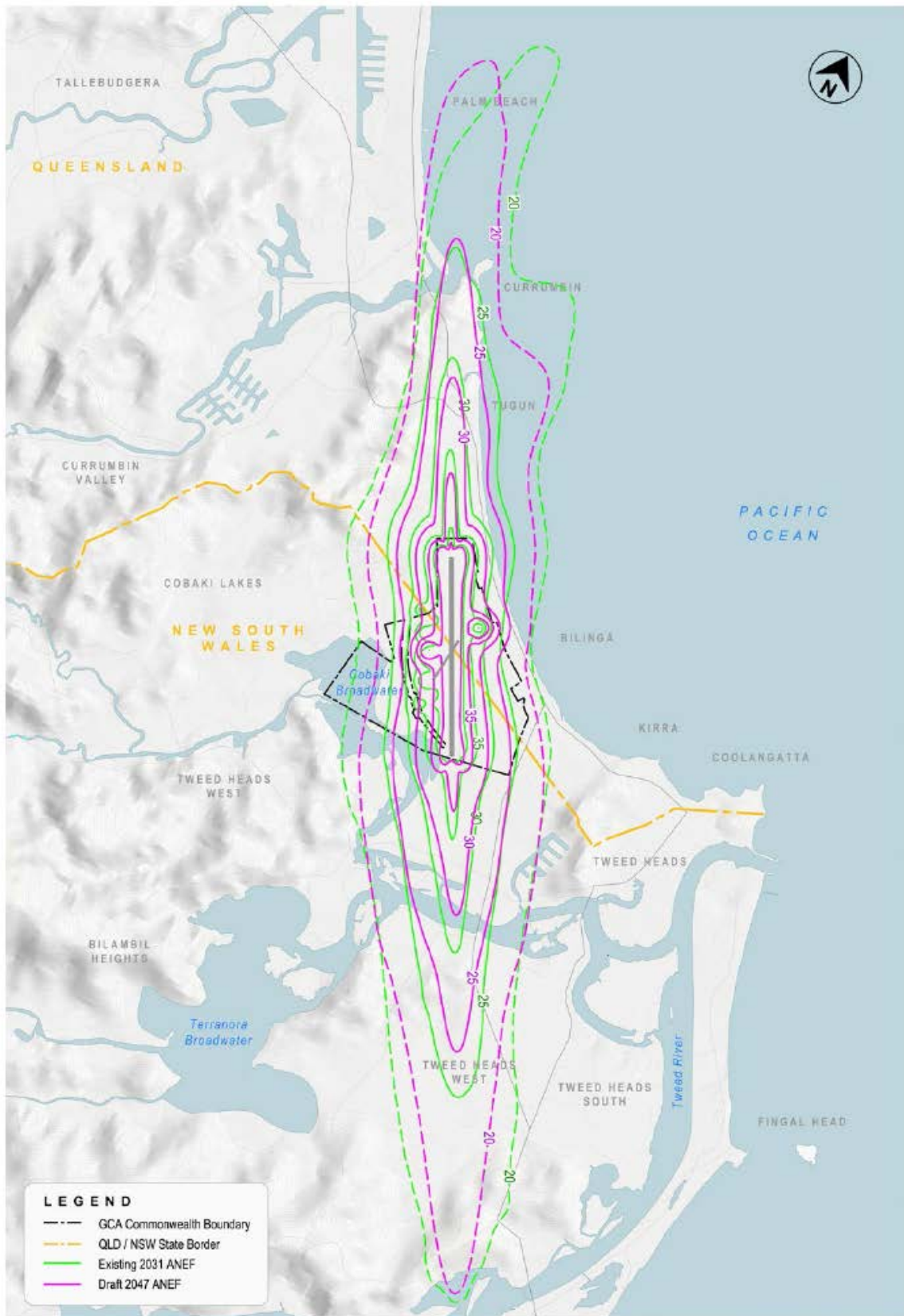


Figure 5.7 Comparison between 2011 Master Plan 2031 ANEF and 2047 ANEF



**Figure 5: Extent of fill on the site.**



**Figure 6: Building materials present in exposed batter of fill.**



### **Restricting development types**

Rezoning of the site from R2 Low Density Residential to RE2 Private Recreation will by default make all landuses listed as permissible with consent within the zone potential landuses on the site, and includes all residential type development typically found within a caravan park.



While residential development is deemed 'unacceptable' under *Australian Standard 2021-2015*, the ability of the site to be developed for some form of residential development cannot be eliminated through the rezoning of the site.

The purpose of establishing ANEF zones surrounding airports is in part intended to reduce the likelihood of noise nuisance and potential conflict with residents living within the various aircraft noise zones.

While ANEF contours are derived from Federal legislation, ANEF contours provide the opportunity locally to manage development at a more strategic landuse planning level such that nuisance and conflict are recognised and minimised where possible.

This planning proposal provides the opportunity through a change in zoning and use of a planning agreement to restrict development of the site to non-residential development types consistent with the long term strategic outcomes for this site and the surrounding locality.

Should Council resolve to proceed with this planning proposal, a draft planning agreement will be prepared in consultation with the proponent, as already agreed by the proponent, at no cost to Council, and placed on public exhibition with the planning proposal for a period of not less than 28 days in accordance with clause 25D of the *Environmental Planning and Assessment Regulation 2000*.

The planning agreement will need to be registered against the title for the property prior to the finalisation of the planning proposal.

### **Existing approval for adjoining caravan park**

The outcome of this rezoning will be integration of the site with the adjoining caravan park.

The caravan park operates under an existing consent (Notice No. 96/422 modified on 9 September 2016) for a maximum of 250 sites, with the maximum number of long term and short term sites permitted at any time being 240 and 10 respectively.

The caravan park is currently operating only 226 sites. Following rezoning and rationalisation of services and facilities which will include relocation of a pool and community hall to this site, the number of sites within the park will be increased by 17 sites, bringing the total number of sites to 243.

### **OPTIONS:**

1. In terms of Planning Proposal PP16/0004 Palms Shopping Village, the matter of alleged unlawful fill of land be referred to Council's Compliance Unit for appropriate investigation and action. On completion of this investigation, a further report will be submitted to Council to further consider the referral of the Planning Proposal to the Department of Planning and Environment for a Gateway determination.
2. Not proceed with the planning proposal and notify the proponent accordingly.

The Officers' recommendation is Option 1.

**CONCLUSION:**

Palms Village Caravan Park is seeking to rationalise the park by extending onto adjoining land the subject of this planning proposal.

Rationalisation will include the relocation of certain recreational facilities and construction of others, specifically a community hall, swimming pool, bowling green, and car park. This will allow the existing caravan park to provide an additional 17 sites which falls within its existing development consent.

The site has been extensively filled with material of unknown origin without consent. The fill lies within metres of the adjoining lagoon which connects to Terranora Creek, and has no geotechnical certification. Resolution of matters relating to illegal fill should be resolved prior to forwarding this planning proposal to the Department of Planning and Environment for a Gateway determination.

Rezoning of the site to RE2 Private Recreation will bring this land into a zone consistent with the surrounding land, and with the use of a planning agreement will prevent any residential development unacceptable within the ANEF zones affecting the site by limiting development to a community hall, pool, bowling green and car park.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

**Consult-**We will listen to you, consider your ideas and concerns and keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1. Aboriginal Cultural Heritage Due Diligence Assessment July 2016 (ECM 4503416)

Attachment 2. Aircraft Noise Impact Report July 2016 (ECM 4503427).

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**7 [PR-PC] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards**

**SUBMITTED BY: Development Assessment and Compliance**

Valid



## **Civic Leadership**

### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 1 Civic Leadership
  - 1.4 Strengthen coordination among Commonwealth and State Governments, their agencies and other service providers and Statutory Authorities to avoid duplication, synchronise service delivery and seek economies of scale
  - 1.4.1 Council will perform its functions as required by law and form effective partnerships with State and Commonwealth governments and their agencies to advance the welfare of the Tweed community
- 

### **SUMMARY OF REPORT:**

In accordance with the Department of Planning's Planning Circular PS 08-014 issued on 14 November 2008, the following information is provided with regards to development applications where a variation in standards under SEPP1 has been supported/refused.

### **RECOMMENDATION:**

**That Council notes there are no variations for the month of March 2017 to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.**

**REPORT:**

On 14 November 2008 the Department of Planning issued Planning Circular PS 08-014 relating to reporting on variations to development standards under State Environmental Planning Policy No. 1 (SEPP1).

In accordance with that Planning Circular, no Development Applications have been supported/refused where a variation in standards under SEPP1 has occurred.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**CONFIDENTIAL ITEMS FOR CONSIDERATION**

**REPORTS THROUGH THE GENERAL MANAGER IN COMMITTEE**

**REPORTS FROM THE DIRECTOR ENGINEERING IN COMMITTEE**

**C1 [E-PC] SPS 3037 Terranora (Area E) Regional Sewerage Pump Station - Contribution from Development Servicing Charges**

**REASON FOR CONFIDENTIALITY:**

Disclosure of Council financial information could prejudice Council's position.

**Local Government Act**

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (d) commercial information of a confidential nature that would, if disclosed:
  - (i) prejudice the commercial position of the person who supplied it, or
  - (ii) confer a commercial advantage on a competitor of the council, or
  - (iii) reveal a trade secret.

Validms

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**Supporting Community Life**

**LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 2 Supporting Community Life
  - 2.3 Provide well serviced neighbourhoods
  - 2.3.3 Provision of high quality and reliable wastewater services which meets health and environmental requirements and projected demand
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